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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday 26 October 2016

B e f o r e:
LADY JUSTICE RAFFERTY DBE
MR JUSTICE SPENCER

THE RECORDER OF PRESTON
HIS HONOUR JUDGE MARK BROWN
(Sitting as a Judge of the CACD)

R E G I N A

V

NARINDER CHADA
SUKHAN SINGH
GURMAIL SINGH DOSANJH

Computer-Aided Transcript of the Stenograph Notes of
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Mr B Kelly QC appeared on behalf of Chada
Mr A Bajwa QC appeared on behalf of Singh
Mr T Price QC appeared on behalf of Dosanjh
Mr J Waddington QC appeared on behalf of the **Crown**

J U D G M E N T
(Approved)

1. MR JUSTICE SPENCER: On 25th March 2015 in the Crown Court at Southwark, Gurmail Dosanjh, now aged 47, and Narinder Chada, now aged 63, were convicted by the jury of conspiracy to cheat the public revenue following a ten week trial before His Honour Judge Testar. It was a missing trader VAT fraud. On the same charge the jury could not agree on a verdict in respect of Sukhan Singh, now aged 36. He was convicted on 18th December 2015 following a retrial before the same judge.

2. On 21st April 2015, Dosanjh was sentenced to eight years' imprisonment and Chada to seven years. On 22nd December 2015, Singh was sentenced to five years' imprisonment. Dosanjh and Chada now renew their applications for leave to appeal against sentence following refusal by the single judge. Singh appeals against this sentence by leave of a different single judge.

3. The prosecution of this fraud arose out of an investigation by Her Majesty's Revenue and Customs known as "Operation Carp" which followed on from another investigation, "Operation Tulipbox". That first fraud, Operation Tulipbox, took place between January and May 2009, resulting in a loss to the Revenue of about £39 million. It involved two bogus trading chains of companies. At the bottom of each chain was a missing trader. None of these three defendants was involved in that first fraud.

4. When Her Majesty's Revenue and Customs became suspicious about the two trading chains in Operation Tulipbox, the conspirators started using a third fraudulent trading chain using different companies. That chain traded throughout July 2009, carrying on where Operation Tulipbox left off. Trading on every working day in July 2009, the third chain resulted in a loss to the Revenue of £11.7 million.

5. In June 2012 there was a successful prosecution of Sandeep Dosanjh, Navdeep Gill and Ranjot Chahal for conspiracy to cheat the public revenue. Judge Testar was the trial judge. The sentences he passed on those three defendants were reduced on appeal by this court in December 2013 to 13 years, 10 years and eight years respectively.

6. We do not propose to set out in detail the mechanism of the first fraud, Operation Tulipbox. Reference may be made to the summary of the facts set out in this court's judgment in the previous appeal: R v Sandeep Dosanjh [2013] EWCA Crim 2366. Suffice it to say that the fraud involved the dishonest manipulation of the EU Emissions Trade Scheme which had been set up pursuant to the Kyoto Protocol to help reduce greenhouse gases. The EU scheme created a system of "carbon credits", each of which was the right to emit one tonne of carbon into the atmosphere. Polluting companies were issued with a certain quota of carbon credits for a particular period, but could buy or sell surplus credits on the market. The mechanism of the fraud was a Missing Trader Intra Community ("MTIC") fraud with the purported trading commodity being carbon credits.

7. In the first case the conspirators ran various companies which formed the two bogus trading chains through which the fraud operated. At the bottom of each chain was a missing trader, a company which defaulted on its VAT liability. When Operation

Tulipbox brought an end to the first fraud, similar fraudulent manipulation of the EU Emissions Trade Scheme continued through the third bogus chain of companies. Again it was an MTIC fraud, with carbon credits being the commodity, but this time using different companies.

8. The prime organisers and main beneficiaries of this second fraud were again Sandeep Dosanjh and Pardeep Dosanjh, as they had been in Operation Tulipbox. They were named as conspirators on the indictment but they were not defendants in the trial. They are cousins of the applicant Gurmail Dosanjh. Pardeep Dosanjh had not been extradited. Sandeep Dosanjh was already serving 13 years' imprisonment following the first trial and it was not thought to be in the public interest to prosecute him again.

9. At the bottom of the third chain the defaulting company was C & T Environmental Services Ltd ("Environmental Services") which acquired credits on a zero rated basis from other EU traders. There were two other buffer companies in the chain, one of which was called Heathrow Services Ltd (“Heathrow Services”). Sukhan Singh was a director of that company and heavily involved in its management.

