

Case No: 200102556 S2

200102476 R2

Neutral Citation No: [200] EWCA Crim 1944

IN THE SUPREME COURT OF JUDICATURE

COURT OF APPEAL (CRIMINAL DIVISION)

ON APPEAL FROM MAIDSTONE CROWN COURT

MR JUSTICE MOSES

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: 31st July 2002

Before :

LORD JUSTICE KAY

MR JUSTICE COLMAN

and

MR JUSTICE OUSELEY

Between :

R

- and -

PERRY WACKER

Appellant

Mr V Temple QC and Mr D Penny (instructed for the Crown)

Mr M Lawson QC and Mr S Russell Flint (instructed for the Appellant)

Mr O Pownall QC (instructed on behalf of the Attorney General)

Hearing date : 14th June 2002

JUDGMENT : APPROVED BY THE COURT FOR HANDING DOWN (SUBJECT TO EDITORIAL CORRECTIONS)

Lord Justice Kay :

1. On the 18 June 2000, Customs and Excise Officers stopped a lorry which was disembarking from a ferry at Dover. When they examined a container loaded onto the trailer, they made the horrific discovery that it contained the bodies of 58 illegal immigrants of Chinese origin and 2 other such immigrants who were still alive. This appeal raises the issue of whether the lorry driver who was in sole charge of the lorry could properly be held responsible for the manslaughter of each of those who died and if so, whether the sentence imposed upon him, a total of 14 years imprisonment, was a proper sentence.
2. The appellant, Perry Wacker, a Dutch national aged 34, was tried in the Crown Court at Maidstone before Moses J and a jury. On the 5th April 2001 he was convicted of conspiracy to facilitate the entry into the United Kingdom of illegal immigrants and of 58 offences of manslaughter. He was sentenced to 8 years imprisonment for the conspiracy and to 6 years imprisonment on each of the manslaughter charges, the 6 years sentences being ordered to run concurrently with one another but consecutively to the 8 year sentence. The total sentence was thus 14 years imprisonment.
3. The appellant appeals against each of the manslaughter convictions by leave of the single judge. He does not appeal against his conviction on the conspiracy charge. He also applies for leave to appeal against sentence, his application having been referred to the full court by the single judge. The Attorney General has also applied to the court for permission to refer to the court the manslaughter sentences as being unduly lenient although he does not seek to persuade the court that the total sentence of 14 years imprisonment should be increased.
4. Because of the extent of the loss of life, the facts of the case, not surprisingly, attracted a great deal of public attention. All 60 of those who were in the container were on their way from China with the intention of gaining illegal entry into the United Kingdom. Their journey was organised by others, whose involvement was manifestly to make a profit out of the desire of people in China to leave that country and settle elsewhere. Each of the immigrants eventually arrived in Holland and it was there that they were loaded into the container to make the fateful journey by ferry to Dover. There was evidence placed before the jury to connect the appellant with the preparations for that journey, which, since he does not appeal against his conviction for the conspiracy, it is unnecessary to detail.
5. Evidence about the journey was given by the two survivors and this was supplemented by information available from the lorry's tachograph. From this information the following picture emerged. The Chinese immigrants were loaded into the lorry at a place near Rotterdam. The container had been adapted by the construction of a wooden framework partitioning it into two distinct areas. The immigrants were required to go behind the partition and that part of the container nearer the container door was loaded with tomatoes to conceal the illegal human cargo behind. The container was then sealed and it was not possible to open the door from the inside.
6. When the journey commenced the only ventilation to the container came from a small metal window or vent in the front of the container. The container was intended for use as a refrigerated container and accordingly it was constructed with seals in such a way as not to allow any air to enter the container other than through the vent when it was open. Those inside the lorry were told that the journey would be uncomfortable and that for part of the time the vent would be shut. They were advised that when it was opened, they could talk quietly but when it was shut they must be silent. The purpose of shutting the vent and of the instructions to remain silent was clearly to assist in avoiding detection.

