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IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
The Strand
London
WC2A 2LL

Tuesday 9th July 2019

B e f o r e:

LORD JUSTICE HOLROYDE

MR JUSTICE CHOUDHURY

and

HIS HONOUR JUDGE FIELD QC
(Sitting as a Judge of the Court of Appeal Criminal Division)

R E G I N A

- v -

GURDIP SINGH SOHAL

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Mr G Arnold appeared on behalf of the Appellant

Mr M Jackson appeared on behalf of the Crown

J U D G M E N T
(Approved)

Tuesday 9th July 2019

LORD JUSTICE HOLROYDE:

1. On 27th September 2018, following at trial in the Crown Court at Wolverhampton, the appellant was convicted of two offences of conspiracy to defraud and three offences of converting criminal property, contrary to sections 327 and 334 of the Proceeds of Crime Act 2002. On 4th January 2019, he was sentenced to a total term of two years and four months' imprisonment.

2. The appellant now appeals against his conviction and sentence by leave of the single judge.

3. The appellant stood trial with three others: his son, Inderjit Sohal (to whom we shall for convenience refer as "Inderjit"); his wife, Jaswinder Kaur; and a friend of Inderjit, Rupinder Singh.

4. The allegations at trial related to the sale, from premises leased by or in the name of Rupinder Singh, of 22 second-hand cars on which the odometer readings had been altered by the use of an electronic device so as to reduce the recorded mileage to a very substantial extent. By way of example, a Range Rover, which was the subject of count 3, had been "clocked" to the extent that its mileage had been reduced from at least 120,527 to 65,000 miles; count 4 related to a Honda Civic, on which the recorded mileage had been reduced from at least 109,731 to 40,000 miles; and count 6 related to an Audi, on which the recorded mileage had been reduced from at least 112,013 to 56,900 miles. In addition to being "clocked", cars were sold with forged service books, forged MOT certificates and forged Hire Purchase Investigation documentation. In order to forge the service histories of the cars, counterfeit dealer stamps were used in order to forge the logos of car manufacturers. The customers who bought the "clocked" cars paid in total £112,370.

5. Most of the complainants gave evidence to the effect that thye dealt principally with a younger man (said by the prosecution to be Inderjit), but that an older man was also present and was in many instances introduced as the seller's father.

6. The appellant took out a number of motor traders' insurance policies, on some of which Inderjit was a named driver. A policy covering a period from January 2012 to January 2013 was taken out in the appellant's sole name and was used to provide cover for a number of cars which had been purchased and subsequently "clocked".

7. The purchasers of the cars made payment either in cash or by cheques or bank transfers, payable to accounts in the name of Mrs Jaswinder Kaur and of Mrs Lukvir Sohal (the former wife of Inderjit). In addition, money paid for cars which were sold after the period covered by the indictment was paid into a PayPal account which was in the name of Autotechnik (Kam Sohal), but which was registered in the appellant's sole name. Kam Sohal was the appellant's daughter. From the PayPal accounts, payments were made to "Tony Singh" (a name said to have been used by Inderjit) and to the appellant himself.

8. When the home addresses of the appellant and Inderjit were searched, a computer was seized which had apparently been used by both of them, from which were recovered electronic copies of documents, including altered MOT certificates and insurance documents. Information was also found about a device used to adjust the recorded mileage of cars.

9. The appellant, Inderjit and Rupinder Singh were charged with two offences of conspiracy to defraud between 1st September 2011 and 11th October 2013. Count 1 alleged a conspiracy to defraud customers by selling motor vehicles with false mileages. Count 2 alleged a conspiracy to defraud proprietors of registered trademarks and purchasers of cars by the use of signs identical to or likely to be mistaken for registered trademarks, in the form of motor vehicle manufacturers' service stamps and service book entries.

10. In addition, the appellant and Inderjit were charged with three offences of converting criminal property. The particulars of count 3 alleged that they "did transfer and/or convert criminal property, namely money being the proceeds of sale of a falsely described Range Rover motor vehicle, registration LK56 HTC, transferred into account No 0071285". That account number related to Inderjit's ex-wife.

