

CANADA / JUDGMENT

R. v. Shen

2025 BCCA 378

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 378 R. v. Shen

0COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Shen,

2025 BCCA 378

Date: 20251020

Docket: CA49561

Between:

Rex

Respondent

And

Qin Shen

Appellant

Before:

The Honourable Justice Dickson

The Honourable Madam Justice Horsman

The Honourable Justice Warren

On appeal from: An order of the Provincial Court of British Columbia, dated
November 30, 2023 (sentence) (R. v. Shen, Vancouver Docket 262551-2-C).

Oral Reasons for Judgment

Counsel for the Appellant:

S. Wright

A.F. Hindi

Counsel for the Respondent:

J.R.W. Caldwell

Place and Date of Hearing:

Vancouver, British Columbia

September 29, 2025

Place and Date of Judgment:

Vancouver, British Columbia

October 20, 2025

Summary:

The appellant appeals a 12-year global sentence of imprisonment following her conviction for attempted murder. The attempted murder relates to the appellant's attack on an individual with whom she had been in an online feud with for almost two decades. She argues the judge erred in assessing her moral culpability by failing to consider the extent to which her mental illness contributed towards her intense animus towards the victim. Held: Leave to appeal is granted and the appeal is dismissed. The judge made no error in her assessment of the appellant's moral blameworthiness or the conclusion she drew that the appellant's mental disorder did not play a causal or contributory role in the commission of the offence.

[1] DICKSON J.A.: On February 14, 2023, the appellant, Qin Shen, was convicted of four offences, including attempted murder, arising out of her attack on Jing Lu in a courtroom approximately two years earlier. On November 30, 2023, the trial judge imposed a global sentence of 12 years' imprisonment on the attempted murder count and stayed the other counts based on the Kienapple principle (*R. v. Kienapple*, [1975] 1 S.C.R. 729, 1974 CanLII 14). Ms. Shen seeks leave to appeal the sentence and, if leave is granted, a reduction to six years' imprisonment.

[2] Ms. Shen was convicted following a lengthy trial at which her mental capacity for criminal intent was in issue and concerning which psychiatric evidence was presented. Ms. Shen sought a verdict of not criminally responsible by reason of mental disorder ("NCRMD"), but the judge rejected her defence. Before us on this sentence appeal, Ms. Shen submits the judge made a palpable and overriding error in assessing her moral culpability by failing to consider the extent to which her mental illness contributed to her intense animus toward Ms. Lu, which animus the judge found was the cause of the attack.

[3] For the following reasons, I would grant leave to appeal but dismiss the appeal.

Background

Circumstances of the offence

- [4] Ms. Shen met Ms. Lu online in 2005 on a website designed to help the Chinese immigrant community connect in Canada. They became entangled in an intense online feud in which they repeatedly posted insults and personal attacks on one another. In 2016, Ms. Lu sued Ms. Shen for defamation. Ms. Shen countersued. Following a civil trial in 2019, both were found liable for defamation. Ms. Shen was ordered to pay \$9,000 in damages; Ms. Lu was ordered to pay \$8,500. Prior to release of the trial judgment, Ms. Shen was also found guilty of contempt of court for breaching an order prohibiting her from posting about Ms. Lu online, and she was ordered to pay Ms. Lu \$2,000.
- [5] Ms. Shen was deeply disappointed by both judgments, which she felt unfairly sided with Ms. Lu. Ms. Lu was also unhappy with the trial judgment. Both parties appealed. While the appeal was pending, Ms. Lu brought another contempt application against Ms. Shen, which, at Ms. Shen's request, was scheduled for an in-person hearing on May 25, 2021. The attack occurred at this scheduled court appearance.
- [6] The judge found that Ms. Shen decided to attack Ms. Lu in the courtroom after Ms. Lu brought the second contempt application. As a result, she requested the in-person hearing. Thereafter, Ms. Shen took several preparatory steps, including arming herself with a knife and hammer, drinking alcohol to bolster her courage, bringing a suitcase with her to court to either take to jail or flee after the attack, and dressing all in red to disguise the red blood stains. At the courthouse, Ms. Shen checked the hallway to ensure no one was close by. Then, while they were waiting for the judge to appear, she attacked Ms. Lu from behind by pummelling her with a hammer and stabbing her with a very sharp and narrow knife. Ms. Shen inflicted at least ten knife stabs and hammer blows to Ms. Lu before a sheriff entered the courtroom and intervened, likely saving Ms. Lu's life in doing so.
- [7] Ms. Lu survived the attack, although she was left with both physical and psychological injuries. In statements made after the attack, Ms. Shen explained that she believed Ms. Lu had to die to stop her from continuing the feud between them.

