
CANADA / JUDGMENT

R. v. Reyat

2011 BCSC 14

COURT

Supreme Court of British Columbia

DECIDED

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2011 BCSC 14 R. v. Reyat

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Reyat,

2011 BCSC 14

Date: 20110107

Docket: 23744

Registry: Vancouver

Regina

v.

Inderjit Singh Reyat

Before: The Honourable Mr. Justice McEwan

Reasons for Sentence

Counsel for the Crown:

L. Doust Q.C. and

W. Milman

Counsel for the Accused:

I. Donaldson Q.C. and

H. Huzzey

Place and Date of Trial/Hearing:

Vancouver, B.C.

November 17 and 18, 2010

Place and Date of Judgment:

Vancouver, B.C.

January 7, 2011

I

- [1] Inderjit Singh Reyat is before the court for sentencing on one count of perjury, having been found guilty of that offence by a jury on September 19, 2010.
- [2] Mr. Reyat was convicted of making a false statement under solemn affirmation, knowing that the statement was false, with intent to mislead the court that he did not know or recall any details of the conspiracy alleged in Count One of the indictment in what is commonly referred to as the Air India trial.
- [3] In that proceeding, Mr. Reyat had been charged with conspiracy to commit murder together with Ripudaman Singh Malik and Ajaib Singh Bagri. On February 10, 2003 he pleaded guilty to manslaughter for his part in the deaths of 329 persons on June 23, 1985, when a bomb blew Air India flight 182 apart off the coast of Ireland. He was sentenced to five years in prison. Upon that plea, Mr. Reyat became compellable as a witness.
- [4] The trial commenced on April 28, 2003 against Mr. Malik and Mr. Bagri. Mr. Reyat was called by the Crown and testified over the course of three days on September 10, 11, and 15, 2003. It is the evidence he gave on that occasion that is the subject of the perjury for which he is now before the court.
- [5] Count one of the indictment against Malik and Bagri, which is referred to in the perjury indictment against Mr. Reyat, reads as follows:

THAT between the 1st day of June, 1984 and the 24th day of June, 1985, at or near the Cities of Vancouver, Kamloops and Duncan, the District of Burnaby, the Corporation of the Township of Richmond and elsewhere in the Province of British Columbia and Canada did unlawfully conspire together the one with the other or others of them and with TALWINDER SINGH PARMAR and with a person or with persons unknown, to murder the passengers and crew of an aircraft designated as Air India Flight 301 scheduled to depart New Tokyo International Airport, Narita, Japan at approximately 1:05 A.M. on June 23, 1985 (Pacific Daylight Time) for Bangkok, Thailand, and the 329 passengers and crew (named in Schedule A, attached) of an aircraft designated as Air India Flight 182 which departed from Mirabel International Airport, Montreal, Quebec, Canada at approximately 7:20 P.M. on June 22, 1985 (Pacific Daylight Time) for Heathrow International Airport, London, England, contrary to Section 423(1)(a) of the Criminal Code of Canada, R.S.C. 1970, c. C-34 and against the peace of our Lady the Queen her Crown and Dignity.

- [6] The evidence before the jury included certain Admissions of Fact and the entire evidence given by Mr. Reyat at the Air India trial. This included his direct examination by the Crown and his cross-examination by counsel for Mr. Malik and Mr. Bagri. At one point in the trial, the Crown applied to have Mr. Reyat declared to be a hostile witness. That application was refused by the trial judge. The evidence before the jury had, therefore, not been subjected to cross examination by the Crown.
- [7] When Mr. Reyat testified he assiduously attempted to say no more about the activities leading to the destruction of Air India flight 182 than the concessions he made in an Affidavit and an attached Agreed Statement of Facts, prepared at the time of his guilty plea. These were exhibits. They read as follows:

I, Inderjit Singh Reyat, MAKE OATH AND SAY AS FOLLOWS:

1. At the request of Talwinder Singh Parmar, in May and June, 1985 I acquired various materials for the purpose of aiding others in the making of explosive devices.
2. Parmar told me, and I believed, that the explosive devices would be transported to India in order to blow up property such as a car, a bridge or something "heavy". I complied with Parmar's request because I was very upset with the Indian government's treatment of the Sikh people and I wanted to assist their cause in any way that I could.
3. In addition to acquiring materials for Parmar, on June 4, 1985 Parmar, myself and a third man whose identity I do not know drove to a wooded area near Duncan. Parmar and I went into the woods, at which time I unsuccessfully attempted to make an explosion using items including a battery, a light-bulb and some gunpowder.
4. Although I acquired materials in response to Parmar's request, I did not make or arm any explosive device, nor did I place an explosive device on an airplane, nor do I know who did or did not do so. Consequently, I do not know the size or nature of the explosive device or devices placed on Air India Flight 182.
5. On June 22, 1985 I was in Vancouver for personal reasons unrelated to the above-described involvement with Parmar.
6. At no time did I intend by my actions in acquiring materials for Parmar to cause death to any person or believe that such consequences were likely to occur. I am saddened, as is my entire family, by the fact that many people died in the crash of Air India Flight 182, and am very remorseful that my actions contributed to this tragedy. I know that the families of the deceased have suffered terribly, and apologize to them for my role in the crash.
7. I confirm the accuracy of the Agreed Statement of Facts referred to in my Plea Agreement with the Crown, which is attached as Exhibit A to this affidavit.

Appendix A - Agreed Statement of Facts

In May and June, 1985, in the province of British Columbia, Mr. Reyat acquired various materials for the purpose of aiding others in the making of explosive devices. Mr. Reyat was told and believed that the explosive devices would be transported to India in order to blow up property such as a car, a bridge or something "heavy". Although Mr. Reyat acquired materials for this purpose, he did not make or arm an explosive device, nor did he place an explosive device on an airplane, nor does he know who did or did not do so.

At no time did Mr. Reyat intend by his actions to cause death to any person or believe that such consequences were likely to occur. However, unbeknownst to Mr. Reyat the items that he acquired were used by another person or persons to help make an explosive device that, on or about June 23, 1985, destroyed Air India Flight 182, killing all 329 people on board.

II

[8] The allegations of perjury were particularized in 19 separate paragraphs. Before the jury was instructed on the law, I ruled that it need only be unanimous in that each individual juror must find, in relation to at least one particular, that the offence had been made out beyond a reasonable doubt, but that they need not agree on any given particular. That ruling is indexed at 2010 BCSC 1623.