7. The tachograph recorded the journey as starting at 2.53 pm (continental time). There were several short stops and then at 6.49 pm (continental time), the lorry stopped some four and a half kilometres from Zeebrugge. The two survivors told how at this stage the small vent was shut by someone from the outside. The appellant's fingerprints were found on the outside covering of the vent.
8. At 7.01 pm (continental time) the lorry resumed its journey, boarding the ferry at Zeebrugge. The ferry crossing to Dover was anticipated to take four and a half hours. The survivors described how approximately two hours after the vent had been shut, those inside began to become distressed because it was difficult to breathe. One described how eventually there was a lot of screaming but no one had come to help them.
9. The ferry trip took somewhat longer than was anticipated and it was not until 11.14 pm (English time – which was 12.14 am continental time) that disembarkation at Dover commenced. Very soon afterwards the lorry was driven off the ferry and was stopped by the Customs Officers. The container was then searched and the dreadful loss of life was discovered. The deaths had been caused by the lack of air in the container.
10. At trial, the appellant denied any knowledge of the illegal immigrants in the container. He claimed that he was simply driving what he believed to be a load of tomatoes from Rotterdam to Bristol.
11. At the conclusion of the prosecution case, Mr Michael Lawson QC on behalf of the appellant submitted to the trial judge that there was no case for the appellant to answer on each of the manslaughter charges. He took as the foundation for his submission, the observation of Lord Mackay of Clashfern LC in R v Adamako [1995] 1 A. C. 171 in which he said at page 187B:

"...in my opinion the ordinary principles of the law of negligence apply to ascertain whether or not the defendant has been in breach of a duty of care towards the victim who has died. If such breach of duty is established the next question is whether that breach of duty caused the death of the victim. If so, the jury must go on to consider whether that breach of duty should be characterised as gross negligence and therefore as a crime."
12. Mr Lawson, therefore submitted that the first question to be decided was whether applying "the ordinary principles of the law of negligence", the appellant owed to those in the container a duty of care. He submitted that one of the general principles of the law of negligence, known by the Latin maxim of *ex turpi causa non oritur actio*, was that the law of negligence did not recognise the relationship between those involved in a criminal enterprise as giving rise to a duty of care owed by one participant to another. In his ruling Moses J summarised Mr Lawson's submission on the facts of the case as follows (transcript page 13B):

"Mr Lawson QC contends that a failure to produce sufficient air or ventilation stems directly from the criminal activity in which both driver and passengers were engaged. It was essential to the criminal activity of all that secrecy be maintained. The closure of the vent, and the failure to re-open it during the course of the journey on board the ferry, which caused the death by suffocation of the 58 occupants, arose directly, he contends, from an enterprise the very essence of which was that secrecy was maintained. Secrecy could only be maintained by keeping the vent closed, since if it was open voices might be heard and, as the evidence of at least one of the survivor's revealed, the occupants had been told only to speak when the vent was open.

Moreover, it is not possible for the court to determine the appropriate standard of care to be

exercised by the driver. What is the appropriate standard of care to be applied in the case of a driver seeking, as part of a joint criminal exercise, to conceal the presence of 60 occupants of his lorry? In other words, the criminal activity on which all were engaged does, so he submits, have a bearing upon the appropriate standard of care. That standard cannot be ascertained without regard to the clandestine nature of the joint criminal activity. It was the driver's job to increase the chance of entry without detection, the very object which the passengers themselves sought to achieve."

13. Mr Temple QC on behalf of the crown accepted the general proposition that the principle of *ex turpi causa* applied to determining whether there was a duty of care in considering a charge of manslaughter just as it did in determining whether a civil claim for damages for negligence could succeed. He submitted, however, that the failure to take reasonable steps to ensure that a supply of sufficient air to breathe was wholly incidental to the criminal enterprise upon which the passengers were engaged and as such the principle would not prevent a claim in negligence. The standard of care could be identified. It was the ordinary standard of care to be expected of a competent and experienced heavy goods vehicle driver, carrying 60 people in the container pulled by the tractor he was driving.