Circumstances of the offender

- [8] Ms. Shen was 53 years old when she attacked Ms. Lu. She had no prior criminal record. She immigrated to Canada in 2005 with her husband and son. She holds an engineering degree from China and worked there in that field. She also worked steadily in Canada, took several ESL programs, and earned a one-year diploma in international trade. She eventually stopped working due to the stresses associated with her ongoing feud and litigation with Ms. Lu.

- [9] Ms. Shen's obsession with the feud with Ms. Lu (which was apparently mutual) eventually led to her marriage dissolving and the onset of anxiety and depression. In 2018, she was referred to a psychiatrist, who noted that the deterioration in Ms. Shen's mental health was primarily related to her legal troubles with Ms. Lu.
- [10] At the time of the attack, Ms. Shen was living in Surrey and rarely leaving her home. Based on the psychiatric evidence presented at trial, the judge found that she suffered from depression, anxiety and mild alcohol-use disorder when she attacked Ms. Lu.

Sentencing proceedings

- [11] The sentencing hearing was set to begin on May 8, 2023. However, the judge was concerned by the absence of medical evidence regarding any causal effect of Ms. Shen's depression, anxiety and alcohol-use disorder on the attempted murder. As a result, she ordered a report on that issue from Dr. Lacroix, the psychiatric witness, whose trial testimony regarding Ms. Shen's mental state at the time of the offence the judge accepted in reaching her verdict on the NCRMD defence.
- [12] Among other things, Dr. Lacroix testified at trial that Ms. Shen's fixation with Ms. Lu and perception of herself as the victim were established "from nearly the beginning of the feud that evolved far before any signs of mental illness developed" and they endured post-offence, unaffected by the medications she ultimately received for her mental illness. For example, he stated, the threat that Ms. Lu posed to Ms. Shen's self-concept "was consistent post-offence as well. Ms. Shen remained fixated on the perceived unfairness of the justice system and her mistreatment by Ms. Lu and the offence to her self-concept", which remained impervious to antipsychotic medication. Dr. Lacroix had also testified that he saw Ms. Shen as a victim in the sense that she was in "a state where she's clearly suffering from depression, that this illness has worsened over a period of years and she's unable to reorient herself away from this feud that she's had with Ms. Lu over these years".
- [13] The judge asked Dr. Lacroix to provide an expert psychiatric opinion on the contribution, if any, of Ms. Shen's mental illness or alcohol use on her offending behaviour and a risk assessment for sentencing purposes. In his responding report, Dr. Lacroix observed that "[t]o this day, Ms. Shen still does not regard Ms. Lu as a victim or acknowledge that she caused her harm". He opined that "the primary factor driving Ms. Shen's violent actions on May 25, 2021 was her intensifying animus towards Ms. Lu", which had "developed over a period of years and at the time was worsened by Ms. Shen's perceived unjust treatment in civil court proceedings".
- [14] Dr. Lacroix stated that Ms. Shen's depressive disorder "provides context to the events of May 25, 2021 insofar as it explains the extent to which the feud with Ms. Lu had affected her life", but "there is no information to suggest that the symptoms of Ms. Shen's major depressive disorder was a causative factor to the events of May 25, 2021". In terms of her alcohol use, he commented that given the planning that preceded the attack "a reasonable clinical inference

could be that Ms. Shen utilized the anxiolytic effects of alcohol to facilitate the attack" and stated that "alcohol intoxication was not a causative factor in the events of May 25, 2021". He summarized his opinion by stating that, "Ms. Shen's Major Depressive Disorder and Alcohol Intoxication were factors that place the events of May 25, 2021 in proper context, but were not direct causative elements of the offences. It remains my opinion that her animosity toward Ms. Lu was the dominant factor driving her behaviour".