[9] The jury's finding of guilt reflects its unanimous view that Mr. Reyat had committed perjury. For sentencing purposes the Crown submits that Court must make specific findings respecting which of the particulars were actually established. This submission is based on the principle outlined in *R. v. Ferguson* (2008), 228 C.C.C. (3d) 385 S.C.C. In that case, the Chief Justice, writing for the Court, observed:

.. unlike a judge sitting alone, who has a duty to give reasons, the jury gives only its ultimate verdict. The sentencing judge therefore must do his or her best to determine the facts necessary for sentencing from the issues before the jury and from the jury's verdict. This may not require the sentencing judge to arrive at a complete theory of the facts; the sentencing judge is required to make only those factual determinations necessary for deciding the appropriate sentence in the case at hand.

Two principles govern the sentencing judge in this endeavour. First, the sentencing judge "is bound by the express and implied factual implications of the jury's verdict": *R. v. Brown*, [1991] 2 S.C.R. 518 p. 523, 66 C.C.C. (3d) 1. The sentencing judge "shall accept as proven all facts, express or implied, that are essential to the jury's verdict of guilty" (Criminal Code, s. 724(2)(a)), and must not accept as fact any evidence consistent only with a verdict rejected by the jury.

Second, when the factual implications of the jury's verdict are ambiguous, the sentencing judge should not attempt to follow the logical process of the jury, but should come to his or her own independent determination of the relevant facts... In so doing, the sentencing judge "may find any other relevant fact that was disclosed by evidence at the trial to be proven". To rely upon an

aggravating fact or previous conviction, the sentencing judge must be convinced of the existence of that fact or conviction beyond a reasonable doubt; to rely upon any other relevant fact, the sentencing judge must be persuaded on a balance of probabilities... It follows from the purpose of the exercise that the sentencing judge should find only those facts necessary to permit the proper sentence to be imposed in the case at hand. The judge should first ask what the issues on sentencing are, and then find such facts as are necessary to deal with those issues

Jurors may arrive at a unanimous verdict for different reasons and on different theories of the case: *R. v. Thatcher*, [1987] 1 S.C.R. 652, 32 C.C.C. (3d) 481, 39 D.L.R. (4th) 275. It is speculative and artificial to attribute a single set of factual findings to the jury, unless it is clear that the jury must unanimously have found those facts. Where any ambiguity on this exists, the trial judge should consider the evidence and make his or her own findings of fact consistent with the evidence and the jury's findings.

- [10] Counsel for Mr. Reyat does not suggest that these are not the appropriate principles, but submits that the only conclusion to be drawn from the jury's verdict is that it was satisfied beyond a reasonable doubt that Mr. Reyat was untruthful in his testimony. Counsel submits further that it is not necessary to the sentencing function to attempt to ascertain which particulars were made out, as, in his submission, this would usurp the function of the jury.
- [11] I think that wherever there is more than one path to conviction, the court is obliged to consider the principles set out in *Ferguson*. In this case there was evidence for the jury to consider in relation to each particular. The jury was advised to consider that evidence carefully and to consider each particular in the context of the evidence as a whole.
- [12] Having myself reviewed the evidence in that manner, it is my view that each of the alleged particulars is, in one way or another, an example of an attempt to avoid telling the truth or the whole truth. In some cases there are outright contradictions between one part of the evidence and another. Thus, in relation to the first particular, Mr. Reyat at one place said, as alleged, that he did not know Mr. Parmar was a leader of the Babbar Khalsa, and on more than one occasion later, allowed that he was.
- [13] In other instances Mr. Reyat took refuge in faulty recollection. In relation to the second particular, Mr. Reyat said that he could not recall what Mr. Parmar asked him to do to help the people in India, indicating, as an aside, that his previous assertions to a police officer about a "bridge" or something "heavy" were fabrications: "I had to make something up." Later, he allowed that Mr. Parmar wanted something to take to India to "explode something, maybe." He expanded this to a "bridge or something" and then indicated he was simply adhering to his statement to the police officer. Upon reviewing his statement, he reasserted his position that he was just making something up. Then later he said he was asked to "get the material, put it together" for an explosive device.

- [14] In relation to the third particular, Mr. Reyat said he was asked to make only one explosive device. His attention was drawn to the affidavit filed at the time of his guilty plea. It referred to the making of "explosive devices" at Mr. Parmar's request, "to blow up property such as a car, a bridge, or something heavy."
- [15] In relation to the fourth particular, that the only reason Mr. Parmar gave for making an explosive device was to help "friends" in India, Mr. Reyat denied any knowledge as to how exploding something would help people in India, despite saying in his affidavit that he was upset with the Indian government's treatment of the Sikh people and wanted "to assist their cause in any way that I could".
- [16] In relation to the fifth particular, that Mr. Parmar did not say "in detail" what the device was going to be used for, Mr. Reyat simply suggested that what he had to say was in the affidavit was what he had to say.
- [17] In relation to the sixth particular, Mr. Reyat suggested that in the weeks leading up to the bombing, his discussion with Parmar were about converting a vehicle to propane. The ultimate answer to the seventh particular contradicts this assertion.
- [19] In relation to the seventh particular, that Mr. Reyat said Parmar never asked Mr. Reyat about his progress in constructing an explosive device, Mr. Reyat allowed, in cross-examination by Mr. Code, counsel for Mr. Bagri, that the purpose of a meeting with Parmar was possibly to discuss the status of the device he had been asked to build.
- [20] In some instances Mr. Reyat's evidence was simply preposterous. In relation to the eighth particular, for example, Mr. Reyat said he procured dynamite from various sources after Mr. Parmar had asked him to build an explosive device but only to blow up stumps. He could not identify any particular stumps or property with stumps he intended to blow up.
- [21] Similarly, in relation to the ninth particular, that before the second test an associate of Parmar (Mr. "X") came into his home for tea, and eventually stayed for about a week, but was never introduced by name, Mr. Reyat steadfastly maintained that this improbable story was so.
- [22] In relation to the tenth particular, that Mr. Reyat never learned Mr "X's" name where in Toronto he lived, how long he had been there, who his friends and acquaintances were, what he did (other than that he was a teacher) where he taught, whether he was married, how long he had been in Canada, where in India he had come from, or whether he had family there, Mr. Reyat also steadfastly maintained that this improbable story was so.
- [23] In relation to the eleventh particular, that after the second explosive test, neither Mr. X nor Mr. Parmar asked Mr. Reyat to do anything further in relation to the explosive device, Mr. Reyat said that his task changed from making an explosive device to providing Mr. X with the materials.