14. Moses J in his ruling accepted the concession made by the prosecution that the principle of *ex turpi causa* applied to a charge of manslaughter. He said (transcript page 1G):

"There is no doubt but that the ordinary principles of the law of negligence applied to ascertain whether the defendant owed a duty of care to the victims. (see R v Adamako ...) thus, in order to make good an allegation of manslaughter, the crown must establish that under ordinary civil law principles, the defendant owed a duty of care to the occupants of the lorry. This introduces a certain air of unreality to the problem. This is not a case where the relatives of the occupants, or the surviving occupants of the lorry, are seeking to claim compensation. It is a criminal case, where the state is seeking to vindicate a wrong done, not primarily to the victims but to the state as a whole. Nonetheless, as all acknowledge, the fact that that issue arises in the context of manslaughter as opposed to a claim in tort makes no difference."

15. Clearly the judge's view that "an air of unreality" was introduced to the problem was right. It is only necessary to consider the test as to the standard of care that had been suggested by the prosecution to see that wholly artificial concepts were being introduced. It will be necessary to examine later whether this view accepted at trial as being the law relating to manslaughter is really right.

16. However, having ruled that the concept of *ex turpi causa* was much a part of the law of manslaughter as other principles of the law of negligence, the judge then considered whether the crown's submission that the principle had no application to the facts of the case was right. This involved a careful examination of the authorities relating to civil claims for damages for negligence involving some form of unlawful activity. At page 10A the judge said:

"I derive from these authorities the following propositions:

1. no duty of care can be established absent the ability of the court to determine an appropriate standard of care;
2. the court cannot determine a standard of care, that is the content of the duty of care, in circumstances where it is compelled to weigh and adjust the conflicting demands of joint criminal activity and the safety of the participants in order to identify the appropriate standard of care. In short,

the question is whether the criminal activity on which the plaintiff is engaged, or for which the plaintiff shares responsibility, bears upon the standard of care reasonably to be expected of the participants from whom he is seeking to claim."

17. He then referred to further authority and quoted from the judgment of Bingham LJ in Saunders v Edwards [1987] 1 WLR 1116 at 1134:

"... I think that on the whole the courts have tended to adopt a pragmatic approach to these problems, seeking where possible to see that genuine wrongs are righted so long as the court does not thereby promote or countenance a nefarious object or bargain it is bound to condemn. Where the plaintiff's action in truth arises directly ex turpi causa, he is likely to fail... Where the plaintiff has suffered a genuine wrong, to which allegedly unlawful conduct is incidental, he is likely to succeed..."

18. On the facts of the case, Moses J concluded that a proper distinction could be drawn between those criminal activities for which the passengers were solely responsible, those for which there was a shared responsibility and those for which the drivers and others were solely responsible. The driver's failure to ensure that the passengers had sufficient air was, he ruled, incidental to the passengers role but, implicitly, critical to his own role. Thus since the passengers would be "relying" on a matter incidental to their criminality, they would not be "relying" upon their own unlawful conduct. Accordingly he ruled that there was a case to answer.

19. When the judge summed the case up to the jury, he explained to them that the allegation was that the death of the 58 who died was caused by "gross negligence amounting to criminal negligence". He then explained what was meant by negligence saying (see transcript page 23B):

"In order to prove negligence the prosecution must make you sure that Mr Wacker, the driver owed a duty of care to each and every passenger in the container; if he owed it to one he owed it to all. He owed a duty of care to each passenger in the container and that his conduct amounted to a breach of that duty. That that breach caused the death of those 58 passengers and that having regard to the risk of death involved the conduct of the defendant was so bad, so grossly negligent, as to amount in your judgment to a criminal failure."

He then looked at each of the elements in turn.

20. As to duty of care, he explained how in certain circumstances in every day life one person owes a duty to take reasonable care for the safety of another. He illustrated the general concept by reference to the duty upon a motorist and that upon a pedestrian and explained that the essential feature was that the person ought reasonably to have foreseen that their conduct, whether it was an act or omission, might cause injury to that other person.

21. He then said (transcript page 24F):

"Thus, in this case, subject to one qualification I will come to, if the driver knew that he was carrying 60 passengers and ought reasonably to have foreseen that his failure to take any reasonable care to see that there was adequate air or ventilation to sustain life was supplied to the container so that it might result in injury or loss of life, then that driver owed a duty of care to each and every occupant."

