

290.4 *Fire, By*

R v Khatoon 2014 EWCA Crim 881 D pleaded to manslaughter and reckless arson. Her marriage to V1 had broken down some weeks previous. V1 was in a new relationship with V2. V2 lived with her mother, V3. D was furious and embarked on a campaign of relatively minor harassment. She telephoned V1 and made threats. D also resented V3 and telephoned her calling her a whore and threatened to kill her. There were also physical attacks on the property including a smashed light and paint being poured over her car. V1 received a phone call stating that 15 Sikh males would ‘get him’ if he did not leave V2. One evening, V1 and V2 were staying at V3’s address, along with V2’s friend, V4. At 6.30am the following morning, D and her co-accused travelled to V3’s house, dressed in dark clothing. They set a fire which spread to the house and a passer-by heard screaming from inside. V1, V2 and V3 managed to escape the property by jumping from a window. V1 suffered fractured heel bones, V2 suffered a fractured femur and V3 suffered a broken back. V4 was unfamiliar with the layout and was unable to find her way out of the property. She died from thermal injuries. D had previously had contact with mental health services. She had no mental disorder although claimed to be able to hear voices. An expert report considered that she had an emotionally unstable personality disorder. The Judge considered that the notional determinate term was 14 years. Held. Life with a minimum of 7 years was too high, by a significant amount considering the authorities. The **life sentence** was correct and the appropriate minimum term was **6 years**.

290.14 *Burglars/Robbers/Thieves, By*

R v Garner 2014 EWCA Crim 926 D pleaded to manslaughter and attempted robbery after her jury was sworn (10% credit). There were a series of robberies on a tow path where gay men met for casual sex. In the early hours, V1 was robbed of a packet of cigarettes by C and M. V2 and V3 came to V1’s assistance. V2 was stamped on and V3 was thrown into the canal but managed to get out. B and S joined the group and pursued V4. The group then left but returned again. The group followed V5 and tried to rob him. That was frustrated and V5 was pushed in the canal. B admitted V5 shouted, “I can’t swim.” B fled followed by D seconds later. The whole group ran off. V5 drowned and V3 suffered injuries. D was sentenced on the basis that she was present when B was pushed into the canal and encouraged others to intimidate V5. D was aged 21 and had 27 previous convictions including a number of robberies and attempted robberies. One was committed after the canal death. The Judge commented that a) the men who visited the area were vulnerable because those who preyed on them did so knowing that they were unlikely to complain because of their situation, b) the robberies were in the dark and the group created fear and were prepared to use violence and c) D had been treated leniently before and she had not responded to that. C was sentenced to an extended sentence (10 years’ custody and a 3-year extended licence). M received 9 years’ detention in a YOI. Held. There was evidence robberies were unreported in this area. D lent support and added to the threat by her presence. The Judge drew the inference D heard the V5’s cry as well as B. It was callous to abandon V5 in the canal. **10 years** upheld.

See also: *R v Delija 2013 EWCA Crim 2735* (Convicted. Planned attack on elderly couple in bungalow by two men. Balaclava and ski mask worn and tied up victims. Husband repeatedly beaten to find out where keys to safe were. Keys found and safe opened. Substantial amount of cash taken. Threats to kill made. Imprisoned for best part of half an hour. Wife bound with tape. Husband suffered from significant heart disease and died. **20 years** at the top of the range but justified.)

290.26 *Diminished responsibility Case*

Att-Gen's Ref No 34 of 2014 2014 EWCA Crim 1394 D pleaded guilty (full discount) to two counts of manslaughter (diminished responsibility). D said he would kill V1, his mother, and then attempt to commit suicide. [Presumably nothing happened.] D was hospitalised, having taken a cocktail of drugs and alcohol, but released after his mental state was assessed. Two days later he killed V1, with an axe, in a premeditated attack. When V2 discovered what had happened, D killed her, with the same axe. The killings were minutes apart. He also killed his dog with the same axe. D was later found in a very disturbed state. D was aged 24 at sentence and of good character. The Judge found D had significant responsibility for the offences because they were based on the voluntary taking of LSD, which had triggered a vulnerability to psychosis. The Judge made a hybrid hospital order with the sentence. Held. The aggravating factors were two victims, the significant degree of culpability, the clear intent to kill, a degree of premeditation and the use of the axe. A nuanced approach is needed to assess reflect D's residual culpability in that the greater it is, the greater the impact of Schedule 21 factors, (which are used in murder cases). Here, the serious aggravating factor of more than one intentional homicide should have its own impact on sentence. We start with 20 years minimum term. With plea, **13 years 4 months**, not 6 years.

Note: There is a problem here with using the murder guidelines for non-murder cases. If the Court thought a 20 year minimum term was appropriate, then the determinate term would have started at 40 years which is significantly out of line with comparable cases. Ed.

290.52 *No reason/Drunken attack* *Fists etc.*

R v Jackson 2014 EWCA Crim 355 see **290.71** in this update.

290.56 *One punch manslaughter* *Cases*

R v Jackson 2014 EWCA Crim 355 see **290.71** in this update.