- [24] In relation to the twelfth particular, Mr. Reyat maintained that after the second test Mr. Parmar returned to the ferry in Nanaimo, but that Mr. X decided to stay with the Reyat family for 4-5 days to shop and see Duncan, and not for any reason related to the explosive device. However, he acknowledged to Mr. Code, in his cross-examination, that during that time he acquired bomb making materials, including a Micronta clock, one or more relays, and a tuner.
- [25] In relation to the thirteenth particular, Mr. Reyat said that he gave Mr. X two Micronta clocks, but did not know why, and had no idea why he wanted them or how they would be used, but acknowledged later that he talked to Mr. X about how it could be used to set the time on an explosive device. He also allowed that it had "crossed his mind" that it might be used in an explosive device.

The quality of the evidence in this regard is perhaps best illustrated by a brief excerpt of the evidence:

Q. See, I don't know if it refreshes your memory, but it might assist you for me to tell you that yesterday you said that you acquired one Micronta clock to give to Mr. X to aid him in making the explosive device; is that accurate?

A. I said that yesterday?

Q. Yes.

A. Probably, yes, that's right then. Probably.

* * *

Q. Now that we've gone over this again, does that refresh your memory at all on the question of whether he asked you for them and told you why he wanted them?

A. Yes.

Q. Well, did he ask you?

A. Yes.

Q. And what did he tell you about why he wanted it?

A. Used as timer device.

Q. For what?

A. For explosive device. I don't know.

- [26] In relation to the fourteenth particular, Mr. Reyat asserted that when he was going to make the device it was not his plan to use a timing device, which was quite at odds with his assertion in the thirteenth particular.

- [27] In relation to the fifteenth particular, Mr. Reyat said he believed Mr. X intended to send the Micronta clock to India but did not know why. He subsequently allowed that it was to be used for a timer for an explosive device, and that he understood he was helping Mr. X and Mr. Parmar to make explosive devices.
- [28] In relation to the sixteenth particular, Mr. Reyat said that Mr. X asked him for a Micronta clock after seeing one in his car and he "kind of" gave him one as a gift, but resiled from that assertion and acknowledged that he did not know when he was asked.
- [29] In relation to the seventeen particular, Mr. Reyat said that he gave Mr. X a 12 volt battery when he knew it would not work, rather than a six volt battery which he knew would work, but said that Mr. X might try to "modify it". At another point in his evidence he said that he tried out the six volt battery, while Mr. X was with him.
- [30] In relation to the eighteenth particular, Mr. Reyat said that he and Mr. X never spoke of Sikh politics or the explosive device or why it was built. He said that it was supposed to go to India and that he could not recall what it was to be used for.
- [31] In relation to the nineteenth particular, Mr. Reyat said that before Mr. X left his home he took down his phone number. He could not explain who he would ask for if he ever used the number.
- [32] The Crown's election to charge one count of perjury in 19 particulars gave Mr. Reyat notice of the case that would be alleged against him. Each particular amounts to an example of an aspect of Mr. Reyat's evidence. The specific nature of the perjury alleged is in falsely testifying that he did not know details of the conspiracy alleged in Count 1 of his indictment against Mr. Malik and Mr. Bagri, when in fact he did. When one reviews the evidence pertinent to each of the particulars alleged, it is obvious that in several instances Mr. Reyat contradicted himself such that what he said on one or other occasions during the testimony could not be true. On other occasions what he said defies common sense or experience to such a degree that it cannot be so. When the particulars are considered in the context of the testimony as a whole it is clear that Mr. Reyat was untruthful, not in the sense that he advanced what he intended to be a plausible alternative to the truth, but in the sense that what he said was evasive and unresponsive and intended to avoid the truth. He was simply determined to give up nothing in addition to the information he had acknowledged at the time of his guilty plea.
- [33] The Crown contends that the severity of the perjury depends on the number of individual lies that were told and that for that reason a specific finding on each particular is important for the purposes of sentence. I have already indicated that counsel for Mr. Reyat has suggested that all the Court should do is accept that the jury's verdict was that Mr. Reyat had been untruthful.

- [34] I think the proper approach must be to consider whether, in fairness, some of the particulars can be accounted for as lapses, or as the product of fatigue or language difficulties, or carelessness short of the requisite intention to mislead, for any particular to support a conviction for perjury. Counsel for Mr. Reyat made a forceful submission to the jury to this effect, and the jury was instructed to consider each particularly scrupulously in that light.
- [35] Where the perjury alleged is a failure to tell the truth in accordance with the duty imposed by a solemn affirmation, rather than an allegation of an active attempt to construct an alternative to the truth, the number of lies may not be a particularly helpful index to the gravity of the offence. It may more accurately reflect the degree of pressure brought to bear on the witness, and the degree of the witness's resistance. Seen in this light, Mr. Reyat's evidence was a determined attempt to conceal whatever he knew, and the 19 particulars are individual instances or examples of what amounts to a course of conduct. From start to finish Mr. Reyat's testimony was a deliberate attempt to frustrate the search for the truth. That, in my view is the implication of the jury's verdict.

III

- [36] That said, I will briefly review the principles of sentencing for perjury expressed in the existing case law.
- [37] Perjury is an offence that carries a maximum period of incarceration of 14 years. It has been described as a very serious offence which strikes at the root of the justice system: *R. v. Johanson*, [1990] B.C.J. No. 307 (C.A.); *R. v. C.D.*, [2000] O.J. 1668 (C.A.).
- [38] Relatively lengthy periods of incarceration have frequently been imposed for perjury. Both the Crown and the defence have tendered cases suggesting a range of penalties up to six years, which was the sentence given in *R. v. Glauser* (1981), 25 C.R. (3d) 287 (Alta. C.A.). There, the accused gave false testimony in an effort to exonerate his brother of murder. The reasons of the Alberta Court of Appeal were brief.