22. He then turned to the one qualification to which he had referred and dealt with the principle

of ex turpi causa saying (transcript 25B):

"There are circumstances where the law will not recognise a duty of care. A person is not allowed to sue for negligence, bring an action in a court, alleging a failure to take care if that failure arises out of his own criminal action; note those words, "arising out of his own criminal action"."

He gave the well known illustration of one safe breaker blowing up another and continued (transcript 25G):

"Why is that relevant in this case? It is relevant because of an argument adopted and advanced by Mr Lawson QC on behalf of Mr Wacker that you must consider. In this case the occupants themselves were committing a criminal offence. What was that? Seeking to enter the United Kingdom illegally. They got on the lorry they were told that the vent was going to be closed to preserve secrecy and, therefore, it is said – this is an argument on behalf of Mr Wacker – they shared responsibility for the criminal arrangements made to smuggle them into the country and thus, it is said, the driver owed them no duty of care.

What of that argument? It may be it need not keep you for very long for this reason. What you have to consider is whether in reality they did assume or may have assumed significant responsibility for the arrangements which were made. If they did or may have assumed such significant responsibility, no duty of care owed by Mr Wacker; end of the case of manslaughter against him. But, if you are sure that they did not in any significant way assume responsibility for the arrangements by which they were carried then subject to the issues I have already dealt with – importantly knowledge, of less significance in this case foreseeability of harm – he did owe a duty.

In this case you may think that death arose from the failure to take care to see that there was an adequate supply of air for those 60. That failure arose from the arrangements which were in fact made for their transport. Did the occupants of the container play any part in making those arrangements?"

23. The judge then looked at the facts relevant to the question he had just posed and concluded by saying (transcript page 27E):

"You may think that the evidence falls miles short of saying that they may have shared responsibility for the arrangements which caused the deaths."

24. Thereafter the judge looked in a little more detail at the issues of whether there was a breach of duty, whether it caused death, and if so, whether it could be characterised as criminally negligent.

25. The grounds of appeal against conviction contend:

- i. That the judge was wrong to rule that there was no case to answer; and
- ii. That the direction given to the jury as to the circumstances in which a duty of care would arise was wrong.

26. Mr Lawson, in his helpful and realistic submissions to the court, contends that no duty of care can be said to be owed by the appellant to the Chinese because they shared the same joint illegal purpose which:

- a. Displaced the duty of care;
 - b. Made it impossible for the court to define the content of the relevant duty of care; and
 - c. Made it inappropriate for the court to define the content of a relevant duty of care.
27. He further submits that since the allegation was of an omission or failure by the appellant to act, by opening the vent, the relevant time at which the "duty" arose could not in any event be ascertained.
28. Mr Lawson further submits that categorisation of the omission to act as being one which was merely incidental to the unlawful purpose of the Chinese is one that is untenable in the circumstances. The sole purpose of closing, and therefore keeping closed, the vent was to bring about the very unlawful objective upon which not only the driver was engaged but also the Chinese, namely their entry into the United Kingdom without detection. In this context Mr Lawson places particular reliance on the formulation of the rule by Mason J in the High Court of Australia in Jackson v Harrison (1978) 138 CLR 438 at paragraph 11:
- "If a joint participant in an illegal enterprise is to be denied relief against a co-participant for injuries sustained in that enterprise, the denial of relief should be related not to the illegal character of that activity but rather to the character and incidence of the enterprise and to the hazards which are necessarily inherent in its execution. The more secure foundation for denying relief, though more limited in its application – and for that reason fairer in its operation – is to say that the plaintiff must fail when the character of the enterprise in which the parties are engaged is such that it is impossible for the court to determine the standard of care which is appropriate to be observed."
29. Mr Temple on behalf of the prosecution argues that the judge, and ultimately the jury, were entitled to draw the distinction that since the method of effecting the illegal entry to the United Kingdom was not something with which the Chinese were in any way concerned, whilst there might be a shared objective, there was no shared responsibility for the arrangements and accordingly such arrangements including the shutting of and the failure to re-open before it was too late, the vent were incidental to the unlawful activity of the Chinese.
30. There are occasions when it is helpful when considering questions of law for the court to take a step back and to look at an issue of law that arises without first turning to, and becoming embroiled in, the technicalities of the law. This is such a case. We venture to suggest that all right minded people would be astonished if the propositions being advanced on behalf of the appellant correctly represented the law of the land. The concept that one person could be responsible for the death of another in circumstances such as these without the criminal law being able to hold him to account for that death even if he had shown not the slightest regard for the welfare and life of the other is one that would be unacceptable in civilised society. Taking this perspective of the case causes one immediately to question whether the whole approach adopted by both counsel and the judge in the court below can be correct, and we must, therefore, examine this matter.
31. The first question that it is pertinent to ask is why it is that the civil law has introduced the concept of *ex turpi causa*. The answer is clear from the authorities. Bingham LJ in Saunders v Edwards in the passage quoted in paragraph 17 above, explains that as a matter of public policy the courts will not "promote or countenance a nefarious object or bargain which it is bound to condemn".