290.58 *Relationship killings* *Men killing wives, partners or former partners*

Att-Gen's Ref No 29 of 2014 2014 EWCA Crim 1314 D pleaded to manslaughter (loss of control) on the first day of his trial for murder for which he was acquitted. D had been with his partner, P, for about 18 months. V began a relationship with P. The next day, V told D about it on the phone. P was annoyed about that. Later, V happened to be driving past D and he threw a photo of P and him kissing at D. D went to P's flat and trampled on some flowers V had given P. (It seems P was not there.) D waited the rest of the day and the following night for V to arrive. In fact he stayed away as he had heard D was threatening to stab him. P took an overdose and was taken to hospital. Both D and V visited her. D later contacted P to say their daughter had gone missing. V collected P from hospital and they went to look for the daughter. The daughter was found and V and P went to a flat of a former partner of P, T. Shortly after D arrived, P went to lie down. D questioned V about his relationship and T left the room. V screamed and T returned and saw V curled up with D repeatedly punching V. Next he saw a knife fall to the floor. D then went to the kitchen and he picked up a large kitchen knife. P persuaded him to put it down and D left. V was found to have seven stab wounds which would have required severe force to inflict. One entered the lungs and the pericardial sac of the heart. D was 45 with no relevant convictions. The Judge sentenced D on the basis he had not brought the knife to the scene and the stabbing may have followed a humiliating remark by V about D. The Judge started at 10 years saying that was half-way between the 15 and 25-year starting points. With 25% credit he gave 7 ½ years custody. He later reduced this to 6 years because of D's low IQ. Held. The Judge gave insufficient weight to D's desire for a violent confrontation. He also gave too much weight to the low IQ. The guidelines should have led to a sentence of 11 years at least. With the 25% plea discount, **8 years'** custody with the extended licence of 5 years remaining.

290.61a *Sexual*

R v Dobllys 2014 EWCA Crim 402, 2 Cr App R (S) 44 (p 355) D was convicted of manslaughter and two rapes. V placed a lonely hearts entry in a Lithuanian newspaper. D answered it and they met in a hotel. A room was booked and paid for by D. During the night, D vaginally and anally raped V. V died during the night and certainly before 7:15 am. D checked out at 11.20am and told the receptionist that he thought V was dead. V was found face-down on the floor with bruising to her breasts, arms and thighs, and numerous injuries to her vaginal and anal areas. These injuries were consistent with D gripping her and a forceful impact with the floor. D drank vodka while police examined the body and was calm. V had died from postural asphyxia as a result of her position not allowing her sufficient air. Alcohol was considered a contributory factor. D, aged 49, had convictions for robbery, assault and carrying a knife. A psychiatric report concluded D was a “self-centred, grandiose man with limited empathy”. Held. Recent authorities demonstrated there should be a correlation between sentences for murder (with a 30-year starting point) and sentences for manslaughter. The two rapes, the callous disregard for V, D’s lies and the painting a bogus picture of consent etc. were factors. The crimes committed were grotesque and appalling and deserved condign sentences. **20 years extended** (16 years’ custody and a 4-year licence) was severe but wholly justified.

See also the MURDER: *Sexual* para at **295.18**.

290.67 *Defendant aged 16-17*

R v Jackson 2014 EWCA Crim 355 see **290.71** in this update.

290.71 *Secondary parties*

R v Jackson 2014 EWCA Crim 355 D was convicted of manslaughter. V, aged 40, was out with his friends. They had been to several pubs and at about 7.15pm, D set off on his own to buy some food. He phoned his friends to say he was having some trouble with a group of youths. They set off to meet him. CCTV footage showed that D was part of a group of young people behaving in an antisocial way. Members of the group could be seen to be throwing road signs around, obstructing the pavement to get in the way of passers-by and being ‘loutish’. D was not shown on the CCTV throwing anything, but was a part of the group. V approached the group and something was said to V. V stopped and remonstrated with them. While the exchange was going on, other people gathered. Two friends of V’s tried to diffuse the situation. D sought to inflame matters and tried to provoke one of V’s friends, saying that he was going to ‘crack’ him and knock him out. There was a further verbal confrontation with V. V did not try to provoke or try to hit anyone. He wanted to give the group a piece of his mind, which was in the Judge’s view, reasonable. Someone in the group shouted for assistance from D. He came running towards V from some 50m or so and delivered a single full force punch to the side of V’s head. V did not see him coming. The blow was so severe that it caused him to fall and strike his head on a pillar and then on the pavement. He suffered serious skull fractures and brain damage and died soon afterwards. D was sentenced on the basis that he was aggressive, looking for violence and trying to provoke one of the other men. D was aged 16. He had four court appearances predominantly for public disorder and criminal damage. The PSR noted that D had consumed a great deal of alcohol. Held. There was no intent to kill or to do really serious harm. The Judge knew every detail of the case and we do not seek to undermine his findings. He correctly identified 6 years as the starting point however he fell into error in failing to reduce the sentence to take account of D’s age. 6 years was manifestly excessive. **4 years** was appropriate.

¹ Reporting restrictions were lifted.

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