
CANADA / JUDGMENT

R. v. Bogarh

2020 BCSC 383

COURT

Supreme Court of British Columbia

DECIDED

5 March 2020

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2020 BCSC 383 R. v. Bogarh

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Bogarh,

2020 BCSC 383

Date: 20200305

Docket: 52599-17

Registry: Vernon

Regina

v.

Paramjit Singh Bogarh

Before: The Honourable Madam Justice M. Devlin

Oral Reasons for Sentence

Counsel for the Crown:

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P. Johnstone, Q.C.

M. Treddenick

Counsel for the Accused:

N.C. O'Brien, Q.C.

Place and Date of Hearing:

Kelowna, B.C.

March 5, 2020

Place and Date of Judgment:

Kelowna, B.C.

March 5, 2020

- [1] THE COURT: This decision was delivered in the form of Oral Reasons. The Reasons have since been edited for publication.
- [2] The accused, Parmjit Singh Bogarh, has pled guilty to a charge of accessory after the fact to murder with respect to the murder of his wife, Saminder Kaur Bogarh, by his brother, Narinder Singh Bogarh, on December 31, 1986 in Vernon, British Columbia. Counsel for the Crown and the accused submit by way of joint submission that a sentence of five years less credit for three years of pretrial custody is appropriate in all of the circumstances and comports with the principles of sentencing.
- [3] An Agreed Statement of Facts ("ASF") has been filed as an exhibit on the sentencing hearing. The ASF comprehensively details the circumstances of Saminder Bogarh's death and the accused's actions in relation to her murder. As I review the actions of the accused, I will refer to some of the parties by their first name. In doing so, I mean no disrespect. These reasons for sentence should be read with reference to the entire ASF.
- [4] On December 31, 1986, Narinder murdered Saminder sometime between 2:30 p.m., when she was seen alive by her sister, and 11:40 p.m. when the accused arrived home from work. Saminder was stabbed to death. At the time of the murder, Manpreet, the couple's young son, was in the residence. When the accused returned home from work and found the body of his wife, he concluded in his mind that his brother, Narinder, had murdered her. The accused placed a call to the police and ambulance saying his wife had been killed. When the RCMP arrived at the scene, the accused did not advise the police that Narinder was in the area, nor did he tell them of his belief that his brother had murdered his wife. Instead, at 12:15 a.m., the accused lied to the police by telling Constable Parker that his two-year-old son had said a white man had beat his mother. The accused said this with the intention of misleading the police and diverting attention from his brother, Narinder, whom he had concluded had murdered his wife, Saminder. The young child did not speak English so the police officer was unable to speak directly to him and relied on the accused. Both the accused and the young child, Manpreet, were taken to the police station.
- [5] On January 1, 1987, the accused gave a statement to the police. He again claimed that his son, Manpreet, had said it was a white man that had attacked Saminder. The accused knew the statement was false and he made it to deliberately divert attention from Narinder. During this time, while the accused was providing information to the police about a white man, Narinder was able to leave the Kelowna area and travel to Vancouver arriving late in

the evening. During this same timeframe, the accused was at the police station answering questions, but never advised the police of his belief that Narinder had murdered his wife. The acts and omissions of the accused assisted Narinder in escaping the area and arranging for assistance from others to leave the country and travel to India. The accused's misleading statements to the police together with omitting to advise police Narinder was in the area collectively enabled Narinder to avoid arrest and assisted in his escape.

- [6] Mr. Bogarh was arrested in California on February 15, 2018, and was extradited to Canada on charges of murder and conspiracy to commit murder. He has been in custody since that time.
- [7] This morning I had the privilege of hearing from Saminder's son, Manpreet; her brother, Sukhdev Nahal; his daughter, Kirndeeep Nahal, Saminder's sister, Jagvinder Klaer; and Saminder's niece, Sundeep Bahia. Their victim impact statements were filed as exhibits. They all bravely stood in the courtroom and shared their intimate private feelings of loss over the death of Saminder. The emotional pain at the loss of Saminder is unimaginable. I was particularly impressed with Manpreet's composure as he described the devastating impact the loss of his mother has had on him since he was an infant. Not only did he lose his mother on that day, but he also lost his biological father. Essentially abandoned as an infant, Manpreet was lovingly taken in by his mother's family who have loved and supported him throughout his life. It is difficult to imagine the trauma inflicted on Manpreet that night.
- [8] As I proceed with my sentencing reasons today, I am mindful of the devastating impact the tragic death of Saminder has had on her family. I am also mindful that the sentence I impose today cannot possibly remedy the feeling of pain and suffering they have endured over 30 years and will continue to do so. The passage of time has not and will not reduce that pain.
- [9] The fundamental principles to be considered by the court in sentencing are established by Parliament and set out in s. 718 to 718.2 of the Code. Section 718 provides that the fundamental purpose of sentencing is to protect society and to contribute, along with crime prevention initiatives, to respect for the law and the maintenance of a just, peaceful, and safe society by imposing just sanctions with reference to six objectives. These include denunciation of unlawful conduct, deterrence of the offender and other persons from committing offences, separation of the offenders from society where necessary, assistance in the rehabilitation of offenders, provision for the reparations for harm done to victims or to the community, and to the promotion of a sense of responsibility in offenders and acknowledgement of the harm done to victims.
- [10] Pursuant to s. 718.1, a sentence must also be proportionate to the gravity of the offence and the degree of responsibility of the offender.