32. In other situations, it is clear that the criminal law adopts a different approach to the civil law in this regard. A person who sold a harmless substance to another pretending that it was an unlawful dangerous drug could not be the subject of a successful civil claim by the purchasers for the return of the purchase price. However the criminal law would, arising out of the same transaction, hold that he was guilty of the offence of obtaining property by deception. Many other similar examples readily come to mind.
33. Why is then, therefore, this distinction between the approach of the civil law and the criminal law? The answer is that the very same public policy that causes the civil courts to refuse the claim points in a quite different direction in considering a criminal offence. The criminal law has as its function the protection of citizens and gives effect to the state's duty to try those who have deprived citizens of their rights of life, limb or property. It may very well step in at the precise moment when civil courts withdraw because of this very different function. The withdrawal of a civil remedy has nothing to do with whether as a matter of public policy the criminal law applies. The criminal law should not be disapplied just because the civil law is disapplied. It has its own public policy aim which may require a different approach to the involvement of the law.
34. Further the criminal law will not hesitate to act to prevent serious injury or death even when the persons subjected to such injury or death may have consented to or willingly accepted the risk of actual injury or death. By way of illustration, the criminal law makes the assisting another to commit suicide a criminal offence and denies a defence of consent where significant injury is deliberately caused to another in a sexual context (Brown [1994] 1 AC 212). The state in such circumstances has an overriding duty to act to prevent such consequences.
35. Thus looked at as a matter of pure public policy, we can see no justification for concluding that the criminal law should decline to hold a person as criminally responsible for the death of another simply because the two were engaged in some joint unlawful activity at the time or, indeed, because there may have been an element of acceptance of a degree of risk by the victim in order to further the joint unlawful enterprise. Public policy, in our judgment, manifestly points in totally the opposite direction.
36. The next question that we are bound to ask ourselves is whether in any way we are required by authority to take a different view. The foundation for the contention that *ex turpi causa* is as much a part of the law of manslaughter as it is a part of the law of negligence is the passage from the speech of Lord Mackay in Adomako set out in paragraph 11 above. In particular it is Lord Mackay's reference to "the ordinary principles of negligence".
37. Adomako was a case where an anaesthetist had negligently brought about the death of a patient. It, therefore, involved no element of unlawful activity on the part of either the anaesthetist or the victim. We have no doubt that issues raised in the case we are considering would never have crossed the minds of those deciding that case in the House of Lords. Insofar as Lord Mackay referred to "ordinary principles of the laws of negligence" we do not accept for one moment that he was intending to decide that the rules relating to *ex turpi causa* were part of those ordinary principles. He was doing no more than holding that in an "ordinary" case of negligence, the question whether there was a duty of care was to be judged by the same legal criteria as governed whether there was a duty of care in the law of negligence. That was the only issue relevant to that case and to give the passage the more extensive meaning accepted in the court below was in our judgment wrong.
38. The next question which is posed is whether it is right to say in this case that no duty of care can arise because it is impossible or inappropriate to determine the extent of that duty. We do not accept this proposition. If at the moment when the vent was shut, one of the Chinese

had said "you will make sure that we have enough air to survive", the appellant would have had no difficulty understanding the proposition and clearly by continuing with the unlawful enterprise in the way that he did, he would have been shouldering the duty to take care for their safety in this regard. The question was such an obvious one that it did not need to be posed and we have no difficulty in concluding that in these circumstances the appellant did voluntarily assume the duty of care for the Chinese in this regard. He was aware that no one's actions other than his own could realistically prevent the Chinese from suffocating to death and if he failed to act reasonably in fulfilling this duty to an extent that could be characterised as criminal, he was guilty of manslaughter if death resulted.