11. Counts 5 and 6 were in similar terms but related to the payments made in respect of different vehicles.

12. Jaswinder Kaur was charged on count 7 with entering into a money laundering arrangement by receiving into her bank account the proceeds of sale of falsely described motor vehicles.

13. At the outset of the trial, Rupinder Singh changed his pleas to guilty to counts 1 and 2. He did so on a specific and limited basis which was accepted by the prosecution. He was subsequently sentenced to a total of thirteen months' imprisonment, suspended for twelve months.

14. The appellant's case was that he had not been present at the car sales, or, if he had been present on some occasions, he had played no part in any sale and had been unaware that any of the cars had been "clocked". He had taken out the motor insurance policies at the request of Inderjit in order to reduce the level of the premium which would have been payable if the policies were in the name of Inderjit.

15. On counts 1 and 2, the principal issue for the jury was whether there had been an agreement between the appellant and Inderjit to sell "clocked" cars and falsify trademarks.

16. On counts 3, 5 and 6, the principal issues were whether the appellant had played a role in transferring funds into the accounts of his daughter-in-law and/or his wife, and whether he at the time knew, or suspected, that the funds were the proceeds of criminal activity.

17. The appellant was of previous good character. Inderjit was not. In March 2013, Inderjit had pleaded guilty to two offences of conspiracy to defraud. Those offences had involved the selling of "clocked" cars between December 2009 and February 2011 from a number of business premises and also from the family home, where he lived with the appellant and Jaswinder Kaur, and from the premises of a fish and chip shop of which the appellant was the proprietor. It was not at any stage alleged by the prosecution that the appellant had been involved in his son's earlier offending.

18. It is relevant to note an outline chronology. Inderjit's earlier offences had been committed during the period December 2009 to February 2011. The charges relating to the appellant, with which we are concerned, covered the period 1st September 2011 to 11th October 2013. Inderjit pleaded guilty to his earlier offences in March 2013. There was an issue at this trial as to the extent to which his parents had been aware of his involvement in those offences. The trial of the present offences took place in September 2018, by which time Inderjit had served a prison

sentence for his earlier offences and had been released.

19. In the course of the trial, prosecution witnesses gave evidence, as we have said, about the presence of an older man at the time when car sales were being conducted by the younger man. Inderjit's former wife gave evidence for the prosecution. She said that she had been aware that Inderjit ran a car sales business, but only became aware of his criminal activity a week or two before he was sentenced for the earlier conspiracies. Her evidence was to the effect that Inderjit would find cars that were being sold online and that Inderjit and the appellant would then travel together to purchase cars and to attend car auctions. They would travel together in one car, with a view to one of them driving back in a purchased vehicle. Her evidence further indicated that the appellant had a far greater command of English than he himself claimed.

20. The appellant, who had the assistance of an interpreter at trial, and is similarly assisted before this court, gave evidence that he had come to this country when aged 26. He had worked in a number of factories and foundries before purchasing the fish and chip shop. He gave evidence that he had only a limited command of English, did not know how to use a computer or the internet and had no knowledge of receiving payments from PayPal. He was not aware until March 2013 that Inderjit had pleaded guilty to the earlier offences, and had only found out on the day when Inderjit was sentenced that the offending had related to "clocked" cars. Until July 2013, when he had leased the fish and chip shop to someone else, he had worked in that shop from 10am to 11pm on six days of the week. He therefore denied that he had any part in selling cars with Inderjit during that period.

21. In addition, the appellant gave evidence of a number of medical problems which he said prevented him from travelling far, although he had sometimes been taken for a drive by Inderjit. He said that any older man seen with Inderjit at the time of car sales could have been someone else. If it was himself, he had not played any part in any discussion and had not assisted in any aspect of car sales. It was Inderjit who had identified a suitable motor insurance policy for him to take out. He had not been aware that it was a policy used by motor traders. He had not altered or used any false documents and had no knowledge that anything dishonest was being carried out by his son.