- [15] As to risk, Dr. Lacroix opined that Ms. Shen did not pose a risk to anyone but Ms. Lu, but that the risk she posed to Ms. Lu was high.
- [16] Both Crown and defence counsel accepted Dr. Lacroix's opinion. Defence counsel submitted that if mental illness or alcohol use did not cause, but did contribute, to the commission of the offence, an appropriate sentence was six years' imprisonment. Crown counsel submitted that a sentence of 16 to 18 years was appropriate.

Reasons for sentence

- [17] The judge began her thorough and cogent reasons by reviewing the circumstances of the offence, the offender, and salient sentencing principles. After outlining aggravating and mitigating factors of the case, she turned to the role of mental illness on sentencing. Under that heading, she summarized the defence position, namely, that Ms. Shen's moral culpability was reduced by her mental illness and alcohol use at the time of the offence. She reviewed the psychiatric evidence of Dr. Lacroix on those points and stated:
- [40] I accept the opinions of Dr. Lacroix. They accord with the opinions that he advanced at the trial and are also based on the facts as I found them. As a result, I find that neither Ms. Shen's mental illness nor alcohol use were causative factors in her commission of the offence of attempt murder.
- [18] Next, the judge noted defence counsel's argument that "even if Ms. Shen's mental illness and alcohol use were not causative of her violent behaviour, they contributed to that behaviour". She reviewed his submission regarding the evidence of the strong relationship between Ms. Shen's mental illness and her feud with Ms. Lu, which submission she described as persuasive:
- [41] Therefore, I fully accept that the elongated conflict with Ms. Lu and the ongoing court proceedings contributed in a very significant way to Ms. Shen's mental illness and alcohol-use disorder. However, that is different from Ms. Shen's mental illness and alcohol misuse contributing to her attempt to murder Ms. Lu.
- [19] In evaluating the evidence, the judge emphasized Ms. Shen's continuing animus toward Ms. Lu and unremorseful attitude for her actions. After contrasting that post-offence attitude with those of the offenders in cases where the court found that mental illness played a contributory role, she observed that, although Ms. Shen had been medically stable for some time:

- [45] she still harbours intense animus for Ms. Lu. Again, the lone reason she has stated she will not try to kill Ms. Lu is because she would end up in jail. She is considered to have an unacceptably high risk of violence towards Ms. Lu despite the nonexistence of many of the factors that created the context in which Ms. Shen attempted to murder Ms. Lu on May 25, 2021.
- [20] The judge went on to say this:
- [46] In the circumstances, it does not appear that Ms. Shen's mental illness or use of alcohol contributed in any significant way to her violent behaviour. Rather, her intense animus towards Ms. Lu; her belief that Ms. Lu is responsible for her mental illness, her divorce, and her loss of privacy; and her belief that she would not obtain justice from the court provide the context in which she planned to murder Ms. Lu on May 25, 2021. There is no evidence that Ms. Shen's mental illness or alcohol use contributed to her violent behaviour to a degree that would lower her moral blameworthiness for her actions. Nevertheless, I may, and I will, consider Ms. Shen's mental illness as a factor when determining an appropriate sentence.
- [Emphasis added.]
- [21] After reviewing the risk assessments, the impact of the offence on Ms. Lu, the Crown and defence positions, and several case authorities, the judge summarized her conclusion on an appropriate sentence:
- [88] Given all of the aggravating and mitigating circumstances, along with the other principles of sentencing, the fact that the offence was committed in a courtroom, and taking into consideration that Ms. Shen has been suffering from a significant mental illness, even though it did not contribute to the offence, an appropriate sentence is 12 years.
- [22] Accounting for pre-sentence custody, she imposed a remaining term of imprisonment of eight years.