1 LIEBERMAN J. A. (orally):--The respondent was a Crown witness at the trial of his brother and one Bobyk on a charge of first degree murder. That trial resulted in the acquittal of the respondent's brother and in the conviction of Bobyk of first degree murder, later reduced to second degree.

2 At the trial the respondent stated that he did not remember many of the incidents that he had clearly related in a statement made to the authorities prior to the preliminary hearing on the murder charges.

3 The respondent, following the murder trial, was charged with perjury. After a trial on the perjury charge held before a judge sitting with a jury, the respondent was found guilty and was sentenced to a term of imprisonment of two years less one day. This is a Crown appeal from that sentence.

4 The administration of justice is based upon the truthful testimony of those persons who are called to give evidence under oath. The freedom or, on the other hand, the incarceration of accused person in serious criminal offences depends totally upon the truthfulness of those witnesses.

5 This is not a case of shading the truth or lying on an inconsequential point. It is a case of skilful and deliberate lying for the purpose of subverting the course of justice in a most serious offence, that of first degree murder.

6 Counsel for the respondent argues that the police investigation and the strategy adopted by the Crown during the course of the murder trial put the respondent in a most difficult position. He was called upon to testify against his brother and Bobyk. He received threats. He may well have been a co-accused in a murder trial if he had not agreed to testify. These suggestions may all be true, but in our view although they may explain, subjectively, the reasons for the perjury, they do not excuse it nor do they reduce the seriousness of the offence in these circumstances.

7 The respondent is aged 32. He had a long record of criminal offences dating back to 1965. These offences include crimes of dishonesty and violence.

8 The sentence imposed by the learned trial judge does not, in our view, reflect the seriousness of this offence which goes to the very root of our system of criminal justice. That seriousness is emphasized by the maximum penalty provided for the offence, namely, 14 years.

9 We accordingly allow leave to appeal, we allow the appeal and for the sentence imposed we substitute a sentence of six years' imprisonment. At arriving at this term we have taken into consideration the time that the respondent spent in custody prior to sentencing.

[39] In *R. v. Jordan*, [1986] A.J. 610 (C.A.) the Alberta Court of Appeal summarized the factors it considered relevant to sentencing in a perjury case as follows:

Perjured testimony strikes at the very heart of the judicial system. The court has always taken a most serious view of such offences and lengthy sentences are the usual course.

A number of different factors enter into a consideration of the length of sentence for perjury. Without in any way being an exhaustive list, the following are some of these factors:

- (i) The relative seriousness of the offence with respect to which the perjured testimony was given.
- (ii) The effect, if any, on the outcome of the trial by reason of the perjured evidence.
- (iii) Whether the testimony dealt with a vital part of the evidence.
- (iv) Whether the perjured evidence led to the implication of an innocent person in a crime, which would ordinarily be a most aggravating factor.
- (v) Whether the perjury was planned and deliberate or the result of a sudden temptation in the course of giving evidence.

[40] In *R. v. Desnomie*, [2005] S.J. 785 (C.A.), a case of false retraction of incriminating testimony leading to an acquittal, the Court noted the significance of the underlying offence:

... The investigation of who caused a homicide is one of the most significant that a court can undertake and one that must be carried out with openness and with the greatest attention to seeking the truth in order to preserve society's respect for the judicial system. It is fundamental in any judicial proceeding that witnesses treat the process with respect and tell the truth, and that if they do not, the court deal with them appropriately to show not only other witnesses, who may potentially do the same, but society that it takes extremely seriously the process of ascertaining the truth. This can nowhere be more important, both for the system itself and for the respect society gives to the system as a means of resolving disputes in society, than in the case of a homicide. The courts must treat this process with utmost seriousness, not only for the parties involved in each case, but because society must be confident that these questions can be fully dealt with in an appropriate manner by the court system. Structure in society depends on this.

The seriousness of the offence with respect to which the testimony is given and its importance as part of the case are material factors to be considered. See *R. v. Jordan* (1986), 72 A.R. 167 (Alta. C.A.) and *R. v. Martin* (1993), 141 N.B.R. (2d) 227 (N.B.C.A.). In the latter case the court said:

[8] No one can weigh with certainty whether the verdict would have been different had Roger Martin told the truth. It can be said that the perjured testimony was material, went directly to the question of whether Mr. Gallant had caused the death of Ms. MacKinnon and must have been considered by the jury in coming to its conclusion.

[12] The sentence for perjury should take into account the gravity of the offence under prosecution. This principle that the seriousness of the litigation will affect the sentence for perjury is given clear support in precedents where perjury was committed in the course of a murder trial as was the case here.

Here the evidence was material, it is the most serious kind of case considered by the court and the offence was planned and deliberate.

[41] In *R. v. Kuznozoff*, [1991] B.C.J. No. 421 the British Columbia Court of appeal, per Lambert, J.A. observed:

There ought to be a relationship between the sentence imposed for perjury and the crime in relation to which the perjury was committed.

In addition, the nature of the perjury can affect the seriousness with which the offence is viewed. The most serious category is where the perjured evidence is being given to lead to the conviction of an innocent person.

The second most serious category is where, as in this case, the perjured evidence is given in the hope of procuring the acquittal of a guilty person.

The third and final category, in a descending order of seriousness, is where a person gives perjured evidence to protect himself or herself.

- [42] This case was considered "a little dated" by Hall, J.A. in *R. v. Corbett*, [2006] B.C.C.A. 257. He suggested that sentences have become "somewhat heavier" since that case was decided.
- [43] The principles that can be derived from the case law are that perjury is always a serious offence requiring significant sanctions, because it "strikes at the heart" of the "judicial system".