22. Inderjit did not give evidence. Like his father, he was convicted of counts 1, 2, 3, 5 and 6. He was sentenced to a total of three years' imprisonment.

23. Jaswinder Kaur was acquitted.

24. The original grounds of appeal against conviction related to rulings made by the judge during the trial as to the admissibility of evidence. They contend that the judge erred in law in admitting evidence relating to Inderjit's previous offending and wrongly admitted hearsay evidence. In the alternative, if this evidence was admissible, it should have been excluded on grounds of fairness, pursuant to section 78 of the Police and Criminal Evidence Act 1984.

25. Before addressing those grounds, we must refer to additional grounds which Mr Arnold, today as in the court below appearing for the appellant, has at the eleventh hour sought leave to advance. When the original grounds were lodged, the Registrar, acting through a lawyer in the Criminal Appeal Office, perceptively identified a potential issue as to the adequacy of the evidence relied upon by the prosecution in support of counts 3, 5 and 6, and as to the correctness of the directions which the judge gave in that regard. The lawyer pointed out, in a note which was provided to the parties, that neither the prosecution opening, nor the judge's summing-up identified what part the appellant was alleged to have played in the transferring or converting of criminal property. That is a matter about which the jury had asked a question during their

retirement.

26. Clarification was sought from the prosecution, but the response which was given regrettably failed to address the correct point.

27. There matters lay until a few days before the hearing of the appeal, when Mr Arnold, very belatedly, and only when asked to confirm whether or not any point was to be taken in this regard, submitted that there was no evidence that the appellant had played any part in the transfers of funds which were particularised in the three counts of money laundering. We have been troubled by the lateness of this application, but we grant leave to the appellant to vary his grounds of appeal.

28. It is convenient to consider this additional ground of appeal first. Payment for the Range Rover, which was the subject of count 3, was made by the purchaser himself making a transfer directly into Lukvir Sohal's account. Payment for the vehicles which were the subject of the other two counts were made by each of the customers concerned obtaining a banker's draft which was given to Inderjit and was subsequently used to credit Jaswinder Kaur's account. There was no evidence that the appellant had played any part in any of these financial activities, either as a principal or as a secondary participant.

29. Now that the point has been identified and proper attention given to it, Mr Jackson, for the respondent, has frankly conceded that, although there was a good deal of evidence of Inderjit's involvement in the transfer of criminal property, there was no evidence on which the jury could find that the appellant was involved in any such transfer. The respondent, therefore, accepts that the appeal against conviction on counts 3, 5 and 6 such succeed. We agree. There was no evidence on which the jury could find the appellant guilty of those counts, and the convictions are accordingly unsafe. We would have so concluded even if the respondent had not realistically conceded the point. We would also have made observations about the directions of law given to the jury in relation to this aspect of the case, but it is not now necessary to do so.

30. We return to the original grounds of appeal. The judge ruled that Inderjit's previous convictions for conspiracy to defraud were admissible against him as being capable of showing a propensity on his part to commit offences of the type alleged. Some of the details of the earlier convictions were ultimately put before the jury in the form of admissions.

31. As against the appellant, the prosecution wished to rely on the evidence of two men: Mr Safdar and Mr Shabir, who had made statements in early March 2011 about one of the car sales covered by the earlier indictment against Inderjit. Their statements were to the effect that they had gone to the fish and chip shop where Mr Safdar had bought a BMW from a man who identified himself as "John Singh", but who was in fact Inderjit. Soon after the purchase, Mr Safdar discovered that the odometer reading of about 74,000 miles was far from accurate and that the true mileage covered by the car was in excess of 218,000 miles. He had, therefore, gone back to the fish and chip shop, again accompanied by Mr Shabir, to take the matter up with the vendor. Mr Safdar's witness statement described that visit in the following terms:

> "Upon entering the premises Mr John Singh was behind the counter with his father. I explained to him the issues relating to the false mileage reading on the vehicle, MOT and service manual. I also explained to him that I had used up my life savings to purchase the vehicle and could not afford to lose any value on the vehicle. He denied any knowledge of this and offered to contact the previous seller of the vehicle in an attempt

> to retrieve my money. However, he then advised me to sell the vehicle of my own accord if possible. This was also reiterated by his father. Mr Singh appeared quite agitated by our presence on the premises and advised us that he would call the police if we did not leave the premises. Although frustrated and angry, I decided to leave at that point as we did not appear to be resolving the matter at hand."

