

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

**I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE**

**CRI-2022-090-4566
[2023] NZHC 2040**

THE KING

V

KANWARPAL SINGH

Hearing: 2 August 2023

Appearances: F Culliney and P Philpott for Crown
S Thode for Defendant

Sentence: 2 August 2023

SENTENCE OF JOHNSTONE J

Solicitors:
MC, Auckland

Preliminary

[1] Kanwarpal Singh, it is my task to sentence you for the crime of murdering Farzana Yaqubi. I am going to take some time to let you and the other people here in Court know the reasons for the sentence I have chosen. I will ask you to stand up when it comes time for me to impose that sentence. So at the end of my remarks, when I am imposing my sentence, that is when I will ask you to stand up.

Offending

[2] First, I will describe the offending you have acknowledged by pleading guilty to a Crown summary of the facts. I start, where I should, with Ms Yaqubi.

[3] Farzana Yaqubi was 21 years old when she died. She came to New Zealand from Afghanistan, when she was aged two. Ms Yaqubi came with her mother and siblings to join her father, taking refuge here against the challenges of life in a wartorn country.

[4] Ms Yaqubi flourished in New Zealand. She was smart and independent. She did well at school and started working part-time aged 14. At the end of 2022, Ms Yaqubi had just finished her third year at the Auckland University of Technology's Law School. She should have had a rich and fulfilling life ahead of her.

[5] However, just over two years earlier, in September 2020, she had met you. You noticed her, no doubt on her way to or from her studies at AUT, occasionally passing by the place on Queen Street in Auckland City, where you worked as a security guard.

[6] You engaged her in conversation one time, and you were successful in having her agree to sit down with you for a coffee. From that point, you were able to stay in touch with Ms Yaqubi, including through use of the social media application, Instagram.

[7] Over time, she blocked your Instagram messages. You responded during 2021 and 2022 by creating new accounts, and by contacting Ms Yaqubi using these new accounts.

[8] Your messages started to threaten Ms Yaqubi. In one, you threatened to kidnap her, saying you would give her 365 days to fall in love with you. In another, you threatened to throw acid on her face. You also added Ms Yaqubi's family and friends as social media links, so that you could maintain contact with her.

[9] In October 2022, Ms Yaqubi made an online report to police, complaining about your harassment. On 5 December 2022, Ms Yaqubi noticed you following her at Westgate shopping mall, and she approached a security officer for assistance. On 6 December 2022, you used a social media account to send Ms Yaqubi a video taken outside her home.

[10] Understandably, Ms Yaqubi feared for her safety. She went to the Henderson Police Station and made a statement complaining about your "stalking" of her. She provided police with screenshots of your threatening messages.

[11] On 19 December 2022, the last day of Ms Yaqubi's life, she finished work at an outlet store at the Westgate shops. She caught a bus to a nearby suburb and she started to walk along the alleyway that runs beside a badminton centre, before it becomes a pathway bordering parkland and emerges on the street where Ms Yaqubi lived with her family.

[12] You were waiting in your car, parked around the back of the badminton facility away from the road. When you saw Ms Yaqubi, you approached her with a large knife in your hand. When Ms Yaqubi saw you, she attempted to call the police.

[13] Rather than allow that to happen, you approached Ms Yaqubi and commenced what I infer was a frenzied attack upon her. You stabbed her multiple times to the stomach and chest. As she fell to the ground, you stood over her and continued to stab her.

[14] When members of the public approached, you ran back down the pathway, to return to your car and flee.

[15] When Ms Yaqubi died, she died where she fell. She had received 12 stab wounds, four of which would individually have been fatal. The thumb on one of her hands, which she had raised in an attempt to protect herself from you, was partly severed.

[16] You did not approach authorities following your offending. But it was a relatively straightforward matter for police to find you at your home the following day.

Sentencing for murder

[17] I turn to the law relating to sentencing for murder.