IV

- [44] I think it convenient to address this case in light of the factors set out in *Jordan*. Thus, the seriousness of the *Air India* case itself must first be considered. This requires some appreciation of the background of that case and of Mr. Reyat's involvement in the events leading up to his appearance as a witness.
- [45] The *Air India* trial concerned the second of two linked events. On June 22, 1985, at 11:15 p.m. a bomb inside a piece of luggage exploded at the airport at Narita, Japan killing two baggage handlers. It had originated in Vancouver on a Canadian Pacific Airlines flight that had departed about 1:37 p.m. that day, and the bag had been interlined, or forwarded, to an *Air India* flight that was departing for Bangkok.
- [46] At about 12:14 a.m. on June 23, 1985 *Air India* flight 182 disappeared from radar screens at Shannon, Ireland. It disintegrated off the coast of Ireland as a result of a bomb in luggage transferred to it from a Canadian Pacific Airlines flight that had originated in Vancouver. *Air India* 182 started in Toronto as flight 181 and became 182 after a stop in Montreal. It was bound for London, en route to Delhi and Bombay.
- [47] Mr. Reyat was linked to the device that exploded at Narita by a painstakingly assembled chain of circumstantial evidence that, among other things, associated the remnants of the explosive device at Narita, to purchases of a timer and other materials by Mr. Reyat in Duncan, British Columbia.
- [48] On February 5, 1988, Mr. Reyat was arrested in England, and in December of 1989 he was rendered to Canada. He remained in custody until his trial on two counts of manslaughter and six charges related to the acquisition, possession and use of explosive substances arising out of the Narita incident. On May 10, 1991, he was found guilty by Paris, J. following a trial by judge alone. In the course of his reasons, Paris, J. reviewed the forensic and other evidence in detail, including evidence of motive and of admissions Mr. Reyat made to the police. Paris, J.'s observations in that regard are of some significance.

There is of course abundant evidence of motive on the part of Reyat. From the testimony of various witnesses it is apparent that he was keenly interested in political questions related to Sikhs in India. Several witnesses testified that he had expressed hostility towards the Indian authorities, great indignation at the events at the Golden Temple in Amritsar, and even

gratification at the assassination of Indira Ghandi. His expressed purpose for his attempt to get dynamite from Robinson and the test in the woods with Parmar related to violent activity of some kind directed at India. To one witness, Michael Leitch, he expressed willingness to fight and if necessary to die for his cause, although he was perhaps being goaded somewhat by Leitch at the time. To another witness, Glen Cumming, he expressed the wish that Indira Ghandi be blown up.

The foregoing evidence is particularly significant because of the circumstances surrounding the placing of the bomb on Canadian Pacific Flight 003 on June 22, 1985. I have no doubt that the bomb was in a piece of luggage which had been placed on the plane upon presentation at the check-in counter of a ticket which had been issued in the name of "L. Singh". The ticket had been purchased on June 20, 1985 by an East Indian person wearing a turban, had been paid for in case, and was a one-way ticket. The terminus of the ticket was not Narita but was Bangkok via a connecting Air India flight, which means of course that the luggage was to be transferred to that Air India flight. The evidence was that the holder of that ticket did not board the plane after having checked his luggage onto it.

The circumstances in the preceding paragraph cannot be ignored. Of course by themselves they prove nothing. But they are relevant because they fit in or dovetail perfectly with the rest of the evidence in the case, especially the evidence relating to Reyat's motive for involvement in the fabrication of the bomb. In describing the use and effect of circumstantial evidence in a criminal case the metaphor of a mosaic is often used. Reasoning by metaphor can be dangerous and occasionally misleading. But I find that that metaphor is particularly apt in this case with respect to the evidence relating to the purchase of the ticket and the placing of the plane of the luggage which carried the bomb. That evidence fits together perfectly with the overall pattern created by the rest of the evidence in the case.

[49] In finding that Mr. Reyat was guilty of manslaughter, Paris, J. made specific comments about the nature of a conviction for that offence:

I am satisfied beyond a reasonable doubt that the accused either fabricated or, at the very least, aided others in the fabrication of the bomb which exploded in Narita killing the two baggage handlers. The Crown does not argue that it has proved his exact purpose beyond a reasonable doubt but I am satisfied beyond a reasonable doubt that he knew the bomb was to be used for some illicit purpose. It could not be otherwise.

According to the Criminal Code the elements of manslaughter are directly or indirectly causing the death of a human being by means of an unlawful act. In *Regina v. Adkins* (1988), 39 C.C.C. (3d) 346 the British Columbia Court of Appeal ruled that the unlawful act must be such as all reasonable people would inevitably recognize must subject the victim to risk or harm.

In his written argument Crown counsel made the following submission:

"The offence of manslaughter is made out if an accused in the commission of an unlawful act causes the death of a person where the unlawful act is dangerous by its nature. That is, an act which is of itself dangerous and unlawful is in the act causes the death of a person sufficient to found guilty of manslaughter."

I accept that proposition. I believe it fulfils the requirement of *Regina v. Adkins*. To fabricate or assist in the fabrication of the bomb in this case was an unlawful act which reasonable people would recognize would subject other persons to the risk of harm. In any event, I am satisfied beyond a reasonable doubt that the accused himself understood that risk of harm. In sum, the actions of the accused were unlawful, knowingly dangerous and caused death.

[50] Mr. Reyat came before the Court on June 10, 1991, for sentencing. On that occasion, Paris, J. made the following observations:

The accused has been convicted of two counts of manslaughter, that is, causing the death of two persons by an unlawful act or acts. He has also been convicted of four related explosives offences. Crown did not allege nor did it prove that the accused intended to kill anyone or that he knew that others intended to use the bomb to kill anyone. However, the unlawful acts involved the fabrication of a highly dangerous bomb.

Furthermore, this was not an impulsive act or a crime committed in the heat of passion as are many manslaughters. It involved a planned and deliberate course of conduct. Because of these factors alone, therefore, it is on the more serious rather than on the less serious end of the scale of manslaughter offences.

The evidence also leads inexorably to the conclusion that the motive of the accused was political. That is an aggravating factor in the circumstances of this case, particularly because of the loss of human life. The end cannot justify violent means in a democratic society, no matter how idealistic or naive the offender is. The Court must be sure to make that clear to all like minded persons. In particular, the Court cannot tolerate such violence being perpetrated in our community to advance some cause abroad.

On the other hand, the evidence is consistent with the interpretation that the accused was a lesser player in the plot who may not have been fully aware of the extent of the nefarious intentions of his co-plotters. I certainly cannot be convinced otherwise on the evidence before me. That, of course, is why he was charged and convicted only of manslaughter. I emphasize once again for the record that I am directing my mind to, and sentencing the accused for, only what was proven against him at this trial.

Furthermore, the accused is apparently a person of remarkably good character, a good family person, a hard worker, well liked by all who knew and worked with him. There are too many testimonials to that effect from too many varied sources for it to be otherwise. It is profoundly sad that such an otherwise decent person should be drawn into such a mad enterprise.