On Appeal

- [23] Defence counsel contends the judge made a palpable and overriding error in her assessment of Ms. Shen's moral culpability because she failed to consider the extent to which Mr. Shen's mental illness contributed to her animus toward the victim. In his submission, her conclusion that Ms. Shen's mental illness did not contribute to her attack on Ms. Lu ignores Dr. Lacroix's important evidence that "Ms. Shen's Major Depressive Disorder provides context to the events of May 25, 2021, insofar as it explains the extent to which the feud with Ms. Lu had affected her life". According to defence counsel, the contributory role of Ms. Shen's significant mental illness in her offending behaviour is readily apparent. Although he acknowledges the judge's finding that animus was the primary driver of her conduct, he says that does not mean it was the exclusive factor. However, he submits, that is how the judge treated it. He argues that, in doing so, she erred.

- [24] In support of his position, defence counsel emphasizes that Ms. Shen's animus toward Ms. Lu grew and evolved as it did because she was experiencing the world through the lens of her illness, which he describes as "the soil within which the animus grew". He contends that Ms. Shen's mental illness undeniably contributed to the extent of her animus toward Ms. Lu based on the evidence before the court. In other words, he says, the devastating impacts of her feud with Ms. Lu and resulting animus only occurred because of Ms. Shen's mental illness and thus it cannot be said that her mental illness did not contribute to the commission of the offence. In his submission, the contributory link between the two is abundantly clear.
- [25] According to defence counsel, the judge made the same error as that made by the judge in *R. v. Badhesa*, 2019 BCCA 70. In *Badhesa*, this Court found the judge erred by failing to consider the extent to which an offender's mental illness contributed to the excessive alcohol consumption that drove the offending conduct, which in that case was manslaughter and assault causing bodily harm. Defence counsel also argues that the evidence differs from that in *R. v. Milne*, 2021 BCCA 166, where the sentencing judge erred by treating the offender's mental health as a significantly contributing factor that attenuated his moral culpability despite the absence of evidence to support that conclusion.
- [26] For his part, Crown counsel contends the judge made no errors in deciding that Ms. Shen's mental disorder did not play a causal or contributory role in the commission of the offences. In his submission, her factual determination on that point is entitled to appellate deference.

Discussion

Standard of review

- [27] Sentencing decisions are discretionary. Accordingly, the standard of review on appeals from sentence is highly deferential. Appellate courts may only interfere if an appellant establishes an error in principle that materially affected the sentence, or the sentence is demonstrably unfit: *R. v. Sheppard*, 2025 SCC 29 at paras. 38-39.
- [28] A palpable and overriding error is an error which is "plainly seen": *Housen v. Nikolaisen*, 2002 SCC 33 at para. 6. Mere disagreement with the factual assessment or weighing of evidence by the court does not give rise to a reversible error. In *Benhaim v. St-Germain*, 2016 SCC 48, the Court explained why:
- [37] Allowing appellate courts free rein to overturn trial courts' factual findings would duplicate judicial proceedings at great expense, without any concomitant guarantee of more just results. Finally, according deference to a trial judge's findings of fact reinforces the notion that they are in the best position to make those findings. Trial judges are immersed in the evidence, they hear viva voce testimony, and they are familiar with the case as a whole. Their expertise in weighing large quantities of evidence and making factual findings ought to be respected.

Did the judge make a palpable and overriding error in her assessment of Ms. Shen's moral culpability by failing to consider the extent to which her mental illness contributed to her animus toward Ms. Lu?

- [29] When mental illness causes or contributes to the commission of an offence, it is a mitigating factor, and a sentence may be reduced because the offender's moral culpability is attenuated: *Badhesa* at para. 42. As this Court noted in *Badhesa*, determining the extent of the relevant contribution, if any, is a highly fact-driven exercise:
- [43] Cases involving mental illness and intoxication in combination are, of course, intensely fact-driven. Detailed and specific medical evidence is essential to a proper understanding of their relationship in a particular case, if any, as well as their impact on the offender's moral culpability. Generalizations are insufficient: *Friesen* at para. 25. In our view, insofar as possible, taking into account all of the relevant evidence, a sentencing judge should strive to determine the extent to which an offender's mental illness contributed to the offending conduct, including any contribution to his or her self-induced intoxication: *R. v. Ellis*, 2013 ONCA 739 at para. 116; *Friesen* at paras. 22-32.
- [44] When assessing a fit sentence, the judge should attribute a degree of moral culpability to the offender commensurate with the magnitude of the mental illness and its overall role in the commission of the offence: *Ramsay* at para. 25. Where mental illness played a central role, the importance of deterrence and punishment should be given less weight and treatment and public protection concerns should be increased: *Batisse* at para. 38. This decreased emphasis on deterrence and punishment is consistent with the proportionality principle, which is the *sine qua non* of a just sanction: *R. v. Safarzadeh-Markhali*, 2016 SCC 14 at para. 70; *Ellis* at para. 183.