[18] An offender who is convicted of murder must be sentenced to imprisonment for life unless, given the circumstances of the offence and the offender, a sentence of imprisonment for life would be manifestly unjust.¹ Your lawyer, Mrs Thode, responsibly accepts that a sentence of life imprisonment is required in your case.

[19] When sentencing you in that way, I must impose the minimum period of imprisonment (Minimum Period) that I consider necessary: to hold you accountable for the harm done to Ms Yaqubi, her family and the community; to denounce your conduct; to deter you or other persons from committing similar offences; and to protect the community from you.² In this case, for reasons I will come to, the most relevant sentencing purposes are those involving accountability and denunciation.

Victim impact

[20] In considering what Minimum Period will hold you accountable for the harm you have done, I wish to acknowledge the toll your offending has taken, and will continue forever to take, on Ms Yaqubi's family and friends. While the loss of a life so innocent and full of promise is a loss suffered by the entire community, the toll naturally falls most heavily on those who were closest to her. It cannot be measured.

¹ Sentencing Act 2002, s 102.

² Section 103.

[21] I have received, and I have carefully read, victim impact statements from a range of people connected to Ms Yaqubi. Four of those statements, from her father, and from two siblings, and from a very close friend, were read in Court this morning. They speak very clearly of the intense anguish that your conduct has caused.

Features of offending — s 104

[22] I need to consider whether your offending involved certain aggravating circumstances, which I will call “s 104 circumstances”. I call them s 104 circumstances because they are listed in s 104 of the Sentencing Act. If present, the Minimum Period you will serve is required to be fixed at at least 17 years unless that period would be manifestly unjust.

[23] In this case, the Crown submits that your offending involved three s 104 circumstances. It submits that your offending involved: calculated and lengthy planning; significant brutality, cruelty, depravity or callousness; and a particularly vulnerable victim. On your behalf, Mrs Thode submits that is not so.

Calculated or lengthy planning

[24] On the issue of planning, you have asserted that there was some spontaneity in your actual use of the knife. You say you intended only to show you were serious. You wanted to make sure Ms Yaqubi would speak with you, or perhaps to take her phone so you could speak with her contacts. But something went wrong.

[25] Mr Singh, I do not accept that your use of the knife, or for that matter, your offending generally, was spontaneous. The history of your stalking type behaviour, as outlined above, demonstrates that you knew Ms Yaqubi wanted nothing to do with you. You changed social media profiles to get around her decision not to receive your electronic messages. You can only have followed her at Westgate, because you knew Ms Yaqubi did not want to speak with you.

[26] It is clear that you had not been invited to her home, because once she received your video of yourself taken outside her home she went straight to the police. On that basis, I consider your decision to intercept Ms Yaqubi as she walked home can only

have been taken after tracking her movements on a previous occasion, and after consideration of the best location at which you might be able to find her alone.

[27] And given that context for your attempt to force Ms Yaqubi to speak to you, the apparent purpose for you obtaining and taking a knife with you to that location was to use it against her should she, entirely reasonably, refuse to bend to your will. You will have known that the use of the knife against Ms Yaqubi in those circumstances would be likely to risk her death. At best, for you, I can allow that you may only have intended to murder Ms Yaqubi in the alleyway as she walked home in the likely event that your approach to her holding a knife did not see her submit to you entirely.

[28] In that sense, your offending did involve planning. The planning was not “competent or sophisticated”, but it was more than just “thinking in the abstract about killing a person”.³ It involved both calculation and was developed over at least some period of time. As s 104 refers to “calculated or lengthy planning”, I find that that this s 104 circumstance was present.

Brutality, cruelty, depravity or callousness

[29] Next, I acknowledge Mrs Thode’s submission that in some ways, most murders are likely to involve brutality, cruelty, depravity or callousness. And regrettably, this Court has been required to deal with murders where the level of violence and hard-heartedness involved has been more extreme.

[30] However, this murder involved a frenzied attack comprised of 12 stabbings, four of which would on their own have been sufficient to achieve your object of killing Ms Yaqubi. To the extent Ms Yaqubi sought physically to resist with a bare hand, you simply cut through it.