- [51] Paris, J. sentenced Mr. Reyat to 10 years in prison for his implication in the deaths of the two Narita baggage handlers.
- [52] The proceedings at which Mr. Reyat was sentenced for his involvement in the Air India event took place on February 10, 2003, before the then Chief Justice, Chief Justice Brenner. After reviewing the circumstances of the Air India event, the Chief Justice made the following observations:

Now, the offender, Mr. Reyat is 51 years old. He's married with three children. As pointed out by his counsel, he was working as an electrician in London when he was arrested in 1988 and charged with the Narita incident. Before Mr. Reyat referred me during the course of his submissions to the conclusions of Mr. Justice Paris presided at the first trial. And he emphasized Mr. Justice

Paris's sentencing reasons and in particular, his words that page 1 of his reasons that "Crown did not allege nor did it prove that the accused intended to kill anyone or that he knew that others intended to use the bomb to kill anyone."

And on page 2 of Mr. Justice Paris's sentencing reasons, that the evidence in that case "is consistent with the interpretation that the accused was a lesser player in the plot who may not have been fully aware of the extent of the nefarious intentions of his co-plotters."

In this submission, Mr. Wright stated that the RCMP have never stopped since June of 1985, they have been at work on this case and they have aggressively pursued all investigative leads. As a result of that investigation, which I think can only be described as exhaustive, the evidence available to the Crown supports nothing further than the charge of manslaughter, the specific charge of aiding and abetting which Mr. Reyat is charged before the court. In particular, Mr. Wright advises the court that there's no evidence that Mr. Reyat intended to kill anyone nor is there any evidence that he was aware that a bomb was to be placed on Air India 182.

Both Crown and defence point out that the totality of the sentence for this activity will be 25 years.

And so I return to what I said at the outset, and that is, is the five year additional period of incarceration appropriate in this case? The sentence proposed will take the offender to effectively 25 years of incarceration for the Narita and Air India offences. Is 25 years a fit sentence in this case? The usual sentence for manslaughter wherein an offender is not considered to be an ongoing threat in British Columbia, it has been stated by our Court of Appeal has a range of a suspended sentence at the low end to something less than 8 years at the high end. After his conviction for the manslaughter deaths of the two baggage handlers at Narita Airport, the offender Reyat was given a 10 year sentence, which in my respectful view was entirely fit and appropriate.

From the submissions of counsel before me is clear that the offender's actions in respect of the Narita case and the Air India case are one. In simple language, he aided and abetted in the creation of two explosive devices. And so the issue is the sentence of 25 years sufficient to meet the interest of justice as set out in Section 718 of the Criminal Code.

I want to briefly review those principles. 718 states the fundamental purpose of sentences is to contribute along with crime prevention initiatives to respect for the law and a maintenance of a just peaceful and safe society by imposing just sanctions that have one or more of the following objectives: A, to denounce unlawful conduct. B, to deter the offender and other persons from committing offences, C, to separate offenders from society where necessary, D, to assist in rehabilitating the offenders, E to provide reparations for harm to victims or to community. And F, to promote a sense of responsibility of offenders and acknowledgment of the harm done to victims and to the community.

In considering the sentence proposed, I must, of course, have regard to the offender's plea of guilt. Counsel for the offender in his submissions submitted to the court that the offender is remorseful. I would observe that a plea of guilty is supportive of that fact. And by a -- by pleading guilty in this case, Mr. Reyat has accepted his role in the aiding and abetting of the manslaughter deaths of 329 people.

In my view, a 25 year sentence for what Mr. Reyat has done is both fitting and proper. And it satisfies the principles set out in the Criminal Code.

Mr. Reyat, would you please stand. Mr. Reyat, I've determined -- Mr. Reyat, I've determined that a sentence of 25 years for the offences for which you have now been convicted with Narita and an Air India case is appropriate. After taking into account time at you have been incarcerated, I sentence you to a further period of incarceration of 5 years.

[53] Mr. Reyat's guilty plea on February 10, 1983, made him a compellable witness, that is, that he then had the duty cast on any citizen to tell the whole truth if called to do so in a judicial proceeding.

V

[54] The Air India trial was, of course, concerned with the most serious mass murder in Canadian history. Apart from the 329 people who died as a result of that explosion, the perpetrators put at risk a like number of others by means of the device that blew up at Narita. Only an accident of timing prevented the death toll from being far worse.

[55] It is a principle of sentencing that similar offences should attract similar sanctions. The scale of the Air India matter is difficult to compare with even the most serious of the perjury cases that have been cited as precedents. Even the strong language in *R. v. Desnomie* does not begin to describe the scale of Air India. In terms of the first factor in *Jordan* the offence in relation to which Mr. Reyat's perjury was committed could scarcely have been more serious.

- [56] The effect of Mr. Reyat's perjury on the outcome of the Air India trial, the second factor in Jordan, and whether it was in relation to a vital part of the evidence, the third factor, is incalculable, owing to the nature of the perjury committed. In his reasons for judgment in that case, Josephson, J. commented on Mr. Reyat's evidence from the perspective of one who had seen as well as heard the testimony that was before to the jury in the perjury trial:
- [225] Mr. Reyat's credibility on the witness stand is also of little moment in relation to the outcome of this trial. That said, it is without hesitation that I find him to be an unmitigated liar under oath. Mr. Reyat endeavoured to reveal as little information as possible regarding the complicity of himself and others in the offences, while attempting unsuccessfully to craft a story consistent with his plea to manslaughter and his admissions of fact in that connection.
- [226] Much of his evidence was improbable in the extreme and entirely inconsistent with common sense. When caught in obvious and numerous irrationalities, he would seek refuge in memory loss or offer tentative possibilities or guesses.
- [227] The most sympathetic of listeners could only conclude, as do I, that his evidence was patently and pathetically fabricated in an attempt to minimize his involvement in his crime to an extreme degree, while refusing to reveal relevant information he clearly possesses. His hollow expression of remorse must have been a bitter pill for the families of the victims. If he harboured even the slightest degree of genuine remorse, he would have been more forthcoming.
- [57] What Mr. Reyat contributed to that trial was of little moment because Mr. Reyat achieved his objective: he imparted nothing of assistance. Precisely owing to the nature of his perjury - failing to tell what he knew and knows - it is impossible to say what difference the whole truth might have made in that trial. Having said that, however, the evidence the Crown sought to elicit seemed to pertain more to the preparations implicating Mr. Parmar and Mr. X than to any direct dealings with Mr. Malik or Mr. Bagri. This is not a case, like Glauser or Desnomie where the perjury was a demonstrable and crucial factor in a miscarriage of justice.
- [58] The fourth factor identified in Jordan is not pertinent. There is no aspect of Mr. Reyat's perjury that implicates another person.
- [59] The last factor, "whether the perjury was planned and deliberate or the result of a sudden temptation in the course of giving evidence" is relevant. As I have said, Mr. Reyat does not appear to have planned or attempted to construct a plausible alternative to the truth. Rather he deflected all attempts to elicit the truth in a manner that was indifferent to the effect of what he was saying on any sensible listener. Suggestions that he kept explosives around in case some day he might see a stump he wished to blow up; or that he had a house guest for several days whose name he never knew, although he had his telephone number; or that he had forgotten the details of events for which he had been obliged to sacrifice many years of his own freedom are not ordinary fabrications. They are a contemptuous and public