32. Mr Shabir's statement, which bears the same date as that of Mr Safdar, was in identical terms in this respect.

33. Although the prosecution made clear that they did not allege that the appellant was involved in his son's earlier offending, they wished to rely on the evidence of Messrs Safdar and Shabir in order to rebut the appellant's assertions that he had never been involved in any car sales, did not know until March 2013 that his son had been selling "clocked" cars, and spoke only limited English. They served the statements of these two witnesses as part of a Notice of Additional Evidence which accompanied a late application to adduce bad character evidence against Inderjit.

34. Before that additional evidence was served, Mr Arnold had sent an email to Mr Jackson saying that he could not agree the evidence of witnesses referred to in an Amended Prosecution Summary, whose names he could not yet provide because the statements had not been served. He said that those witnesses relating to "a disgruntled customer from the first conspiracy" would be required to attend court. We are told, and of course accept, that, very unfortunately, that email did not reach or was not seen by Mr Jackson. The additional evidence was served and by what appears to have been a most unfortunate series of oversights and omissions, no further steps were taken by the defence to notify the prosecution that the attendance of Messrs Safdar and Shabir was required. That oversight continued, even though in the preparations for the trial the prosecution served a batting order of witnesses which did not show either Mr Safdar or Mr Shabir as attending to give oral evidence, and even though steps were taken to alert the jury panel of the identities of all the witnesses who would give oral evidence.

35. In the event, it was not until after the trial had begun that the prosecution were told that the witnesses were required to attend for cross-examination. By then, Mr Safdar was on holiday in Spain. His whereabouts were unknown and he could not be located. So far as Mr Shabir is concerned, it appears that he had moved house and, without the assistance of Mr Safdar, the prosecution had no means of locating him. In those circumstances, and some days after the bad character ruling, the prosecution applied to adduce the statements of the two witnesses as hearsay evidence.

36. Both the application to adduce the evidence and the application to adduce hearsay evidence were opposed by Mr Arnold on behalf of the appellant. He submitted, amongst other things, that the evidence of Mr Safdar and Mr Shabir was not admissible against the appellant because it was bad character evidence in respect of which no appropriate application had been issued.

37. In his ruling to which we have referred, the judge held the bad character evidence to be admissible against Inderjit. So far as the appellant is concerned, the judge ruled that the prosecution were entitled to adduce evidence tending to rebut the appellant's assertions that he did not recall presence at any transactions and was not aware of any sales of "clocked" cars taking place.

38. In his ruling on the hearsay application, the judge concluded that no criticism of any significance attached to either side in relation to the failure to arrange the attendance of Mr Safdar and Mr Shabir. He said that there had been "universal oversight" by both prosecution and defence. However, the evidence was clearly admissible, pursuant to section 116 of the Criminal Justice Act 2003, and the judge could see no basis for thinking that the admission of the evidence would have such an adverse effect on the fairness of the proceedings that the evidence ought to be excluded. It was relevant to the appellant's claim that he had not engaged in any of Inderjit's car sales and his claim that he had only a limited command of English. In those circumstances, the statements of both Mr Safdar and Mr Shabir were read in full as part of the prosecution case.

39. In his summing-up, the judge gave a very clear direction about the relevance of the appellant's good character. No complaint is or could be made in that regard. He directed the jury about the manner in which the evidence of Inderjit's bad character might lead them to find that he had a propensity to commit offences of this type. Having given a clear and appropriate direction in that regard, the judge went on to say this about Messrs Safdar and Sabir (at page 9G):

> "The relevance of this evidence to Inderjit's co-accused, his mother and his father, is limited. If it helps satisfy you that the younger man involved in the car sales was Inderjit, then that is a factor that is relevant to the question of whether the older man, who was present at some of the viewings and sales, was his father. But the fact that Inderjit's past conduct was dishonest does not begin to help you determine whether his father's role, in the present case, was dishonest."