[31] Further, your attack will have terrified Ms Yaqubi. As you approached her with your knife, she will have realised that her attempts to avoid your attentions over many prior months had been fruitless. And in that moment, you simply did not care. You

³ *Desai v R* [2012] NZCA 534 at [59].

were acting to impose your will upon her. You were acting in line with what you wrongly decided was best for her.

[32] On that basis, I consider your attack upon Ms Yaqubi involved a high level of brutality and callousness.

Vulnerability

[33] On the issue of vulnerability, I accept that Ms Yaqubi was 21 years old in comparison to your 30 years, a discrepancy which of itself did not give rise to vulnerability on her part. And I note Mrs Thode's reference to the case of *R v Nelson*.⁴ But in that case, the victim happened to be sitting at a kitchen table when another occupant in the home shot her from behind. Justice Heath observed that the nature of the "particular vulnerability" described in s 104 is rather less directed to whether a person happens to be standing or sitting in a place where they may be attacked unexpectedly, than to other situations where the victim's vulnerability is more substantial. The issue is fact-specific.⁵

[34] In my view, Mr Singh, Ms Yaqubi was in a situation of particular vulnerability to your offending. Indeed, that is why you selected the place at which you intercepted her on her way home. You knew she would be on her own, and powerless to resist you. Your prior electronic threats and physical tracking of her movements will certainly have heightened her sense of vulnerability to you as she saw you approaching her with your knife.

How to assess the Minimum Period

[35] Having found that these three s 104 circumstances apply, questions around what Minimum Period should be imposed arise. The initially leading Court decision suggested approaching the issue of what Minimum Period to impose in two steps:

- (a) First, the Court would consider the degree of culpability in the current case compared to the culpability involved in murders which do not

⁴ *R v Nelson* [2012] NZHC 3570.

⁵ *Marong v R* [2020] NZCA 179.

feature s 104 circumstances. At this stage, the Court would settle on a nominal Minimum Period which would be imposed in the absence of the s 104 presumption.

- (b) Second, the Court would go on to consider the question whether to impose a Minimum Period of at least 17 years would be manifestly unjust in light of the nominal Minimum Period it has settled on.⁶

[36] More recently, the Court of Appeal has suggested that the issue of what notional Minimum Period is called for might in some cases best be decided prior to the decision whether any of the s 104 circumstances are present, as something of a cross-check to ensure that the application of s 104 serves the statutory purposes I have mentioned.⁷ Also, it recognised that s 104 is no longer a new provision, so there is a substantial body of cases where s 104 has been found to apply, and that body of cases is available to refer to for assistance when identifying the appropriate nominal Minimum Period.⁸

Case comparison

[37] I will now undertake a case comparison. By comparison with murders which do not feature s 104 circumstances, your case of course features those aspects which I have found to amount to calculated and lengthy planning, high levels of brutality and callousness, and particular vulnerability on Ms Yaqubi's part.

[38] Counsel have referred me to a number of cases which do feature s 104 circumstances. I will summarise those I find to be of most assistance:

- (a) In the case of *Rajeshwar Singh v R*,⁹ the appellant murdered his estranged wife after calling and appearing to stalk her in breach of a protection order, smashing a window to enter her home, and stabbing her multiple times as she attempted to phone police. The sentencing

⁶ *R v Williams* [2005] 2 NZLR 506 (CA) at [52]–[54].

⁷ *Davis v R* [2019] NZCA 40, [2019] 3 NZLR 43 at [25]–[26].

⁸ *R v Williams*, above n 6, at [27].

⁹ *Singh v R* [2016] NZCA 582.

Judge identified a nominal Minimum Period of 18 years, prior to allowing a reduction of two years for a guilty plea. The Court of Appeal approved that sentence. That case is similar to yours, except that instead of entering Ms Yaqubi's home you found a way to trap her in the alleyway.