defiance of the judicial process itself, on an occasion that could not have attracted more public interest.

- [60] It is in this respect that the dispositions of the earlier proceedings are pertinent. In the Narita case, Paris, J. was persuaded that Mr. Reyat's motives were political, but that the evidence left open the possibility that Mr. Reyat had not been "fully aware of the extent of the nefarious intentions of his co-plotters". He also accepted that Mr. Reyat was a man of "remarkably good character" and an "otherwise decent person" drawn into a "mad enterprise".
- [61] At Mr. Reyat's subsequent sentencing in the Air India matter itself, Chief Justice Brenner explicitly adopted Paris, J.'s characterization of Mr. Reyat's involvement. He accepted the submission of counsel that "the offender's action in respect of the Narita case and the Air India case are one. In simple language he aided and abetted in the creation of two explosive devices". The Chief Justice said that the question before him was whether a cumulative of sentence of 25 years, five more in the Air India matter, was sufficient to meet the interests of justice, in terms of the principles of sentencing set out in s.718 of the Criminal Code.
- [62] The Chief Justice expressed the further view that Mr. Reyat's guilty plea was, in itself, an indicator of remorse.
- [63] There are a few points to be made of these observations. The first is that in each case Mr. Reyat had the benefit of his entitlement under our law to scrupulous adherence to the principle of reasonable doubt. The second is that his representations that he was essentially a decent person whose confederates had taken advantage of him, were largely accepted. The third is that his representations that he was remorseful were given significant weight.
- [64] When it came time for Mr. Reyat to fulfill his obligation to testify, however, he behaved nothing like a remorseful man unwittingly implicated in mass murder. In the witness box Mr. Reyat behaved like a man still committed to a cause which treated hundreds of men, women and children expendable. There is no other way to view his testimony.

VI

- [65] Counsel for the Crown submits that a central provision of the plea agreement on February 10, 1983 was that Mr. Reyat would testify truthfully at the Air India trial. The Crown submits that this is relevant, not because it adds anything to the duty that bound Mr. Reyat in any event, but as an answer to the submission by Mr. Reyat that this Court ought to consider an alleged breach of the Crown's obligations under that arrangement in mitigation.
- [66] The nature of that submission is that Mr. Reyat contends that the Crown failed to honour the plea agreement by breaking promises expressed in the following terms:

1. Counsel for Mr. Reyat will request that the Court recommends that Mr. Reyat serve his sentence at Ferndale Institution. The Crown will not take any position on such a request and will not oppose the request.
 2. The Crown will not ask the court to delay Mr. Reyat's eligibility for parole.
 3. Following Mr. Reyat's conviction for the offence of manslaughter, Assistant Commissioner Bass of the RCMP will forthwith deliver a letter to the Parole Board in the form described in appendix B. The Crown and the RCMP agree to take no steps opposing temporary absences or parole for Mr. Reyat during the term of the sentence imposed in consequence of the plea agreement, and will not take any position with respect to such matters that is inconsistent with the aforementioned letter of Assistant Commissioner Bass.
11. The draft letter of Assistant Commissioner Gary Bass was to read:

"Reyat has plead guilty to the charge of manslaughter in relation to the deaths of the passengers and crew of Air India flight 182. He has been in custody on this and other criminal charges since 1988. We have no information that he poses an escape risk. We know of no other criminal investigations involving him. We believe he may be treated like any other prisoner by Corrections Canada and/or the Parole Board".

[67] Mr. Reyat alleges that in consideration of these promises he acted to his detriment in the following ways:

1. He pleaded guilty to the offence of manslaughter on 10 February 2003.
2. He agreed to a term of imprisonment of 5 years to be imposed in relation to the manslaughter conviction.
3. Mr. Reyat agreed to withdraw the application for reconsideration currently before the Home Secretary in the United Kingdom.

[68] The Crown concedes that Officer Bass failed to write the letter that was part of the agreement "forthwith". Rather, he held it pending Mr. Reyat's testimony, following which the Crown took the position that Mr. Reyat's failure to testify truthfully had relieved it of its obligation under the agreement. Mr. Reyat takes the position that, by failing to write the letter, and then, in actively opposing Mr. Reyat's early release and leaking information to the media, adversely affecting his custodial conditions, the Crown has breached his rights under s.7 of the Charter. The consequence he submits is that this Court ought to take account of the breach and reduce the sentence it would otherwise impose. Mr. Reyat submits that he should only have served 20 months of his five year manslaughter sentence and that the perjury sentence should be adjusted accordingly.

- [69] In summarizing this argument, I do not do justice to the effort that clearly went into its preparation. I would not wish it be taken to condone any breach alleged against the Crown, if such there was. But the factors at play in a plea arrangement are often complex and so influenced by unknowns, that I do not think it realistic to analyze them retrospectively. Even if it were appropriate to attempt such a thing, it would not be possible to decide on the basis of the material submitted, but would require a more extensive and, ultimately collateral inquiry. The remedies Mr. Reyat now seeks should have been sought in the context of those proceedings. I simply do not think it possible or proper, at this stage, to attempt to deconstruct the plea bargain and I dismiss the Charter application as irrelevant to the task I must perform.
- [70] Just as I consider it inappropriate to import considerations proper to those proceedings into these, I think it essential to note that, conversely, in sentencing Mr. Reyat for perjury, I must not and do not take account of the crimes for which he has been sentenced as if this proceeding is an opportunity to adjust or extend Mr. Reyat's punishment for those matters. He has been sentenced and served his time for those crimes, and the issue now is only the proper sentence for perjury, in light of the principles relevant to the nature of the occasion on which the perjury occurred.

