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IN THE COURT OF APPEAL

CRIMINAL DIVISION

Royal Courts of Justice

Strand

London, WC2A 2LL

Tuesday, 30 July 2019

B e f o r e:

THE VICE PRESIDENT OF THE COURT OF APPEAL CRIMINAL DIVISION

(LADY JUSTICE HALLETT DBE)

MR JUSTICE GARNHAM

MRS JUSTICE MAY

R E G I N A

v

SYAM HUSSAIN

MUHAMMED MOHON TALUKDAR

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Mr R McCann appeared on behalf of the **Applicant Hussain**

Mr J Manning appeared on behalf of the **Applicant Talukdar**

J U D G M E N T

(Approved)

1. MR JUSTICE GARNHAM: On 25 June 2019, Syam Hussain and Muhammed Talukdar were convicted of entering or becoming concerned in a money laundering arrangement. Each was sentenced to eight months' imprisonment. The registrar has referred Mr Hussain's application and Mr Talukdar's application for leave to appeal against sentence to the full court.

2. This case involved what is known as courier fraud. Between late April 2015 and 1 June 2016, a conspiracy to defraud was devised and executed. The conspiracy involved a large number of individuals in a number of places, including Barrow-in-Furness, Droitwich and Ludlow. The foot soldiers of that conspiracy included men called Idris Ali, Mohammed Nazeen Miah and Yarsir Afzal.

3. The method of the fraud was for one of the conspirators, usually a male, to telephone the victim and introduce himself as a police officer investigating a crime relating to the victim's bank, often referring to the particular branch in which the victim's account was held. The caller would ask for the victim's help in the investigation. Depending on the victim's reaction, a mixture of charm, pressure and threat would be used to try and win the victim's cooperation. Sometimes the victim was given the impression, or was told explicitly, that there was someone watching their movements. The conspirators made the calls from mobile phones using a number of SIM cards.

4. When a victim sought assurance that the call was genuine, the victim was asked to put down the phone and then call either 999 or the non-emergency police number 101. When the victim did this, a different voice, often a woman, would answer and verify what the caller had said. In reality, the conspirator had kept the call live by not hanging up the mobile call when the victim hung up on the landline.

5. The victim would then be phoned back and asked to provide assistance in one of two ways, or on occasion both ways. One method was to ask the victim to go to the bank branch, withdraw cash and either give it to a courier or leave it in a place as arranged by the caller. Sometimes the victim was asked to hand over one or more bank cards and their PIN numbers. This required the conspirators to be present and visible, although ATM withdrawals were often made at night to try and avoid detection. The second method used was to ask the victim to make cash deposits or transfers to one or more bank accounts as directed by the caller. The victim would sometimes be given a cover story to provide in the event that a bank employee queried a withdrawal. Due to the wide notoriety of courier fraud by the middle of 2016, bank employees were given training to spot it.

6. Some of the victims proved to be easy prey and were used repeatedly by the conspirators. Often the couriers had to travel to the location of the victim to collect the cash. Sometimes another conspirator would accompany them to watch the victim's movements or for other reasons. There appeared to be a pattern in the people chosen as potential victims. They would be older people, with bank accounts which had sufficient balances to make them worth engaging with.

7. Those involved in this conspiracy were tried in February 2019. The major players received sentences for fraud ranging from six years to 30 months. Those with more minor roles received sentences of between 12 and 18 months suspended.

8. Associated with these events were individuals whose role was limited to laundering the money obtained as the product of the fraud. The laundering involved activities such as providing details of bank accounts to be used to receive the proceeds of the fraud, or permitting the payments of some into the associate's own bank accounts.

9. Mr Hussain was convicted of money laundering for his involvement in one fraudulent transaction. The victim of the transaction with which Mr Hussain was involved was a Mr Brown, a man in his late 80s who has since died. On 25 May 2016, Mr Brown was contacted by the conspirators and was persuaded that he was speaking with the police. He agreed to help, and was directed to make payments of approximately £5,000 to nominated accounts controlled by the fraudsters. He was also directed to make payments electronically to a bank account registered in the name of "Podmore" in the sum of £9,100. Whilst he attempted to do so in the belief that he was assisting the police, the transaction was withheld by his bank and no monies were transferred as a result of this attempted fraud. Hussain was linked to the Podmore account through screenshot messages sent from his mobile phone. One of his co-accused, Idris Ali, was in control of the recipient account and monitored it to confirm deposits. Screenshots were taken of the accounts and Hussain received the screenshots and forwarded them as directed.

10. Mr Talukdar was also convicted of money laundering for his involvement in one fraudulent transaction. On 30 April 2016, Mr Harrison-Edward, a gentleman in his late 80s, received a phone call on his home landline from someone who said she was Sergeant Amy Browning from Barrow police station. She explained that he owed money. She transferred him to someone describing himself as Sergeant Reynolds at Scotland Yard, who informed him he owed £7,450. Mr Harrison-Edward's daughter on the phone to the caller and was told that someone had been arrested in relation to this alleged offence. She was told to call 999 to verify this, and was then told that her father had to transfer £7,340 into an account in the name of Muhammed M Talukdar at the Natwest bank. Talukdar's sort code and account number were

given. Mr Harrison-Edward went to the bank and made the transaction.