- [11] Section 718.2 sets out a number of specific principles that a court must take into consideration. An important principle is that a sentence should be increased or reduced to account for any relevant aggravating and mitigating circumstances relating to the offence or the offender. Another important principle is parity of sentence which requires that a sentence imposed should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.
- [12] I am mindful of the decision of the Supreme Court of Canada in the case of *R. v. Anthony-Cook*, 2016 SCC 43, which established that a sentencing judge should not reject a joint submission unless the proposed sentence would be viewed by reasonable and informed persons as a breakdown in the proper functioning of the justice system. I am satisfied that the joint submission is well considered by experienced counsel and presents a suitable outcome. As discussed below, I accept that the proposed sentence is consistent with the principles of sentencing and I am satisfied that there is no basis to depart or reject the proposed joint submission in this case.

Discussion

- [13] I will now proceed to apply the principles of sentencing to this particular case. I find that there are several aggravating factors that must be considered when determining the fit sentence. The circumstances of this case are particularly aggravating and the accused's moral blameworthiness is particularly high. The accused chose to divert police attention away from his brother, Narinder, despite the fact that his wife had been brutally stabbed to death inside her own residence and in the presence of their infant son. Rather than taking steps to comfort and protect the infant, Manpreet, the accused focused his attention on ensuring that the perpetrator of the brutal murder could flee without detection.
- [14] As the Crown stated, the accused chose to serve his murderous brother's interest at a massive prejudice to the interest of his own child. In addition, the accused perpetrated this deceit for over 30 years leading his son and extended family to suffer without any resolution to the tragic loss of Saminder. The accused was a mature adult at the time of the offence. His actions were deliberate and calculated and focused, as I have said, on protecting Narinder at the expense of his own family. His actions were not what society would expect of a husband and a father who had discovered his own spouse's dead body inside the family residence.
- [15] In terms of mitigating factors, the accused does not have a criminal record. At the time, he was a fairly young man and relatively new to Canada. He is now almost 60 years of age. Over the past 30 years, he has remarried, had a child, and established himself in a new community. I am advised he is an active member of the Sikh community in California and has been since the early 1990s. I am also advised that he will be deported to India following this sentence.

- [16] The guilty plea is also significant. It provides some certainty in what is an otherwise devastating and tragic situation. The guilty plea also reflects to a certain extent remorse on behalf of Mr. Bogarh.
- [17] In my view, the principles of deterrence and denunciation are of paramount importance in this particular case given the devastating impact the crime has had on Manpreet and all of Saminder's family and friends. It is important for the court to denounce this conduct through the sentencing process. The events that took place have had a devastating life-long impact on the lives of Saminder's son, Manpreet, Saminder's family, and all who had the good fortune of knowing her.
- [18] As stated in *R. v. Steadman*, 2010 BCCA 382 [Steadman] at para. 20 "there is clearly a need to denounce this sort of conduct because it has an insidious effect on the administration of justice". The sentence I impose must serve to communicate society's condemnation of the conduct by one who deliberately engaged in activity that has implications for the administration of justice generally, for the detection and apprehension of the offender who benefits from the accessory's efforts, and for those who are affected by the original crime (see *Steadman*, para. 9 with reference to *R. v. Wisdom*, [1992] O.J. No. 3110 (Ont. Ct.-Gen. Div)).
- [19] With respect to general deterrence, the sentence must communicate to other like-minded individuals that there will be severe consequences for those who choose to engage in this type of activity. Society cannot and will not tolerate the actions of those who take deliberate and calculated steps to facilitate the principal offender to escape detention and punishment for his crime.
- [20] As for specific deterrence, it is expected Mr. Bogarh will be deported following this sentence. He will not be permitted to return to the life he had with his new family in California. The sentence I impose intends to address the risk Mr. Bogarh may have of re-offending
- [21] Rehabilitation is also a factor to consider but in this particular case deterrence and denunciation are the paramount considerations. Clearly the accused's prospects for rehabilitation are positive given his demonstrated ability to be an active and contributing member of society.
- [22] I accept the joint submission proposed by counsel. I have reviewed the cases provided to me and I am satisfied that a sentence of five years is a fit and proper sentence in these circumstances. This sentence recognizes the impact of the accused's actions and it is sufficient to denounce his conduct and to deter him and others from engaging in such conduct in the future.
- [23] Mr. Bogarh, could you please stand.

- [24] On the count of accessory after the fact, I sentence you to five years' imprisonment. I must also factor into the sentence the credit for your pretrial custody. I have determined that you are entitled to credit for three years. Therefore, your sentence will be two years.
- [25] You may sit down.
- [26] In addition, pursuant to s. 487.051(3) of the Code, I make an order authorizing the taking of a sample of bodily substance from you for the purpose of forensic DNA analysis and inclusion in the national DNA databank.
- [27] Those conclude my reasons for sentence. Thank you counsel.
- [28] Madam Crown, the other indictment?
- [29] MS. SAETTLER: Yes, on Indictment 52599-2, a two-count indictment, Crown directs a stay of proceedings.
- [30] THE COURT: All right, okay. Thank you.
- [31] MR. O'BRIEN: Very well, thank you very much, Madam Justice.
- [32] THE CLERK: And the applications, Crown?
- [33] THE COURT: They are --
- [34] THE CLERK: You have a number of applications.
- [35] THE COURT: Those are all not proceeding.
- [36] THE CLERK: Yes, withdrawn?
- [37] THE COURT: They are all withdrawn.

"Devlin J."

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