VII

- [71] The offences for which Mr. Reyat has been tried and punished, and which were before the Court when he committed perjury, were acts of terrorism. In the Commission of Inquiry into the Investigation of the Bombing of Air India Flight 182, *Air Indian Flight 182, a Canadian Tragedy*, Volume 1, (Ottawa: Public Works and Government Services Canada 2010), at page 159, The Honourable John Major addressed the unique characteristics of terrorism: "Terrorism is an existential threat to Canadian society in a way that murder, assault and other crimes are not. Terrorists reject and challenge the very foundations of Canadian society."
- [72] Mr. Reyat's testimony, only months after his guilty plea, bespoke a deep and abiding rejection of the values of Canadian society in a new context, in relation to the process of the Court itself. In *R. v. Khawaja*, 2010 O.N.C.A. 862 a recent decision of the Ontario Court of Appeal, the Court made a number of pertinent observations:
- [247] Our justice system is committed to the values of a democratic society, in which openness, governmental accountability, individual freedoms and the rule of law are accepted as the cornerstones of a fair and just system of criminal justice. Our sentencing and correctional philosophy also places a premium on the notion of individual dignity and it accepts redemption and rehabilitation as desired and achievable goals. Regrettably, the hallmarks that define our justice system may be seen by those who reject democracy and individual freedom as signs of weakness. Terrorists, in particular, may view Canada as an attractive place from which to pursue their heinous activities. And it is up to the courts to shut the door on that way of thinking, swiftly and surely.

[73] Khawaja concerned a sentence for a terrorist crime in Ontario. These remarks are apposite, however, in that Mr. Reyat's determination not to give any useful information to the Court directly pitted his commitment to activities inimical to the values of Canadian society against the very process that articulates and protects those values. His testimony radically undermined his previous representations of remorse and cast serious doubt on his assertions that he had been effectively taken advantage of by others.

[74] The Court simply cannot leave the impression with would-be terrorists or with the public at large that it will tolerate determined subversion of the premises upon which the whole justice system operates.

[75] The principles of sentencing are found in s.718 of the Criminal Code:

Purpose

718. The fundamental purpose of sentencing is 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 that have one or more of the following objectives:

- (a) to denounce unlawful conduct;
- (b) to deter the offender and other persons from committing offences;
- (c) to separate offenders from society, where necessary;
- (d) to assist in rehabilitating offenders;
- (e) to provide reparations for harm done to victims or to the community; and
- (f) to promote a sense of responsibility in offenders, and acknowledgment of the harm done to victims and to the community. 1995, c.22, s. 6.

[76] Section 718.1 reads as follows:

718.1. A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

[77] The attitude underlying Mr. Reyat's perjury and his persistence in the course he has chosen suggests that his prospects for rehabilitation or for the positive aspects of sentence reflected in s. 718(d), (e) and (f) are dim. The emphasis must be on denunciation and deterrence. Perjury in the cause of the worst sort of crime, in the most public and high profile setting demands a strong sanction. As in all sentencing, however, there is also a requirement for temperance. In this regard, the observations of the Chief Justice of Canada in *R. v. M.C.A.*, [1996] 1 S.C.R. 500, at para. [20] are apt:

Retribution in a criminal context, by contrast [to vengeance], represents an objective, reasoned and measured determination of an appropriate punishment which properly reflects the moral culpability of the offender ... unlike vengeance, retribution incorporates a principle of restraint; retribution requires the imposition of a just and appropriate punishment, and nothing more.

The objective of denunciation mandates that a sentence should also communicate society's condemnation of that particular offender's conduct. .. a sentence with a denunciatory element represents 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 criminal law.

[78] The Chief Justice summarized the obligation of the sentencing judge to consider the interrelated objectives of sentencing and concluded, at para. [21]:

In the final analysis, the overarching duty of a sentencing judge is to draw upon all the legitimate principles of sentencing to determine a "just and appropriate" sentence which reflects the gravity of the offence committed and the moral blameworthiness of the offender.

VIII

[79] It is my considered view that although the occasion on which Mr. Reyat's perjury occurred could hardly be more egregious, its substantive effect has not been shown to be of the most serious kind. This is not a mitigating factor, but a factor that leaves the offence as proved somewhat short of the near-maximum penalty sought by the Crown.

[80] I have already indicated that I will make no allowance in relation to the breaches of the plea bargain Mr. Reyat alleged.

[81] I do, however, take account of the time Mr. Reyat has spent in pre-trial custody between February 2008 and July 2008, a period of five months. I also take account of the time Mr. Reyat has been in custody since he was convicted on September 18, a period of about 3-1/2 months. I accept that the recent amendments to s. 719 of the Criminal Code limiting credit for pre-trial custody to one day for each day spent in custody do not apply since Mr. Reyat was charged on a date before the law came into effect. I therefore credit him with 17 months for the time spent in pre-trial custody.

[82] I do not consider that, in the circumstances of this case, time spent on strict bail condition should result in a credit. The conditions of Mr. Reyat's interim release, while restrictive, were far from the conditions he would have endured if incarcerated. In this regard, I take some guidance from *R. v. Cuthbert*, 2007 BCCA 585.

- [83] Lastly in this proceeding itself, Mr. Reyat offered a statement. Among the things he said was that "no words in any language can ever bring closure to those who have lost loved ones as a result of the Air India and Narita tragedies". It is remarkable that he would say such a thing in light of the crime he has committed. While he refuses to speak or to tell the truth about what he knows, his expressions of remorse and empathy ring hollow, indeed.
- [84] Having considered all of the circumstances in this case including what has been said on Mr. Reyat's behalf by counsel and what he said in this Court, I sentence him to 9 years for perjury. From this term I deduct 17 months for the time spent in pre-trial custody leaving a term of 7 years and 7 months from and after today.
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The Honourable Mr. Justice McEwan

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