

**IN THE HIGH COURT OF NEW ZEALAND
NELSON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
WHAKATŪ ROHE**

**CRI-2018-042-000758
[2019] NZHC 3442**

THE QUEEN

v

BIN JIANG

Hearing: 19 December 2019
Counsel: J M Webber and S J Revell for the Crown
A J D Bamford and E J Riddell for Mr Jiang
Sentencing: 19 December 2019

SENTENCING NOTES OF DOOGUE J

[1] Mr Jiang, on 21 November 2019, a jury found you guilty of the murder of your wife, Yanyan Meng, in the early hours of 27 April 2018. On receipt of that verdict I gave you a warning about the consequences of committing another specified offence under New Zealand's three-strikes law.

[2] The sentence for murder in New Zealand is life imprisonment, unless it would be manifestly unjust.¹ In your case, the Crown says that there is no suggestion that a sentence of life imprisonment would be manifestly unjust. Your counsel, however, says that your case may be one which warrants a finite sentence instead of life imprisonment.

¹ Sentencing Act 2002, s 102(1).

[3] I must therefore decide two questions. First, whether it would be manifestly unjust to impose a sentence of life imprisonment. And second, if life imprisonment would not be manifestly unjust, what minimum period of imprisonment should be imposed. That is the term that you would serve before you would be eligible for parole.

Facts of the offending

[4] Mr Jiang, you are 63 years old. Ms Meng was 62 when she died. You were married for 40 years. You spent most of your married life in Switzerland where you both gained citizenship, having both been born in China. You have one son together.

[5] At the time of Ms Meng's death, the two of you were visiting New Zealand as part of a German-speaking tour group which had started in Christchurch and was travelling to Auckland.

[6] On the evening of Thursday 26 April 2018, you and Ms Meng were staying in room 603 at the Rutherford Hotel, Nelson. Other members of the tour group were also staying on the same floor of the Hotel.

[7] Occupants of rooms directly below and adjoining room 603 have since reported to police that they heard noises coming from the vicinity of your room in the early hours of the morning of Friday 27 April 2018. These noises were described as thumping and bumping sounds.

[8] At 7:30 a.m. that same morning, the tour guide was organising your group to leave by bus for Wellington and noticed that you and Ms Meng were not present on the bus.

[9] She asked the receptionist at the Rutherford Hotel to ring your room. You answered. The receptionist put the tour guide on the phone and you told her to come up. On entering the room she observed the form of a person under a sheet on the double bed — there being two beds in the room, a double and a single.

[10] The tour guide asked you what had happened to Ms Meng. You replied that you had an argument as you frequently did and that she was dead.

[11] It is only now that we know what this argument was about. In or around September 2017, you began messaging an old classmate in China over a popular Chinese app called WeChat. You were in love and having an emotional affair with her.

[12] Ms Meng found out about the messages on your phone between you and your former classmate. At some point on your tour of New Zealand, she had taken photos of some of those messages.

[13] In the early hours of 27 April 2018, Ms Meng sent her brother the photos of your conversations with your classmate. She also sent several voice messages expressing her anger at your infidelity. She asked her brother to send the messages to your family and in particular your sister and elderly mother.

[14] You became incensed at the prospect of your mother (who is aged and frail) receiving this information. You wanted to stop Ms Meng's brother from sending the photos to your mother and so you tried to wrestle the phone from her. During this struggle you both fell off the bed on to the floor.

[15] It is after this that you strangled Ms Meng. You maintained at trial, and still maintain now, that you blacked out and cannot remember what happened, only that you woke up to find Ms Meng dead. You therefore claimed you did not have murderous intent. The jury clearly did not accept this.

[16] The medical evidence suggests that you strangled Ms Meng using your hands, applying pressure to the sides of her throat pushing in with a crushing motion. This must have taken some time and whilst Ms Meng initially fought back she ultimately succumbed.

[17] At some stage after you strangled Ms Meng, you checked her pulse and established she was dead. You then placed her on the double bed in your hotel room and covered her with a sheet.

[18] Shocked by what you had done you attempted to commit suicide by taking several sleeping tablets and drinking a small bottle of wine.

Victim impact statements

[19] Your son and Ms Meng's parents and family are the victims of your killing Ms Meng.

Mr Jiang and Ms Meng's son

[20] I have read your son's victim impact statement and it is evident that he has suffered greatly. He spoke of the shock following the death of his mother and the trauma of coming to New Zealand to collect her body and then organising for her cremation. He also spoke of the stress inherent in managing the relations between your and Ms Meng's families as well as in dealing with the financial implications of Ms Meng's death. As your only child, Mr Jiang, your son was left to organise everything alone.

[21] Your son has said that his mother's death has affected him physically, psychologically, financially and socially. He is clearly very intelligent and hardworking, currently studying towards his second Master's degree. However, his mother's death paralysed him in both his personal and professional life. He says he suffered uncontrollable shaking and persistent sadness. He even questions his choice of moving away from you and Ms Meng to pursue his studies. He has had to take time off and is currently seeing a mental health professional, such has been the psychological and emotional toll on him.

