

IN THE CROWN COURT SITTING IN NORTHERN IRELAND

THE QUEEN

-v-

McGLONE AND McGLONE

MORGAN J

[1] This tragic case arises from circumstances leading to the death of Brij Brushan Sharma on 27 April 2004. The defendant Stephen McGlone has pleaded guilty to the manslaughter of Mr Sharma. He and his brother have also pleaded guilty to criminal damage to a car which occurred in the early hours of 25 April 2004 and his brother Mark has pleaded guilty to attempted intimidation of the deceased's girlfriend on that morning

[2] The background facts are:

- (a) There had been some history of difficulty between children associated with the McGlone family and the deceased.
- (b) On the morning of 25 April 2004 the defendants were making their way home from a family engagement party at Castledawson.
- (c) As they did so the deceased was at his car in the street. There was some shouting which appears to have concerned the children.
- (d) The deceased then squared up to the first named defendant with his hand out.
- (e) The first named defendant then struck him in the face with a single punch of moderate force.
- (f) The deceased fell backwards and struck his head on the ground as a result of which he sustained head injuries from which he died some days later.
- (g) No-one realised at the time how seriously the deceased had been injured. The two defendants assisted in carrying him into the house of his girlfriend. While there the second named defendant advised the girlfriend not to involve the police. That was the substance of the attempted intimidation charge against him.

- (h) Some time later friends of the deceased's girlfriend remonstrated with the McGlones in the street. There was a confrontation in the course of which both defendants kicked the deceased's car. It is alleged by some of the witnesses that there was some reference to the nationality of the deceased by Mark McGlone at that stage but there is nothing to suggest that the attack had any kind of racial motive.

[3] In mitigation the first named defendant relies on the following:

- (a) He delivered a single punch of moderate force.
- (b) There was no intention to cause serious harm.
- (c) The manner of the death was completely unforeseen
- (d) He assisted the deceased after the fall into his girlfriend's house
- (e) The factual basis of the plea accepted by the Crown was that there was an unexpected confrontation with the deceased.
- (f) He expressed remorse during interview.
- (g) He has pleaded guilty. This has come at a late stage some days before his trial. The defendant makes the point that the Crown would not have accepted the factual basis of the plea at an earlier stage. Although I entirely accept that as being correct a defendant who chooses to wait in these circumstances cannot expect to get the same discount for the plea as the defendant who has pleaded at an early stage.

[4] In his case there are aggravating factors:

- (a) He has a record for assault and at the material time was subject to a suspended sentence.
- (b) His conduct in damaging the car after the incident supports the view that he may be inclined to the casual use of violence.

[5] The appropriate sentence for manslaughter depends markedly on the facts of each case. In this case the Crown accepts that there was no premeditation or planning and that the accused did not instigate the confrontation. The consequences of the single blow were unforeseen and the accused helped to carry the deceased into the house afterwards. In manslaughter cases the sentences have to balance the dreadful consequences of the act against what may be judged the modest culpability of the offender. In cases of a single punch such as this the authorities suggest that a sentence of 12 months imprisonment might be appropriate for an offender of good character who pleaded guilty at the first opportunity. Both of those features are absent in this case and the sentence must make appropriate allowance for that. In my view the appropriate sentence is one of 2 years imprisonment to which will be added the suspended sentence which will run consecutively.

[6] I have considered the pre-sentence report. It makes a convincing case for probation with conditions requiring attendance at an anger management programme and an alcohol programme. I am minded to make a custody/probation order consisting of 12 months probation and a total of 17 months imprisonment. I do not consider that it is necessary in this case for the probation period to match completely the period that would have been served in custody.

[7] In respect of Mark McGlone I believe I can take a different view. The attempted intimidation charge arose from a single short conversation which did not prevent the witness giving the information to the police shortly thereafter. It is clear that at the time there was no appreciation of the seriousness of the deceased's injuries. He was not responsible for the injuries to the deceased and assisted him thereafter. He has a record including a suspended sentence and a conviction for criminal damage and his plea also did not come at the first opportunity but in his case I consider that the appropriate course is to make him contribute something to the community and I impose a community service order of 100 hours.