

Case Name:
R. v. Khosa

Between
Regina, and
Harmohinder Singh Khosa

[2014] B.C.J. No. 215

2014 BCSC 194

2014 CarswellBC 305

111 W.C.B. (2d) 876

Docket: 59889-2

Registry: Chilliwack

British Columbia Supreme Court
New Westminster, British Columbia

M.A. Maisonville J.

Heard: December 20, 2013.
Oral judgment: January 10, 2014.

(32 paras.)

Criminal law -- Sentencing -- Criminal Code offences -- Offences against person and reputation -- homicide -- Second degree murder -- Particular sanctions -- Imprisonment -- Parole ineligibility -- Sentencing considerations -- Deterrence -- Submissions -- Joint submissions -- Health (incl. mental health) -- Seriousness of offence -- Effect on victim -- Family obligations -- Accused, schizophrenic responsible for caring for schizophrenic sister, sentenced to life imprisonment with 10 years' parole ineligibility for second degree murder of sister -- Mental illness, while not excusing offence, was mitigating factor -- Conviction itself was enough to promote sense of responsibility in offender and address harm to victim and community -- Conviction would have devastating impact on wife and young children of accused -- Joint submission for 10-year period of parole ineligibility accepted.

Sentencing of Khosa following his conviction for second degree murder. Khosa stabbed to death his sister. Both were schizophrenics. Khosa went to pick up his mother from his sister's home because his sister had been verbally abusing his mother. His sister started calling Khosa immediately after he left with their mother, demanding to know when their mother would return. Khosa decided he would deal with her if she continued to call. He took a kitchen knife with him to his sister's home and entered through an open door. He told her she was causing too much trouble. She pleaded with him no, and tried to protect herself, but she was stabbed to death. Khosa left quickly, taking the knife home, cleaning it and putting it away. Khosa was a married man with school-aged children. His family members claimed he had been placed in the difficult position of caring for his sister despite her abusive treatment. A joint submission was made for a 10-year period of parole ineligibility.

HELD: Khosa was sentenced to life imprisonment with no parole eligibility for 10 years. There was no reason to depart from the joint submission regarding parole ineligibility. Khosa's mental illness was a factor considered in sentencing, despite the fact he remained criminally responsible for his offence. His victim was vulnerable and dependent on him. The impact of Khosa's conviction would be devastating to his family. An element of specific deterrence was not required. The conviction itself would promote a sense of responsibility in Khosa and address the harm to the deceased and the community. Sentence: life imprisonment; 10 years' parole ineligibility -- Criminal Code, ss. 718, 718.2, 745.

Statutes, Regulations and Rules Cited:

Criminal Code, R.S.C. 1985, c. C-46, s. 109, s. 487.051, s. 718, s. 718.2(a), s. 745

Counsel:

Counsel for the Crown: S. Thompson.

Counsel for the Accused: B. Mohan, S. Kalkat.

Oral Reasons for Sentence

1 M.A. MAISONVILLE J. (orally):-- On November 27, 2013, I found Mr. Khosa guilty of murder in the second degree.

2 Mr. Khosa stabbed his sister, Armarjit Kaur Khosa, to death on July 21, 2010 at Abbotsford, British Columbia. She was then 34 years old. He was 40. She was stabbed 13 times in the throat area with a knife he had brought to her residence on Austin Avenue in Abbotsford. She attempted to protect herself and in the process suffered defensive wounds to her hands. She succumbed to blood

loss from the stab wounds to her throat area.

3 Mr. Khosa and his sister both suffer from schizophrenia. I found that while he does suffer from paranoid schizophrenia, the defence he advanced, of not criminally responsible by reason of mental disorder, was not applicable. I found he understood both the nature and quality of his actions, that he knew he was killing his sister and that to do so was legally and morally wrong, as outlined in the case law cited in my reasons for conviction.

4 The facts surrounding the offence are tragic and largely uncontradicted and admitted. Mr. Khosa had gone to the home of his sister and his mother that day to get his mother as she was being verbally abused by his sister. His mother feared Amarjit Khosa would start hitting her, as well, and consequently wanted to be picked up and taken to Mr. Khosa's home away from her daughter.

5 Mr. Khosa is the eldest of four children and much of the family problems fall to his shoulders. Looking after Amarjit was a major responsibility. She would leave Vancouver; she was verbally and physically abusive on occasion.

6 On the day he picked his mother up in his vehicle he drove her to his house. Amarjit was particularly upset. She commenced calling him almost immediately demanding to know when his mother was coming back. She continued to call and Mr. Khosa decided that if she called again he would deal with her. He took a knife from the kitchen drawer, told no one, and went over to his sister's home where he found the door partially ajar. He entered and after telling her she was causing too much trouble, she pleaded "No brother, no" and tried to protect herself but she was killed. He then left quickly with the knife in his pocket. At home he cleaned up and cleaned the knife and put it back into the drawer.

7 Numerous letters in support of the accused have been read into evidence and I have carefully reviewed them. In particular the excerpt of the letter from Harbinder Saran is useful to the Court. He wrote:

Harmohinder got all of Amarjit's problems thrown at him. He was the only one that had to deal with this problem. While my mom and the rest of my uncles backed off from her and did not care for her, Harmohinder would be there for her no matter what the problem was. She would constantly be bothering and putting a lot of stress on him, swearing at him, but from the goodness of his heart, he would do whatever she said and still helped her. From the day I have known Harmohinder he has always been like a second father figure, a brother and friend to me.