[22] What struck me most, Mr Jiang, is that your son is unsure whether he helped or hindered by giving evidence at your trial for fear it may have increased your suffering and pain. In his victim impact statement, he questions whether he can or

even should forgive you. But clearly, he has taken on some of the blame for Ms Meng's death, something which no one in his position should have to do.

[23] What was equally difficult to read was that your son does not know whether he will be alright following these events; whether he will be able to continue with his studies or whether he even truly belongs in academia; whether he will be able to forge friendships; whether he will be able to find love. He says that he feels lost, like a stray dog.

Ms Meng's parents and family

[24] I have also read Ms Meng's parents' victim impact statement. They suffered a huge blow on hearing of their daughter's death and the manner in which she died.

[25] Both are in their 90's and suffered physical set backs upon receiving the news. All the family members – Ms Meng's parents and siblings – have been hospitalised as a result of various ailments caused by the stress of Ms Meng's death.

[26] They have also been plagued by flashbacks and insomnia. On top of that they have experienced social condemnation and shame through no fault of their own.

[27] Finally, they have suffered considerable associated financial losses – medical, legal and funereal.

Pre-sentence report

[28] I have also read a pre-sentence report which was compiled following your interview with a probation officer.

[29] The report briefly spoke of your marriage to Ms Meng and how your trip to New Zealand was one of your first trips since retirement. You mentioned to the report writer that you and Ms Meng intended to spend a large part of your retirement travelling.

[30] The report notes that throughout the interview, your responses at times appeared cold and callous. Having seen and heard you give evidence at trial, I agree

with the report writer's comment that this could be due to cultural differences. However, I consider that you have also chosen to not face up to what you have done. The report notes that you made it clear you did not wish to repeat any of the information discussed at your trial. You apparently do not believe it is healthy to dwell on the past. As you said to the report writer, "what is done is done". You therefore show no introspection as to your own guilt.

[31] The report goes on to say that while you do not deny killing Ms Meng, you still dispute some of the evidence given at trial and maintain that you cannot remember what happened in room 603 at the Rutherford Hotel.

Sentencing – purposes and principles

[32] In sentencing you today, I have to consider the purposes and principles set out in the Sentencing Act 2002.²

[33] The purposes of sentencing which are particularly relevant here are the need to hold you accountable for your offending, to promote a sense of responsibility for and acknowledgement of the harm you have done, to denounce your conduct and to assist in your rehabilitation.³

[34] In respect of the principles of sentencing, I consider it is of particular importance to take into account the gravity of your offending, including your culpability, the general desirability of consistency of sentencing levels with similar offenders, and the effect of your offending on your son and Ms Meng's family who are the victims in this matter.

Submissions

[35] You are already aware Mr Jiang that I must sentence you to life imprisonment, unless it would be manifestly unjust to do so.

² Sections 7 and 8.

³ Section 7(1)(a), (c), (e) and (i).

[36] The Crown submits that there are no circumstances which would make a sentence of life imprisonment unjust in your case. The Crown says that the threshold for manifest injustice is high and has only been reached in a handful of cases involving particular facts. Your case, the Crown submits, is not particularly unusual let alone exceptional.

[37] Your counsel agrees that the threshold for manifest injustice is high but submits that the circumstances of your case may reach it. He says that your lack of criminal record, your age, the absence of injuries to Ms Meng beyond those likely to have been obtained during the strangulation, the low risk of your reoffending and the fact you are a foreign national who will have to spend time in a New Zealand prison are all relevant to whether a sentence of life imprisonment would be manifestly unjust.

[38] This combination of factors, your counsel submits, makes your case exceptional. He therefore submits that a finite sentence around 15 years' imprisonment is appropriate.

Life imprisonment manifestly unjust?

[39] Turning to the first question of whether a sentence of life imprisonment is manifestly unjust in the circumstances.

[40] There is a statutory presumption in favour of life imprisonment for murder.⁴ This is because Parliament has decided that people who commit murder should face an indeterminate sentence of imprisonment unless there are compelling reasons otherwise. As both the Crown and your counsel recognise, this is a high threshold.⁵

[41] Mr Jiang, I agree with the Crown that the circumstances of your offending are neither unusual nor exceptional. Your case shares none of the factors with those cases where the requisite threshold for displacing the presumption in favour of life imprisonment has been met. These include “mercy killings” of disabled or suffering victims at the hands of their family members,⁶ killings by people labouring under

⁴ Sentencing Act 2002, s 102(1).

⁵ *R v Rapira* [2003] 3 NZLR 794, (2003) 20 CRNZ 396 (CA) at [121].

⁶ *R v Law* (2002) 19 CRNZ 500 (HC); *R v Knox* [2016] NZHC 3136.

mental illness⁷ or cognitive disabilities,⁸ or secondary parties who were significantly less culpable than the principal party.⁹ Your being a foreign national is in my view not relevant to this consideration.

[42] Mr Jiang, you killed Ms Meng because you did not want your family to find out about your emotional infidelity. You say it was because you thought the news of your WeChat communications with your former classmate would kill your mother who is frail. Mr Jiang, the act of killing Ms Meng was an entirely selfish one.