10. Finally, there was an off-loading company, Universal Management UK Ltd (“Universal Management”), owned by the applicant Gurmail Dosanjh. The applicant Narinder Chada was a director of that company and heavily involved in its management.

11. Over the 23 working days in July 2009 the conspirators traded about 6.8 million carbon credits in 141 transactions, all of them supplied to Universal Management by Heathrow Services. The total loss to the Revenue in unpaid VAT by the defaulting company, Environmental Services, was £11.7 million. Money was being lost to the Revenue at such an alarming rate that the law was changed at the end of July 2009 to make carbon credit trading zero-rated for VAT purposes.

12. The sentencing framework for the judge was the Sentencing Council's Guideline for the offence of cheating the Revenue which had come into force in October 2014 after the earlier sentence appeal. The harm was Category 2 because the loss to the Revenue was in the bracket £10 million to £50 million. For an offence involving high culpability, Level A, the starting point was 10 years and the category range eight to 13 years. For medium culpability, Level B, the starting point was seven years and the category range five to nine years' custody. These starting points in Category 2 are based on a loss of £30 million. However, the judge made it clear at the outset of his sentencing remarks that he also had in mind the sentencing ranges for Category 3 where the loss is up to £10 million. That is an important matter to which we shall return as we consider the cases of each of these three defendants separately. But we observe that there is a good deal of overlap between the sentencing ranges for categories 2 and 3 at each level of culpability.

13. Dealing first with Gurmail Dosanjh, he was the owner of Universal Management, the main company in this second fraud. The judge concluded that his role straddled culpability Levels A and B. Although there was little evidence that he played any active part beyond providing his company as the vehicle for the fraud, he recruited the applicant Chada and, in the judge's words, "let him get on with it". The judge

concluded that the extent of Dosanjh's reward placed him at a higher level of culpability than a mere operator.

14. He had no relevant recent convictions and there were references which showed a positive side to his character. However, he had made significant gains as a result of trading in this case. The gross profit made by his company Universal Management through the July trading was over €2.2 million. As a result the company was able to buy land for £400,000 on which Dosanjh started to build flats. He bought a Rolls Royce for £275,000 which he later sold to pay corporation tax. He reduced his mortgage by £100,000. He bought a property called Stone Cottage at auction for £720,000 and at the same time a shop for £80,000 which he later sold for £55,000. The absent conspirator, Hardeep Dosanjh (his cousin) bought this applicant a Range Rover for £80,000 which was delivered to him in September 2009. The judge inferred that this was part of his reward for contributing to the scheme.

15. Although this applicant did not have the leading role which the two absent conspirators did, the judge concluded that a significant benefit accrued to him as a result of the way he allowed his company to be used. It was on that basis that this applicant's culpability was assessed to straddle Levels A and B. The judge concluded therefore that the appropriate sentence was eight years.

16. In his grounds of appeal it is contended that Dosanjh was not one of the organisers of the fraud, although he played a significant role. It is true that the proceeds of the fraud were the trading profits made by his company, but his personal benefit was limited to two dividends of £100,000 each, one of which was paid back into the company. The contention is that his culpability should have been assessed at Level B where the starting point is seven years, based on a loss of £30 million, and because the loss here was much lower than that figure the sentence should have been at the lower end of the range of five to nine years and certainly below the starting point of seven years.

17. In his oral submissions before us this morning, Mr Price QC has emphasised that Dosanjh was brought in only as a facilitator. He argues strongly that this should have been treated as Level B culpability. He submits that the judge failed as well to have regard to the personal mitigation once the starting point had been established. He acknowledges that in order for someone to be classified as having only medium culpability, Level B, there would have to be absent in that offender's case the characteristics for Level A. He accepts that there was here a factor which potentially could fall within Level A, namely the sophisticated nature of the offence and significant planning. We asos observe that the fraudulent activity was conducted over a sustained period of time, another Level A indicator. Mr Price submits that those are factors more properly to be viewed in the context of the overall offending in the conspiracy and they do not fit the involvement of this applicant personally. We note, however, from the rubric above that section of the guideline (at page 20) that “the level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out”.

18. In refusing leave, the single judge observed that the trial had lasted several weeks and the judge was uniquely well placed to assess this applicant's role in the conspiracy as compared with that of Chada and to assess the level of benefit to the applicant. The judge had tried the previous linked case, he paid careful attention to the guideline and he took all relevant matters into account. The sentence of eight years was at the very bottom of the category range for higher culpability and therefore accurately reflected the judge's assessment that his case straddled Levels A and B.

