
CANADA / JUDGMENT

R. v. Atwal

2006 BCCA 493

COURT

British Columbia Court of Appeal

DECIDED

30 October 2006

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2006 BCCA 493 R. v. Atwal

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Atwal,

2006 BCCA 493

Date: 20061030

Docket: CA033108

Between:

Regina

Respondent

And

Rajinder Atwal

Appellant

Before:

The Honourable Madam Justice Ryan

The Honourable Mr. Justice Mackenzie

The Honourable Mr. Justice Lowry

Oral Reasons for Judgment

L.A. Sears

Counsel for the Appellant

J. Duncan

Counsel for the Respondent

Place and Date:

Vancouver, British Columbia

30 October 2006

- [1] RYAN, J.A.: The appellant, Rajinder Atwal, was convicted by a jury on March 4, 2005, of second degree murder. On June 22, 2005, Madam Justice Wedge ordered that the appellant serve 16 years of his life sentence without eligibility for parole. The appellant appeals this period of parole ineligibility as of right under s. 675(2) of the Criminal Code.
- [2] The appellant says that the trial judge erred in imposing a period of parole ineligibility outside the appropriate range for this appellant in the circumstances. The appellant also says that the trial judge erred in failing to take into account the fact that the jury had declined to make a recommendation with respect to parole ineligibility.

Proceedings after conviction

- [3] After the verdict, the trial judge put the question of parole ineligibility to the jury as required by s. 745.2 of the Criminal Code which states:

You have found the accused guilty of second degree murder and the law requires that I now pronounce a sentence of imprisonment for life against the accused. Do you wish to make any recommendation with respect to the number of years that the accused must serve before the accused is eligible for release on parole? You are not required to make any recommendation but if you do, your recommendation will be considered by me when I am determining whether I should substitute for the ten year period, which the law would otherwise require the accused to serve before the accused is eligible to be considered for release on parole, a number of years that is more than ten but not more than twenty-five.

- [4] The jury declined to make a recommendation. In other words, the jury did not recommend that the appellant serve only ten years before being considered for parole, some number between 10 and 25 years, nor did it recommend that he serve 25 years before being considered for parole.
- [5] The trial judge then considered the factors set out in s. 745.4 of the Criminal Code before imposing sentence. The relevant parts of that section provide:

[A]t the time of sentencing under s. 745 of an offender who is convicted of second degree murder, the judge who presided at the trial of the offender may, having regard to the character of the offender, the nature of the offence and the circumstances surrounding its commission, and to the recommendation, if any, made pursuant to section 745.2, by order, substitute for ten years a number of years of imprisonment (being more than ten but not more than twenty-five) without eligibility for parole, as the judge deems fit in the circumstances.

[6] In the end, the trial judge set parole ineligibility at 16 years.

Circumstances surrounding the commission of the offence

- [7] The appellant was 47 years of age at the time of the murder. The victim was his daughter, who was 17 at the time of her death. The Atwal family adhere to the Sikh religion. The evidence at trial revealed that the appellant's daughter, Amandeep Atwal, had become involved in a relationship with a young man, Todd McIsaac, who was not of the same faith. Because the appellant had been upset when he learned of his daughter's relationship with Mr. McIsaac, the young couple saw each other in secret for almost two years following.
- [8] In June 2003 the young couple were involved in a car accident. As a result, Mr. Atwal learned that the two had continued their relationship. Mr. Atwal told his daughter that she was a disgrace to the family and that he wished that she had died in the collision. Ms. Atwal graduated from high school that same month and in July told her family that she planned to move from the family home in Kitimat to Prince George to live with Mr. McIsaac. Despite a family altercation, Ms. Atwal remained firm in her decision. Mr. Atwal allowed his daughter to leave, but made her promise to travel with the family to New Westminster for an imminent family visit. Ms. Atwal stayed in Prince George for three days, then joined her father and younger sister for the drive to New Westminster.
- [9] Ms. Atwal stayed in New Westminster for only a few days before telling her father that she wanted to return to Prince George. Mr. Atwal was unhappy with this decision, but agreed to drive his daughter back to Prince George.
- [10] The murder occurred on the drive to Prince George. Mr. Atwal stabbed his daughter 17 times as she sat buckled in her seat belt in the passenger seat of the vehicle. Four of the wounds were very deep, any one of which could have caused the death. There was one large stab wound to the victim's face that had been inflicted after her death.
- [11] After the killing, the appellant placed a blanket over the body of his daughter and returned to Langley where he took her to the emergency department of the local hospital. He told the hospital personnel that his daughter had committed suicide near Cache Creek when he stepped out of the car to stretch his legs.