[43] In my view, there are no circumstances that would make it manifestly unjust for you to serve a sentence of life imprisonment. That is therefore the sentence I will impose.

Minimum period of imprisonment

[44] The second question is whether the statutory minimum period of 10 years' imprisonment should apply, or whether I should impose something higher.¹⁰ Counsel all agree that s 104 of the Sentencing Act 2002, which applies to particularly brutal murders, is not engaged in your case.

[45] A "minimum period of imprisonment" refers to the minimum period for which you must remain in prison before you can apply for parole. Whether you are then released is a decision for the New Zealand Parole Board, who will determine at the relevant time whether you still remain a risk to the community. There is no guarantee, even after the minimum period of imprisonment, that you will be granted parole.

[46] Counsel have referred to a number of cases involving murder where offenders have killed their partners at the end of their relationship. These cases are set out in the written submissions I have received. In these cases, all of which share certain features

⁷ *R v Reid* HC Auckland CRI-2008-090-2203, 4 February 2011; *R v Smith* [2019] NZHC 1910; *R v Rihia* [2012] NZHC 2720;

⁸ *R v Wihongi* [2011] NZCA 592, [2012] 1 NZLR 775.

⁹ *R v Cunnard* [2014] NZCA 138; *R v Innes* [2014] NZHC 2780.

¹⁰ Section 103(1) and (2).

with your offending, the minimum periods of imprisonment have ranged between 10 and 12 years.¹¹

[47] The aggravating features of your offending are the following:

- (a) the self-interested motive in restraining Ms Meng so you could get her phone and stop her brother informing your mother about your emotional affair with your classmate;
- (b) the fact that when Ms Meng appeared to be dead you made no attempt to call for medical assistance; and
- (c) your lack of apparent remorse.

[48] I want to say something about this last factor. Despite noting that your answers at times appeared cold and callous, the pre-sentence report writer noted that you reported feeling “‘empty’ for a short time period after the death of [Ms Meng]”. While I do not question that you said this during your interview, I do not consider that it shows true remorse. On the contrary, your lack of remorse was apparent at trial. In cross-examination, you sought to blame Ms Meng and her brother for what happened. In your view, had it not been for Ms Meng’s refusal to give you the phone, or had her brother called back to speak to her and calm her down, she would not be dead.

[49] Against the aggravating factors I have just mentioned, I must balance the following, which I consider to be mitigating factors present in your case:

- (a) the fact you are advancing in years;
- (b) the fact that you have been a contributing member of the community up until now;
- (c) your lack of previous convictions; and

¹¹ *Hiatt v R* [2011] NZCA 637; *R v Ryan* HC Hamilton, CRI-2005-019-9389, 26 July 2007; *R v Gisborne* HC Rotorua, CRI-2008-087-2425, 19 May 2010.

- (d) the real possibility, given you are a Swiss national with no ties to New Zealand, that you will perhaps find your sentence harder to serve given the vast separation from the support of your family and friends.¹²

[50] Mr Jiang, the reservations you expressed about discussing your offending during the interview with the pre-sentence report writer, and the relatively minimal amount of information that I have been provided in respect of your personal circumstances means that these are the only factors before the Court and therefore the only factors I can take into account in determining the most appropriate sentence.

[51] Having weighed the aggravating and mitigating factors in your case, and in light of both the purposes and principles of sentencing as well as the cases to which I have been referred, I consider that the minimum statutory period of imprisonment is warranted in your case.

[52] Evidence was led at trial of an incident almost 20 years ago where you threw a dumpling at Ms Meng with such force that it injured her eye. The police were called and gave you a warning. This appears to have been a turning point in your life and since then, you recognised your triggers and you made a conscious effort to remove yourself from conflicts with Ms Meng. In this context, your offending which occurred during your mid-60's and during a time when you and Ms Meng were looking forward to enjoying your retirements, is out of character. You now find yourself in a foreign country where you will have to serve a sentence of imprisonment with little or no support.

[53] I therefore consider that a minimum period of 10 years' imprisonment will sufficiently denounce your offending and hold you accountable for your actions. I also consider that it will give you an opportunity to reflect on your actions in order to promote a sense of responsibility for and acknowledgement of the harm you have caused your son and Ms Meng's family.

¹² See *Zhang v R* [2019] NZCA 507 at [163] where the Court of Appeal accepted that in cases of offenders from foreign jurisdictions who commit crimes in New Zealand, the isolation from and denial of family support may be treated as a mitigating factor where it makes the sentence harder than usual to bear. This is, however, at the discretion of the sentencing Judge.

[54] The reality is Mr Jiang that you will be in your mid-70's when you become eligible for parole. It will be up to you to persuade the New Zealand Parole Board at that time that you pose no further risk to the community.

Sentence

[55] Mr Jiang, please stand while I formally sentence you.

[56] Bin Jiang, for the murder of Yanyan Meng I sentence you to life imprisonment with a minimum period of imprisonment of 10 years.

[57] Please stand down.

Doogue J

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