- (b) In the case of *Manchao Li v R*,¹⁰ the defendant persistently harassed his ex-wife in breach of a protection order, causing her to notify police that she thought she might be killed. Indeed, the defendant did kill her, approaching her with a hunting knife he had bought recently and carried with him to a place where he could intercept her as she walked to work, and stabbing her 10 times. The sentencing Judge identified a nominal Minimum Period of 19 years. Again, the case is similar to yours, except that that defendant's campaign of harassment had been carried out over a longer period.

[39] I also refer to the case of *Rohit Singh v R*.¹¹ In that case, the defendant murdered a woman with whom he had been in a relationship, having developed an "ongoing obsession" with her after she ended it. This obsession was evidenced by stalking her and sending messages.¹² The defendant drove to the woman's house taking a knife with him. He waited until she was alone in the home at night, entering her bedroom and inflicting 20 wounds in the course of a frenzied attack. He also struck her head with an unidentified weapon, fracturing her skull. Having left the home, he took steps to conceal his involvement by making a false complaint to police of having been assaulted in another location. The sentencing Judge identified a nominal Minimum Period of 19 years.

[40] Each of these cases are in my view marginally more serious than yours.

[41] In the case of *Rohit Singh*, two weapons were used and there was a false police complaint designed to obstruct justice. In the case of *Rajeshwar Singh* and

¹⁰ *R v Li* [2020] NZHC 3419.

¹¹ *R v Singh* [2019] NZHC 148 [Sentencing Decision]; and *Singh v R* [2019] NZCA 436.

¹² Sentencing Decision at [9].

Manchao Li, each defendant breached a protection order he knew was in place. But the purpose of each protection order was simply to attempt to ensure the defendants did not make unwanted contact. In this case, you knew full well that your attentions were not wanted.

[42] I note that in each of those other cases I have mentioned, there was a prior relationship between the defendant and their victim which might have gone some way to explaining the depth of feeling that motivated each attack. The modest level of personal contact you had had with Ms Yaqubi was in no way comparable. But in any case where one individual makes their own choice not to have any further contact with another, that choice must be respected. I do not consider the other cases to which I have referred to be in any way more serious or less serious by comparison to yours, simply because of the depth of the prior relationship between the murderer and their victim in those other cases.

Features of offender

[43] That brings me to address your own circumstances.

[44] Mr Singh, you are 30 years old. You were born and raised in Himachal Pradesh, India. You came to New Zealand as an adult. Although you have suggested that you established yourself successfully, setting up a security business, I note that by the time of your offending your visitor permit had expired around six months prior.

[45] Your parents adhere to a very traditional and conservative form of the Sikh religion. I understand from Ms Anjeet Singh, who wrote a report I have been provided with under s 27 of the Sentencing Act, that you grew up to accept it was normal for your father to engender respect through violence and the threat of violence. Although you converted to Islam, and came to New Zealand independently, the result has been a sense of expectation on your part that you should be obeyed, particularly in respect of your dealings with women such as Ms Yaqubi, with whom in spite of the limited degree of contact you had had with her you saw yourself as maintaining some form of relationship. And that threatening violence for the purpose of asserting your dominance might somehow be understandable, if not acceptable.

[46] On your behalf, Mrs Thode has submitted that I might find there to be a causal nexus between your personal, family and cultural background and the commission of your crime, implicitly such that your crime's culpability is mitigated.

[47] I do not accept that submission. First, I will not accept, in the absence of far more extensive evidence, that such patriarchal values as might be drawn from your upbringing might in any way support the stabbing to death of a lone, 21-year-old woman. Second, to the extent your own interpretation of your upbringing motivated you to undertake that form of violence, a consequent reduction in the nominal Minimum Period would in my view be inconsistent with the legislative policies under ss 103 and 104 of the Sentencing Act, of holding you accountable for, and denouncing, your conduct.¹³

[48] The Corrections Department's (PAC) report identifies your lack of consequential thinking, your inability to regulate emotions and maintain healthy boundaries, substance abuse and a propensity for violence as factors contributing to your offending. It suggests there may be underlying mental health concerns that exacerbate these factors. However, as noted below you have received the benefit of psychiatric assessment and there is nothing more available to me on that topic.