40. Later in his summing-up, the judge gave a direction clearly explaining to the jury that the statements of Mr Safdar and Mr Shabir had not been read as agreed evidence, as other statements had been, and that the appellant denied the suggestion that he had been present at the material time or had reiterated anything said by the younger man about selling the BMW to someone else. The judge explained in conventional terms the limitations of contentious evidence which is read because a witness is unavailable to give oral evidence. He emphasised that there had been no opportunity for Mr Arnold to cross-examine these two witnesses. He concluded his direction by saying (at page 28C):

> "Finally, when you are deciding how much importance, if any, you give to Mr Safdar and Mr Shabir's evidence, you must look at it in the light of the other evidence in the case. You will remember that when [the appellant] gave evidence, his account differed from theirs because he (a) said he had no recollection of them coming to the shop, and (b) that he would not have said what was attributed to the older man. You recall what he says, his English is very limited anyway.
>
> So, you should take account of [the appellant's] evidence when deciding whether the accounts that Mr Safdar and Shabir have given are truthful, accurate and reliable. You must also keep their evidence in perspective. It only relates to fairly narrow

issues in the case."

41. Mr Arnold submits that the judge was wrong to permit the prosecution to rely on the provisions of section 116(2)(c) of the 2003 Act when the witnesses had never been warned to attend. Alternatively, he submits that the fact that only hearsay evidence would be given was an additional reason for excluding the evidence pursuant to section 78 of the Police and Criminal Evidence Act 1984. He submits that the evidence of Messrs Safdar and Shabir was highly prejudicial on the central issue of the appellant's knowledge of his son's criminal activity.

42. Mr Arnold pursues his submission that a bad character notice was required, but argues that in any event the jury could not realistically have been expected to follow the judge's direction as to the very limited use which could be made of this evidence as against the appellant. Moreover, contrary to the basis of his bad character ruling, the judge did not in fact direct the jury that this evidence had no relevance to the issue of the appellant's knowledge.

43. Mr Jackson, in response, submits that the conditions of section 116(2) of the 2003 Act were clearly met and that there was no ground for challenging the judge's decision that fairness did not require the exclusion of this admissible evidence. He points out that the jury had heard the appellant's own evidence in which the appellant repeatedly denied relevant knowledge.

44. Reflecting upon these submissions, we agree with the judge that nothing would be gained by apportioning blame for the fact that the two witnesses had not been warned in time. Having heard Mr Jackson's helpful submissions, we are satisfied that the judge was correct to conclude that the criteria for admission of the hearsay evidence were met. The issue on which we must focus is whether the judge was right to refuse to exclude the evidence on grounds of fairness.

45. We also think that the judge was entirely correct to reject Mr Arnold's submission based on the suggested need for a bad character application. This was bad character evidence as against Inderjit. But in view of the explicit way in which the prosecution presented their case, it was not adduced as bad character evidence against the appellant.

46. There was, however, no need to read the witness statements of Messrs Safdar and Shabir in order to adduce the bad character evidence against Inderjit, because the relevant facts could be – and, as we understand it, were – reduced to formal admissions. The reason for reading these statements was, therefore, the wish of the prosecution to rely on their contents as against the appellant. Accordingly, whilst the evidence was in principle admissible against the appellant on the limited basis identified by the judge, the real issue again is whether fairness required it to be excluded.

47. In our judgment, the evidence clearly ought to have been excluded on grounds of fairness. Unsatisfactory as it is that the witnesses had not been warned in time, the position at trial was that the evidence could only be adduced by way of hearsay. In the circumstances of this case, the deficiencies of hearsay evidence, as opposed to the direct testimony of a witness who can be cross-examined, were particularly acute. The statements of the two witnesses bear the same date and are in identical terms. It seems to us unlikely that they are verbatim the words of both witnesses. It is, of course, commonplace and perfectly proper for an investigator to receive an account from a witness, to embody it in a witness statement, and for the witness then to confirm his or her agreement with what has been written. But when that has been done, as it obviously has been in this case, there may sometimes be a particular disadvantage for a defendant who is not able to cross-examine the witness concerned.