[Emphasis added.]

- [30] The offender in *Badhesa* beat his mother to death and severely beat his wife during the same incident. A normally peaceful, prosocial man, he had been drinking heavily in the four days leading up to the commission of those offences: at paras. 2-4. The psychiatric evidence, which the judge accepted, was that the offender suffered from a serious mental illness that resulted in depressive episodes accompanied by major psychotic features. The doctor testified that there was a "chicken-and-egg" relationship between the offender's depression and alcohol consumption such that his mental state would deteriorate, psychotic features would emerge, and "then it becomes kind of meshed". He also testified that when the offender received treatment his mental state quickly improved, and he was "just completely beside himself very remorseful and quite taken aback by the severity of this incident": at paras. 9-10 (emphasis added).
- [31] The judge in *Badhesa* accepted that alcohol and mental illness both contributed to the offender's conduct when he committed the offences. However, he concluded that, while his mental illness was a mitigating factor, it did not significantly lessen the offender's moral blameworthiness: at para. 12 (emphasis added). On appeal, this Court held that it was open

to the judge to weigh the relative contribution of the offender's mental illness and intoxication during the commission of the offences and find that his intoxication was the more significant driver of his violent conduct, but he erred in his assessment of moral culpability "because he failed to consider the extent to which the appellant's mental illness contributed to his excessive consumption of alcohol": at para. 35 (emphasis added). In particular, given that the offender "suffered from a diagnosed mental disorder that interfered with his ability to reason, compromised his volitional and decision-making capacity and contributed to his state of self-induced intoxication" his moral culpability was attenuated, and the effect of his mental illness on his consumption of alcohol and opium should have been considered in the assessment of his moral culpability: at para. 46.

- [32] The nature of the evidence in this case differs significantly from that in *Badhesa*. Unlike the psychiatrist in *Badhesa*, Dr. Lacroix did not identify a link between the offender's mental illness, on the one hand, and, on the other, the violent behaviour in question. Specifically, Dr. Lacroix did not provide evidence that Ms. Shen's intense animus toward Ms. Lu was causally linked to, symptomatic of, or meshed with her depression and, accordingly, that her mental illness contributed to her animus-driven violence. Rather, as the judge appreciated, his evidence was that Ms. Shen's ongoing conflict with Ms. Lu contributed to her depression.
- [33] Despite the able submission of Ms. Shen's counsel, I am not persuaded that the judge committed a palpable and overriding factual error in her assessment of Ms. Shen's moral culpability. Unlike the judge in *Badhesa*, she did consider the extent to which Ms. Shen's depressive illness contributed to her attempt to murder Ms. Lu. However, she concluded that it did not contribute to a degree that would lower her moral blameworthiness for her violent conduct.
- [34] I accept that the judge could have inferred on the whole of the evidence that the intensity of Ms. Shen's animus toward Ms. Lu was linked to her depressive illness to a sufficient degree to reduce her moral blameworthiness for her animus-driven behaviour. However, she was not obliged to draw such an inference and the factual finding she made was manifestly available in the light of Dr. Lacroix's evidence. The judge was in the best position to evaluate the evidence. I see no error in her assessment of Ms. Shen's moral blameworthiness or the conclusion that she drew.

Conclusion

- [35] For the foregoing reasons, I would grant leave to appeal but dismiss the appeal.
- [36] HORSMAN J.A.: I agree.
- [37] WARREN J.A.: I agree.
- [38] DICKSON J.A.: Leave to appeal sentence is granted but the appeal is dismissed.

"The Honourable Justice Dickson"

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