19. Having reflected on all the arguments placed before us, written and oral, we agree with those observations. We note in addition that if this were regarded as a Category 3 case, at the very top of the range of loss, £2 million to £10 million, the upper end of the sentencing range is 10 years for Level A culpability and seven years for Level B culpability. As a cross-check it seems to us that this abundantly confirms that eight years was the proper sentence here, reflecting the judge's assessment that the case straddled Levels A and B. That assessment, we are satisfied, cannot even arguably be challenged. The judge having heard the trial was uniquely placed to make the assessment of role for all of the defendants whom he had to sentence.

20. Accordingly, we are satisfied that it is not arguable that this sentence was manifestly excessive and the renewed application for leave is refused.

21. We turn to Narinder Chada. He was the director of Universal Management, the principal company in the second fraud. His role was described by the prosecution as that of a trusted lieutenant. He was recruited by Gurmail Dosanjh and played a very active and important role in the company. He obtained the premises and he obtained the carbon credit trading licence. He attended a conference in Barcelona with the absent conspirator Sandeep Dosanjh, partly to learn the ropes and partly to give himself cover as a bona fide trader. It was Chada who did all the trading of the carbon credits and went through the motions of genuine trading with Heathrow Services. He played a full part in generating records with a view to showing that proper due diligence had taken place in order to support the assertion that there was a proper legitimate trading relationship between Universal Management and Heathrow Services. He received the money for the carbon credits into his company and sent it off-shore.

22. The judge described his role as crucial and he was involved, the judge said, in many areas. The judge assessed his culpability nevertheless as Level B. Importantly, we think the judge concluded that although £11.7 million was towards the bottom of the range for Category 2 in terms of loss, the nature of this applicant's activity was certainly not at the bottom of the range.

23. The judge recognised the effect on the applicant’s family of this conviction and what flowed from it. There were letters from the applicant's wife and children, from friends of the family and from his doctor. The judge accepted that the applicant was deeply interested in various environmental projects and was something of a Walter Mitty character. For a time he controlled the Universal Management bank account and he spent a great deal of money going around the world in connection with his various projects, although the amount was unclear. He was paid a salary of £48,000 per year,

but there were other benefits as well, for example he had the use of a 7 Series BMW car and a Rolls Royce.

24. In his grounds of appeal, it is contended that although the judge correctly assessed this as a Category 2 Level B offence, he failed to have sufficient regard to the lesser role played by this applicant as compared to Gurmail Dosanjh and failed to have sufficient regard to the applicant's positive good character and lack of substantial benefit from the offending.

25. In addition to the grounds of appeal, we have been supplied with further submissions in writing from the applicant himself which we have considered carefully. We note in particular the applicant's concern about the effect of the sentence upon his wife and his concern for her health and welfare because of the illness from which she suffers. There were also further testimonials from the prison chaplain and material relied on in his application for category D status in prison.

26. In his oral submissions before us this morning, Mr Kelly QC emphasised the points that we have mentioned from the grounds of appeal but also developed the point that the judge had not made sufficient allowance for the personal mitigation even as it existed at the time of sentence. He focused upon the judge's use of the phrase "crucial part" as describing the role played by this applicant and submitted that the judge was confusing "crucial" with top end of significant, as it was put. The submission in effect is that the judge wrongly categorised the level of this applicant's culpability within Level B.

27. In refusing leave the single judge observed that it had been submitted to the judge that the appropriate sentence was five to six years' custody, rather than the starting point of seven years under Category 2 Level B, because the loss here was much less than the figure of £30 million on which the starting point was based. The single judge again observed that the trial had lasted several weeks and the judge was well placed to assess the applicant's role as compared with that of Dosanjh and to assess his benefit from the offence. The judge had paid careful attention to the guidelines and took all matters into account. The category range was five to nine years and whilst the loss was much less than the figure of £30 million on which the starting point of seven years was based, the extent of the applicant's direct involvement at an operational level was very considerable. For that reason, the single judge took the view that it was not arguable that seven years was wrong.

28. Again, even having considered Mr Kelly's further oral submissions this morning, we agree with the single judge's observations. We note also that seven years corresponds with the top of the sentencing range for Level B culpability in Category 3 where the loss is up to £10 million. Again, we think this provides a valuable cross-check which confirms the correctness of the judge's sentence. We are not persuaded that it is arguable that the sentence of seven years was manifestly excessive and the renewed application for leave is refused.