48. Neither witness statement gave any indication whatsoever of the basis for the bald assertion that the man present with "John Singh" was "his father". Neither statement gave any indication of the terms in which it is said that "John Singh's" advice that Mr Safdar should try to sell the vehicle "was also reiterated by his father". The statements did not even say in terms that the conversation was conducted in English. Moreover, it must be borne in mind that what is said to have been "reiterated by his father" was a statement made by a man who had admittedly been involved at the time in the dishonest sale of "clocked" cars, including this BMW. It follows that the jury, in considering whether both father and son had dishonestly been selling "clocked" cars between 2011 and 2013, had to grapple with the difficult concept that the son's statement about the "clocked" BMW in 2010 was indicative of his dishonesty when he said it, but was not indicative of dishonesty on the part of the father when the father repeated it. Juries must be trusted to follow and obey the directions they are given. It was certainly made clear to the jury that the prosecution did not rely on the evidence of Messrs Safdar and Shabir as showing dishonesty on the part of the appellant in 2010. But in all the circumstances, the difficulty of the jury's task in that regard, coupled with the acute disadvantage experienced by the defence in their being unable to cross-examine, means, in our view, that the evidence should clearly have been excluded.

49. As the judge's direction ultimately indicated, the evidence was, in fact, of very limited, if indeed any, probative value. We have no doubt that, on the balance of its probative value against its prejudicial effect, the later far outweighed the former.

50. We must then consider whether the incorrect decision by the judge to refuse to exclude this hearsay evidence casts doubt on the safety of the convictions on counts 1 and 2. The statements of Mr Safdar and Mr Shabir undoubtedly had a prejudicial effect. However, in considering whether the convictions are nonetheless safe, it is important to keep in mind the other evidence relied upon against the appellant. We have briefly summarised it at the beginning of this judgment. There was, in our view, a considerable body of evidence against him which the jury were undoubtedly entitled to accept as proving his guilt. In the direction to the jury which we have quoted, the judge made clear that the evidence of Messrs Safdar and Shabir was relevant to only a very limited extent. It was, moreover, made abundantly clear, both by the prosecution and the judge – and no doubt also by Mr Arnold – that there was no allegation that the appellant had been involved in Inderjit's earlier offending.

51. In those circumstances, we are satisfied that the convictions on counts 1 and 2 are safe.

52. We therefore turn to the appeal against sentence. The judge imposed concurrent sentences of imprisonment on each of the counts. On count 1, the sentence was two years and four months' imprisonment; on count 2, two years' imprisonment; and on each of counts 3, 5 and 6, which as we have indicated must now be quashed, ten months' imprisonment.

53. In relation to counts 1 and 2, the judge considered the Sentencing Council's definitive guideline on sentencing for offences of conspiracy to defraud. He assessed the appellant's culpability as falling at the upper end of category B. He took that view because of the factors indicating higher culpability, namely, the numerous victims, the protracted period of offending, the significant planning, and the sophisticated nature of the offending. He found no factors indicating lesser culpability, but took into account that the appellant was subordinate to his son in the conspiracy, and that the appellant's role was not a sophisticated one.