Character of the offender

- [12] The trial judge recognized that Mr. Atwal had been a contributing member of society. He had been a long-time worker for Alcan in Kitimat, supporting his wife and three children. She noted that his family and community continued to hold him in high regard and that some 60 letters of reference had been filed on his behalf. The trial judge said that Mr. Atwal had expressed remorse for the suffering and damage he had inflicted on his family. The trial judge adopted the words of defence counsel, who said that Mr. Atwal was an otherwise ordinary man who had committed a horrendous crime.

Nature of the offence

- [13] The trial judge concluded that the killing was not the result, as had been suggested by the defence, of an impetuous loss of temper caused by Ms. Atwal's decision to move to Prince George. She noted that Mr. Atwal had carried with him a knife of considerable size on the journey to Prince George and must have had it at the ready when he pulled over to the side of the road. The trial judge concluded that the facts demonstrated considerable forethought to the murder falling short of the planning and deliberation required for first degree murder.
- [14] The trial judge found that the motive for the killing was Mr. Atwal's anger at the unwillingness of his daughter to comply with his values and his plans for her future. The trial judge concluded that the principles of deterrence and denunciation must weigh heavily in the circumstances of this case.

The appropriate range

- [15] The trial judge had placed before her 51 cases by the Crown and counsel for the defence. In particular, she had the case of *R. v. Cerra* (2004), 206 B.C.A.C. 168 from this Court, where Mr. Justice Donald said this at para. 17:

I have discerned a pattern from decisions of this Court suggesting, in broad terms, the following: parole eligibility greater than 10 years is justified when there is some particularly aggravating feature; for a penalty of greater than 15 years, egregious circumstances of a higher order of moral culpability are present.

- [16] Later in his reasons, Mr. Justice Donald stated that cases calling for parole ineligibility between 15 and 20 years related to "cases at the highest order of moral culpability or dangerousness".
- [17] In the end, the trial judge concluded that this was a case requiring a period of ineligibility of 16 years. In doing so, the trial judge noted the position of trust between a 17-year-old girl and her father; the fact that the killing was accompanied by considerable forethought; the motive for the crime; and the need to denounce the crime and to deter other likeminded individuals.

The grounds of appeal

- [18] I am not persuaded that the trial judge erred in her characterization of this offence as one which fell into the highest order of moral culpability.
- [19] Counsel for the appellant submits that the case at bar is deserving of a period of parole ineligibility under 15 years. In particular, she relies on two cases: *R. v. Literski*, 2005 BCSC 335, in which parole ineligibility was set at 12 years; and *R. v. Barrett* (1999), 130 B.C.A.C. 4, in which the term was set at 14 years. Counsel for the appellant says that the trial judge erred in failing to mention these cases or to review these cases in her reasons for judgment.
- [20] I do not propose to analyze those cases. They do involve the killing of a child by a parent, or one in that position but each case contains factors unlike those present in the one before us. In *Literski*, the appellant pleaded guilty; she had significant mental health issues. In *Barrett*, the appellant, who beat his girlfriend's 3½-year-old son to death in what might be described as an impulsive act, had himself been abused as a child and was addicted to drugs.
- [21] The reasons for judgment in the case at bar make it clear that the trial judge acutely understood that Mr. Atwal's decision to take the life of his child for the reasons that he did must be met with a denunciatory sentence representing, as the Chief Justice stated in *R. v. M.(C.A.)*, [1996] 1 S.C.R. 500, "a symbolic collective statement that the offender's conduct should be punished for encroaching on our society's basic code of values as enshrined within our substantive law".
- [22] I would dismiss the first ground of appeal. In my view, this period of parole ineligibility did not fall outside the appropriate range for this murder.
- [23] The next ground of appeal is that the trial judge erred in failing to consider the lack of a jury recommendation. In *Cerra*, Mr. Justice Donald, speaking for the majority, said this at para. 14:
- [14] In my view, when a jury declines to make a recommendation they have simply decided to leave the question for the judge. They may have disagreed among themselves on the point or they may have been exhausted by the trial or for some other reason they prefer not to express an opinion about something on which the trial judge has the last word anyway. In the circumstances of the present case the only significance of the jury's response is that they were not moved to propose more than 10 years of parole eligibility. While not an entirely neutral factor, the jury response could not have added much weight to the defence position on penalty.
- [24] As noted by Mr. Justice Donald, the failure of the trial judge to consider the lack of recommendation in *Cerra* did not add much weight to the defence position on penalty. In other words, it made no difference. Given that I have concluded that the sentence in the case at bar is not otherwise unfit, this factor would not have made any difference in this case either.

[25] Ms. Sears has said everything that can be said on behalf of Mr. Atwal.

[26] I would dismiss the appeal.

[27] MACKENZIE, J.A.: I agree.

[28] LOWRY, J.A.: I agree.

[29] RYAN, J.A.: The appeal is dismissed.

"The Honourable Madam Justice Ryan"

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