39. One further issue merits consideration, namely is it any answer to a charge of manslaughter for a defendant to say "we were jointly engaged in a criminal enterprise and weighing the risk of injury or death against our joint desire to achieve our unlawful objective, we collectively thought that it was a risk worth taking". In our judgment it is not. The duty to take care cannot, as a matter of public policy, be permitted to be affected the by countervailing demands of the criminal enterprise. Thus, in this case, the fact that keeping the vent shut increased the chances of the Chinese succeeding in entering the United Kingdom without detection was not a factor to be taken into account in deciding whether the appellant had acted reasonably or not.
40. Mr Lawson's final point was that the time when the duty arose cannot be established in the circumstances. With respect to him that is not right. The duty arose from the moment the vent was shut but it was a continuing duty, which continued until air was allowed into the container. At the moment when the duty first arose, the appellant was outside the jurisdiction in Holland. However the duty continued once the ferry had sailed and it is quite clear on the evidence that if the vent had been opened at that stage, the deaths would not have resulted. Thus we can see no difficulty in this regard.
41. In our judgment, the approach taken in the court below, as advanced by Mr Lawson and accepted by Mr Temple and the judge was too favourable to appellant. It is, therefore, wholly unnecessary to examine whether the distinction between matters for which the Chinese were responsible and those incidental to their illegality was a proper distinction or not. Whichever way they might have been characterised in a civil claim had no relevance to the issue that the jury had to decide.
42. In every other respect we are satisfied that the necessary ingredients of the offences of manslaughter were properly left to the jury. Once the jury had concluded that the appellant was lying when he said that he did not know about the Chinese in the container, this was, in our judgment, as plain a case on the manslaughter charges as one could encounter. Not surprisingly and rightly, the jury convicted. There are, therefore, no reasons to doubt the safety of these convictions and the appeal against the conviction is dismissed.
43. We turn now to the questions arising in relation to the sentences. First the appellant seeks leave to appeal against sentence on the ground that the sentences were manifestly excessive and wrong in principle. It is first argued that it is wrong in principle for consecutive sentences of imprisonment to have been imposed in this case since the offences were so clearly related in their subject matter. Secondly it is contended that the totality of the sentences was manifestly excessive.
44. The second matter relating to sentence with which the court is concerned is the application by Her Majesty's Attorney General for leave to refer to the court the sentences for the manslaughter offences which he considers to be unduly lenient, pursuant to Section 36 of the Criminal Justice Act 1988. Very helpfully Mr Pownall QC who appeared on behalf of the Attorney General made clear from the outset that it was not to be the contention of the

Attorney General that the total sentence imposed by the trial judge should be increased and that the application related solely to the way in which the total of 14 years had been made up. The Attorney General's concern is that the imposition of concurrent sentences of 6 years imprisonment for the manslaughter offences when compared with the 8 years imprisonment for the conspiracy charge sent out an unacceptable message in that it may have suggested to the public that the court saw the involvement with the evasion of the immigration rules to be a more serious matter than causing the death of 58 people.