8 Mr. Khosa is now 43. He is married and has school-aged children. I am mindful of the hardship that this conviction will have on his family.

9 Crown and defence counsel come to Court with a joint submission respecting eligibility for

parole. I find in the circumstances that this is appropriate.

10 Section 745 of the *Criminal Code*, R.S.C. 1985, c. C-46, provides on a conviction for a second degree murder that:

745. Subject to section 745.1, the sentence to be pronounced against a person who is to be sentenced to imprisonment for life shall be ...
- (c) in respect of a person who has been convicted of second degree murder, that the person be sentenced to imprisonment for life without eligibility for parole until the person has served at least ten years of the sentence or such greater number of years, not being more than twenty-five years, as has been substituted therefor pursuant to section 745.4 ...

11 The issue accordingly in plain English is the period to be considered for Mr. Khosa before he is eligible for parole.

12 Both Mr. Thompson for the Crown and Mr. Mohan for Mr. Khosa concur that in the circumstances in the case at bar, a ten-year period before Mr. Khosa should apply for parole and is the appropriate measure to be taken by this Court.

13 The Crown submits that the sentence appropriate in the circumstances is that of a life sentence. He noted there is no other provision for a sentence for second degree murder and that while there can be an application brought for parole at the time period within which the provisions of the *Criminal Code* can be as early as ten years, that is absolutely no guarantee that the parole will be granted.

Joint Submissions

14 I turn now to the factor of joint submissions.

15 Respecting joint submissions, the Court is mindful of the decisions of our Court of Appeal, notably that of *R. v. Grimsson*, [1997] B.C.J. No. 2815 (C.A.). The Court is not bound by the provisions of a joint submission but must give such submission appropriate weight, particularly when submitted by experienced and senior counsel.

16 As summarized by Madam Justice D. Smith in *R. v. Olson*, 2011 BCCA 8, it is common ground that a joint submission is not binding on a sentencing judge who retains his or her discretion to impose a fit sentence that may differ from the joint submission. However, a joint submission should not be rejected lightly and the sentencing judge should give reasons for doing so. While the sentencing judge is not required to inform the offender that he or she proposes to depart from the joint submission, it is preferable for the judge to articulate his or her concerns and provide counsel with an opportunity to make further submissions and provide additional material where available to address those concerns.

17 Also, I note the decision in *R. v. Furey*, 2007 BCCA 395 where the Court explained further the *R. v. Fuller*, 2007 BCCA 353 decision. In *Fuller*, the Court held that when considering whether a sentence is unfit the appellate court must consider whether there has been an error of principle. If not, and unless the sentence is demonstrably unfit, the Court should not intervene. I note also the decision of the Court in *R. v. Bezdan* 2001 BCCA 215 respecting joint submissions where the Court is to be mindful of those in ascertaining whether the sentence is demonstrably fit.

18 I find no reason to depart from the joint submission and find it is appropriate.

Other Legal Principles

19 The *Criminal Code* dictates additionally that the pronouncing sentence must consider as well the following factors respecting the purpose and principles of sentencing.

20 The most important factors are those captured by s. 718 of the *Criminal Code* as set out by Parliament as follows:

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.

21 Additionally, the principle of parity is important. What that means is that a sentence should be similar to other sentences imposed on similar offenders for similar offences committed in like circumstances.

22 A number of cases were placed before the Court. Of particular similarity was the case of *R. v. Reeves*, 2011 BCSC 821 in which the accused, who was diagnosed at trial with paranoid schizophrenia and had likely suffered from it for a long time, had stabbed his stepfather to death. As in the case at bar, he had no prior record and no prior history of violence. A period of parole ineligibility of ten years was held appropriate.

23 Similarly in the case of *R. v. Chang*, [2008] B.C.J. No. 598, there was evidence of mental illness but it was found by the Court to be short of that required to raise the defence of not criminally responsible by reason of mental disorder. I cite that case only for the proposition that mental illness is still relevant in all the circumstances even if it is short of establishing a defence of not criminally responsible by reason of mental disorder.

24 As well, the Court must consider the personal circumstances of Mr. Khosa. I am mindful of his personal circumstances and of the hardship that this conviction will render to him and to his family.

25 Additionally in the *Criminal Code*, s. 718.2(a) requires this Court to consider any relevant aggravating or mitigating circumstances relating to the offender and the offences. I have reviewed some of those that have been particularly outlined to the Court. His sister was very vulnerable and in fact dependent upon him; however he too, suffers with mental illness and this will greatly affect his family.

26 In the case at bar, I am satisfied that the element of specific deterrence is not required. However, there are still the elements of general deterrence and denunciation which weigh heavily in this case. I find that the conviction for second degree murder alone will serve to promote a sense of responsibility in Mr. Khosa and address the harm to the deceased and the harm to the community.

27 Mr. Khosa, will you please stand.

28 I sentence you to a term of imprisonment for life. There will be no eligibility for parole until you have served at least ten years of your sentence.

29 There are to be as well ancillary orders.

30 Pursuant to the provisions of s. 487.051 of the *Criminal Order*, I order that there be taken samples of your bodily substances for the purposes of forensic DNA analysis.

31 I also order that pursuant to s. 109 of the *Criminal Code* that you are prohibited for life from possessing any firearm, crossbow, prohibited weapon, prohibited device, ammunition, prohibited ammunition and explosive substances.

32 Thank you.

M.A. MAISONVILLE J.