[49] The (PAC) report quotes you as telling a Probation Officer:

No one knows the real story. No one knows the truth, only me and her know the truth about [what] was happening with us and because I killed her, people will look down at me. I can't even do victim blaming.

[50] Mr Singh, in at least that last respect, you are correct. It would be entirely wrong for anyone to blame Ms Yaqubi for the terrible situation she found herself in. But comments like that, and others set out in the report, demonstrate to me that you do not feel a true sense of remorse. For no rational reason, you harbour a sense of disgruntlement. You have expressed a desire to apologise to Ms Yaqubi's family. But as you explain, this is because you want them to forgive you.

¹³ *Hohua v R* [2019] NZCA 533 at [44].

[51] Overall, your own circumstances do not justify any reduction in the nominal Minimum Period that I find arises from your offending.

Impact of guilty plea

[52] I turn to deal with the impact of your guilty plea. A relatively settled pattern has emerged relating to cases decided under s 104, of one to two-year discounts being applied to the Minimum Period.¹⁴

[53] The Court of Appeal has recently rejected the suggestion of a change in approach. In doing so, it observed that in some cases the discount in reality will be limited by the statutory floor in s 104 cases of 17 years' imprisonment, and that substantial discounts in the most serious of cases would be excessive if they were to undermine the legislative policy surrounding s 104, which places emphasis on the culpability of the offending rather than the offender.¹⁵ Overall, the Court found an appropriate balance has been struck by the existing authorities.¹⁶

[54] In your case, I will apply a reduction to your nominal Minimum Period to reflect the contribution made by your guilty plea to the relatively prompt determination of this case.

[55] You were charged on 20 December 2022, the day after you killed Ms Yaqubi. The case was promptly transferred to this Court in accordance with usual procedures. Formal arraignment in this Court was deferred until you received a psychiatric assessment and your then lawyer was in a position to take formal instructions. On 4 April 2023, soon after the assessment became available, you pleaded guilty to and were convicted of murder.

[56] A contested trial would inevitably have resulted in your conviction. Your offending attracted the attention of multiple eyewitnesses who were in a position to identify you. But your guilty plea has meant that systemic cost and delay has been

¹⁴ *Frost v R* [2023] NZCA 294 at [43] and [52]. Notwithstanding the Supreme Court's observation in *Hessell v R* [2010] NZSC 135, [2011] 1 NZLR 607 at [70], that some of such discounts had been too light.

¹⁵ At [83].

¹⁶ At [88].

avoided, and that Ms Yaqubi's family and friends have not had to undergo the ordeal of a trial with that inevitable outcome.

[57] Given the timing of the plea, and the nature of the case against you, I consider a one-year reduction of your nominal Minimum Period would be appropriate.

Assessment

[58] Having described those features of your offending, drawn a comparison with other cases, and considered matters relating to you personally, I can now assess the appropriate Minimum Period that you would serve in the absence of the presumptive minimum of 17 years' imprisonment arising in cases displaying s 104 circumstances.

[59] Given the aggravating features I have identified and the case comparison I have made, I consider an appropriate nominal Minimum Period arising from your offending to be 17-and-a-half years. None of the matters relating to you other than your guilty plea require that the nominal Minimum Period be adjusted. Your guilty plea requires a reduction of one year.

[60] That said, I must now consider whether imposing a Minimum Period of 17 years would be manifestly unjust, in light of the nominal Minimum Period of 16-and-a-half years I have settled upon.

[61] I have found your offending to display three s 104 circumstances. The legislative policy is such that any one such circumstance gives rise to the 17-year presumption. In light of the nominal Minimum Period I have settled upon, I do not consider that manifest injustice would arise in the event the 17-year presumption is applied to your case.

[62] Kanwarpal Singh, please stand. For your crime of murdering Farzana Yaqubi, I sentence you to life imprisonment. You are to serve a minimum period of imprisonment of 17 years. Stand down.

Johnstone J