45. Whilst in many cases, the Court of Appeal will only be concerned as to the total sentence passed and not the way in which the sentences are distributed between particular offences, there are rare cases where the way in which the total sentences composed may cause public concern and diminish the faith of the public in the criminal justice system as a whole. In such circumstances, and we can see why the Attorney General considers this case comes into that exceptional category, it seems to us right that provided the point is made out, this court should intervene and give guidance that will assist sentencers not merely to arrive at the right total sentence in the future but also to impose such sentences in a way that promotes public confidence. For these reasons we grant leave to the Attorney General.
46. We look first at the question of totality. Mr Lawson has pointed to a number of factors that he submits ought to have resulted in a shorter total sentence than 14 years imprisonment. He first points to the fact that this was a case where the manslaughter convictions were on the basis of gross negligence. It is not suggested that the appellant had any criminal intention to harm any of his victims in any way at all. Next he points to the fact that others connected with the criminal conspiracy, who were at least as involved as the appellant, and in all probability higher up the chain of command, were apprehended in Holland and have received shorter sentences. Further the appellant finds himself imprisoned in this country, which is not his own, and it is submitted that the effect of any sentence for him will be harder to bear than if he was in his own country where he could the more easily be visited by family and friends.
47. Mr Lawson recognises that the death of so many victims places this case in an exceptional category but he argues that there was no evidence that the appellant knew just how many people were inside the container. He further submits that the sentence imposed was out of line with other sentences for gross negligence and manslaughter.
48. We do not accept Mr Lawson's contentions. The professional smuggling of large numbers of illegal immigrants into this country is in itself a very serious matter. The causing of so many deaths by gross negligence arising from a desire to avoid detection whilst committing such a serious offence, in our judgment, puts this case into a category of its own. We are unaware of any case which can remotely be said to be comparable. Accordingly we ask ourselves the straightforward question whether we view a sentence of 14 years imprisonment as being manifestly excessive for the totality of the appellant's criminal conduct. The answer quite simply is that we do not. This was a difficult sentencing exercise. No sentence could fairly do justice to the loss of life on such a scale but we consider that the total sentence arrived at by the judge fairly reflected the seriousness of the matter and the limited mitigation that could be advanced on behalf of the appellant. Accordingly we refuse leave to appeal against sentence.
49. We turn to the composition of the sentence. Mr Lawson complained that it was wrong in principle to make the sentences consecutive to one another. In the light of our conclusion as to the correct total sentence, this argument is, from the point of view of the appellant, academic because even if it succeeded, we would alter the sentences to concurrent sentences but increase their length so as to maintain the overall sentence of 14 years imprisonment. The real issue in this regard is whether sentences of 6 years imprisonment for each of the

manslaughter cases can properly be viewed as unduly lenient.

50. In the Attorney General's references numbers 19, 20 and 21 of 2001 [2002] 1 Cr App (R) S 33 (at page 136), [2001] EWCA Crim 1432, this court reviewed the approach to manslaughter sentences in the context of a death caused in the course of a street robbery. At page 145, the court concluded:

"In considering any case of manslaughter the court inevitably looks at a number of factors to determine the appropriate sentence. First the court will examine the context in which the death was caused. If it was particularly reprehensible conduct, or conduct that calls for deterrence, the court is bound to impose a longer sentence than otherwise might be the case. The response to these factors must inevitably bear a relationship to the prevailing climate and the attitude at the time ."
51. Thus the element of the unlawful activity in which setting the manslaughter occurs is relevant to the sentence for manslaughter. The court considered in the case to which we have just referred that the sensible approach to such a sentence was to consider what sentence would have been appropriate if no death had occurred and then considered the extent to which the sentence should be increased to reflect the very serious circumstance of death.
52. If such an approach is adopted there is clearly a danger of punishing the underlying criminality twice if consecutive sentences are imposed. Accordingly we consider that the correct approach is to pass concurrent sentences. The sentence for manslaughter involving death in the particular criminal conducts will thus inevitably be the longer sentence.
53. Not only does this method of sentencing eliminate the danger of double punishment for the same criminality but it has the further advantage for which the Attorney General contends in this case, namely that it will be more readily understood by the public. It will not give the appearance, as may have occurred in this case, of devaluing the loss of life.
54. We think that, since the sentence for an offence of manslaughter must take into account the criminal context in which it has been committed, the Attorney General is right to contend that 6 years imprisonment for each manslaughter was unduly lenient. Accordingly we propose to alter the sentences. Each of the sentences of 6 years imprisonment for the manslaughter offences will be increased to 14 years imprisonment but the sentence of 8 years for the conspiracy will now run concurrently with the other sentences. Thus the total sentence remains unaltered but there is a proper reflection of the seriousness of the manslaughter charges in this quite dreadful case.