54. As to harm, the judge rejected a submission that this should be assessed by taking the total price for which the "clocked" cars had been sold and deducting from that figure the value of the

vehicles if their mileages had been correctly recorded. Mr Arnold sought to rely on some expert evidence in that regard. The judge took the view that the true value of a car which had, in fact, been "clocked" and in respect of which the paperwork had been altered, was very substantially less than a comparable vehicle honestly sold with a truthful account of its mileage and legitimate paperwork. He, therefore, took the total prices paid of about £112,000, reduced only to a limited extent to reflect the residual market value which the cars retained once the truth was known. On that basis, he put the offending at the top of category 3, which covers cases in which the loss caused or intended is between £20,000 and £100,000. The judge then accepted a submission by the prosecution that the offending had had a medium impact on its victims, having regard to the safety considerations relevant to very high mileage vehicles and the increased costs of servicing them, and he therefore moved the case upwards in the category range. He spelt out his approach in relation to count 1. He said that the appropriate starting point, having regard to the culpability and harm A factors, was 30 months' imprisonment. He increased that to 36 months, because of the detrimental impact on the victims. He then reduced the sentence, having regard to the long passage of time since the offending and the appellant's good character during that period, to 28 months. That sentence was, of course, too long for a suspended sentence to be possible. But the judge indicated that, even if he had reached a shorter sentence, he would have regarded immediate imprisonment as unavoidable.

55. As we have said, the judge sentenced Inderjit to a total of three years' imprisonment. He reached that sentence by putting Inderjit at the top of category 3A, with a starting point of four years, which he increased to four years and six months to reflect the impact on the victims. The judge then reduced that by twelve months to reflect the fact that, since the offences were committed, Inderjit had served the prison sentence for the earlier conspiracies. He then reduced it by a further six months, because of the passage of time since Inderjit's last offending.

56. The grounds of appeal allege that the total sentence in the appellant's case was manifestly excessive, in particular because the judge adopted too high a starting point and failed to have sufficient regard to the appellant's previous good character, his ill-health, and the time that had elapsed since the offences. It is further submitted that there was unfair disparity between the sentence imposed upon the appellant and the sentences imposed upon Inderjit and Rupinder Singh.

57. Like the judge below, we are unpersuaded by Mr Arnold's argument as to the appropriate assessment of the monetary loss caused by the conspiracies to defraud. The reality of the case, as it seems to us, is that none of the purchasers would have bought any of the relevant cars had the truth been told. It is artificial to suggest that, had they known the truth, they would still have wanted to buy the relevant vehicle, with its wildly inaccurate odometer and its deficient paperwork, for a lesser price. True it is that there was no expert or other evidence before the judge as to the residual value which the prosecution placed on the vehicles, but we are not persuaded that the judge should for that reason have accepted Mr Arnold's approach to the assessment of the loss.

58. Nor are we persuaded that the judge adopted too high a starting point, having regard to the appellant's role in the conspiracies. He was undoubtedly in a less serious position than was Inderjit. But, having heard all the evidence during the trial, the judge was entitled to find that the appellant was fairly described as a subordinate partner in the criminal business.

59. It follows that no successful criticism can, in our judgment, be made of the manner in which the judge applied the sentencing guideline. We see some merit in the submission that somewhat more weight might have been given to the appellant's previous good character and poor state of health. On the other hand, it seems to us that the judge was generous to the appellant in the eight

month reduction he made on grounds of delay. Delay was a significant factor in Inderjit's case, because of his serving of a prison sentence. But in the appellant's case, it might well have been said against him that the delay was substantially due to his denial of the allegations.

60. The submissions based on disparity face the difficulty, which we regard as insuperable, that a comparison of the appellant's position with that of his co-accused is not a comparison of like with like. In Inderjit's case, the total sentence was affected by the sequence of events to which we have referred. If one leaves out of account the reduction which the judge made in respect of the passage of time, the sentence on Inderjit would have been four years' imprisonment, in comparison to the sentence imposed on the appellant, which would have been two years and four months' imprisonment. That difference would fairly reflect the difference in their respective roles in the conspiracies.

61. As to Rupinder Singh, his position was entirely different because he pleaded guilty on an accepted basis of plea, which substantially limited his criminality.

62. For those reasons, there is, in our judgment, no ground on which the total sentence imposed on the appellant can be said to be manifestly excessive.

63. In the result, therefore, the appeals against conviction on counts 3, 5 and 6 succeed and those convictions are quashed. The appeals against conviction and sentence on counts 1 and 2 fail and are dismissed. The total sentence, accordingly, remains, as before, one of two years and four months' imprisonment.

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