29. We turn finally to the appeal of Sukhan Singh. He was sentenced at a later date, as we have explained, because he was convicted only after a retrial. The judge described the appellant as the human face of Heathrow Services, which generated paperwork to

make it look as though genuine trading was taking place. The appellant had a vital role to play if enquiries were made during the period of trading and he was relied upon by the conspirators to discharge that role if anyone were to come knocking at Heathrow's door. He was relied upon to tell convincing lies to the authorities if called upon to do so. His defence at trial was that he was duped by the applicant Chahal into becoming involved and had no idea that he was involved in a fraud. The jury must have accepted the prosecution's case that because this was a sophisticated fraud involving a great deal of money, the fraudsters could not have afforded to have someone in the middle of their activity who could give the game away at any moment. The judge accepted that it was impossible to know what the appellant's personal profit had been from his participation in the fraud. It must have been small compared with that made by others. However, when the sterling equivalent of some £60,000 (representing the profit made on paper by Heathrow) was sent to Heathrow's bank account, £20,000 was withdrawn in cash and could not be followed. Later, a further £30,000 was sent to an account of someone with whom the appellant was associated and sent back to him ten months later. The appellant then sent £29,000 to Sikh Television, which he described as a charity.

30. The judge acknowledged that the appellant had no relevant previous convictions. He was married with two small children. The matter had been hanging over his head for a long time, but that was in the nature of offending of this kind which required lengthy investigation. The judge was particularly impressed by a letter from the appellant's wife.

31. The judge said that the level of culpability must be determined by weighing up all the facts of the case including the extent to which the offending was planned and the sophistication with which it was carried out. There he was quoting from the rubric which we have already mentioned. There were characteristics in the appellant's case at Level B and Level C culpability, the judge concluded. He played a significant role in offending which was part of a group activity and he was well known and trusted by the main conspirators, that suggested Category B. On the other hand there was no evidence that he had become involved through coercion and intimidation or exploitation and it was not a one-off offence. Those would have been Category C indicators. It was a sophisticated offence involving considerable money but the judge accepted that there was evidence of the appellant performing a limited function under direction, one of the indicators for Level C. For all these reasons the judge concluded that the appellant straddled Levels B and C and we note from the sentencing remarks that his counsel accepted this assessment for the purpose of the sentencing hearing.

32. For Level C, the starting point in Category 2 was five years and the category range three to six years. For Level B the category range was five to nine years and the starting point seven years. The judge compared the role of this appellant with the roles of Dosanjh and Chada and was satisfied that the correct sentence for the appellant was five years' imprisonment.

33. In his grounds of appeal it is contended that although the judge identified the correct starting point of five years for Category C, he made insufficient allowance for the fact that the loss here was £11.7 million and therefore at the lower end of the guideline range. Nor had he made sufficient allowance for the applicant's personal mitigation.

34. In his oral submissions this morning on behalf of the appellant, Mr Bajwa QC developed those points. He sought to demonstrate from the words which the judge had used in his sentencing remarks that the judge had taken a starting point of five years and that by definition that was too high because the judge had not indicated clearly that he was making any reduction for personal mitigation.

35. Again, we have considered all these submissions carefully and we bear in mind that leave was granted in this case, whereas it was not in the case of the other two defendants before us. However, again, we think that having presided over both trials and the retrial the judge was uniquely placed to assess the level of this appellant's culpability. We think he was quite entitled to conclude that his culpability straddled Levels B and C and for that reson, even on the arithmetic alone, we think that the submissions made on his behalf falter.

36. The appellant was playing a significant role in offending which was part of a group activity indicating Level B but performed limited function under direction at Level C. The starting point for Category 2 Level C was five years, but for Level B seven years. The intermediate figure would be six years. We note also that for Category 3 where the loss is up to £10 million the upper end of the range for Level C is five years and Level B seven years. Again, the intermediate figure is six years. This is a valuable cross-check and confirms that the judge's starting point could properly have been as high as six years. This, we think, leaves no room for any argument that the judge made insufficient allowance for personal mitigation.

37. In the end the question for us is not the precise interpretation of the words which the judge used in explaining his reasoning but whether the sentence he arrived at was or was not manifestly excessive. We are satisfied that on close analysis this sentence of five years cannot be said to be manifestly excessive. Accordingly, despite the superficial attraction of the argument advanced in the grounds of appeal, we conclude that the sentence the judge passed was entirely justified and the appeal must be dismissed.

38. We express our gratitude to all counsel for the clarity and economy of their submissions. We also wish to pay tribute to the careful and clear sentencing remarks of His Honour Judge Testar at the conclusion of what must have been difficult, complex and demanding trials.