11. Sentencing Hussain and Talukdar, the judge remarked that Hussain provided details of a bank account in the name of Podmore which was going to be used to launder £9,100, which was part of the money defrauded from a victim in his late 80s. Talukdar agreed that his account could be used to accept £7,340 which had been defrauded from a man in his late 80s. No money actually found its way into either of the accounts because the police had become aware of the ongoing fraud and were able to prevent any transactions taking place.

12. The judge said that on the one hand this offending was part of a sophisticated arrangement, indicating higher culpability. On the other hand, the two men fell to be sentenced on the basis that their involvement was limited to only one proposed transfer. Those two factors, the judge said, cancelled each other out. There being no other higher or lower culpability factors, the judge found the offences fell within culpability level B. The sums of money involved were at the upper end of level 6.

13. Mitigating features for Hussain were his good character and total absence of previous convictions, and for Talukdar his virtual good character. That, the judge held, significantly reduced the starting point. Hussain was involved in an arrangement concerning a larger sum of money than Talukdar, but he had slightly more mitigation than Talukdar, who did have one previous but unconnected criminal conviction. They were both sentenced to eight months' imprisonment.

14. In addressing whether the sentences could be suspended, the judge considered the guidelines for the imposition of community and custodial sentences. He included that a deterrent sentence was essential in a case such as this to deter others who might be tempted to do what Hussain and Talukdar had done. The appropriate punishment could only be achieved by immediate custody.

15. Before us, Mr McCann on behalf of Hussain argued that the judge erred by placing too great an emphasis on the events concerning the principal conspiracy. That resulted, he said, in a sentence with increased culpability, starting point and a limitation on the ability of the court to consider alternatives to immediate custody. He said that the starting point was too high, and despite the reduction for personal mitigation, a sentence of eight months was not commensurate with Hussain's offending. He contends that the sentence is manifestly excessive.

16. Mr Manning on behalf of Talukdar argued first that the starting point for this offence is a community order and there was no warrant for increasing it as the judge had done. Second, he said that the sentence was wrong in principle because it gave rise to disparity with the sentences imposed on others convicted in this case, notably Idris Ali, Mohammed Nazeen Miah, and Yarsir Afzal.

17. In our judgment, there can be no complaint about the categorisation of these offences under the guidelines. The cases of both applicants were properly treated as falling into culpability category B and harm category 6. The guidelines direct that where there are characteristics which fall under different levels of culpability, the court should balance those characteristics to reach a fair assessment of culpability. That is what the judge did here. By the end of the hearing, we did not understand either counsel to quarrel with that conclusion.

18. The range of sentences identified in the guidelines for that category of money laundering is low level community order to one year's custody. The judge took the top of that bracket as the starting point and reduced it by a third to reflect the personal mitigation of each applicant. We note that the sentencing council's definitive guidelines on the imposition of community and custodial sentences requires sentencing

judges to ask themselves whether it is unavoidable that a custodial sentence is imposed. Section 156 of the Criminal Justice Act 2003 provides that a sentencing court contemplating the imposition of a custodial sentence should obtain and consider a pre-sentence report unless it is of the opinion that that is unnecessary.

19. The appellants here are young men with no or very little previous history of offending. They were both university students. There had been considerable delay for which they were not responsible between the offending and the trial. The applicable bracket in the guidelines for their money laundering offences included community orders. In our judgment, in those circumstances, it was incumbent on the judge to obtain a PSR before proceeding to sentence. A community order was, at the very least, a possibility which required consideration.

20. Having heard submissions in this case this morning, we directed the applicants' counsel to approach the probation service in the Royal Courts of Justice. We invited the probation service to speak to the applicants over the video link. We are pleased to say that that has now happened, and we are especially grateful to Miss Innis, the probation officer, for accommodating our requests. She has provided us with an extremely helpful and thorough verbal report. It is necessary only to summarise one or two of the headlines of that report.

21. In respect of Mr Talukdar, she said that he was in the final year of his university course at the time of the conviction. He plans now to resit the last year. He told her that he accepts that he has to be punished. In respect of Mr Hussain, Miss Innis told us that he too recognised that he had fallen in breach of the law and was rightly punished. He was a graduate now, had already obtained lucrative employment in the city, hoped to be able to return to that employment, and was a hardworking man well able to fill his days.

22. The probation officer recommended in the case of both applicants that, reflecting the fact that they have both been in custody for some weeks, an appropriate penalty would be between 40 and 50 hours' unpaid work. We agree. In our judgment, the sentences imposed were manifestly excessive and we will direct in a moment that they be substituted by community orders in the case of each applicant, with orders for their doing 50 hours of community service. That being so, the ground alleging disparity falls away and we are in a position to grant both applicants leave to appeal and allow both appeals.

We substitute for the eight months' custody imposed on both appellants a community order for one year, in which each are to undertake 50 hours' unpaid work. They will be required to do that work as and when instructed. If they fail to comply with that requirement, they stand at risk of being re-sentenced. They must stay in touch with the probation service and they must notify the probation service of any change of address.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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