THE QUEEN

-v-

GLEN KANE

and

RAYMOND HAGAN

MacDERMOTT LJ

The 2 appellants along with 2 others (Robert Andrews and William John Martin) were charged with the murder of Kieran Patrick Abram on 5 July 1992. On the fourth day of their trial before McCollum J at Belfast Crown Court - 7 December 1993 - the 4 accused were re-arraigned and each pleaded guilty to the manslaughter of Abram. With the approval of the learned trial judge these pleas were accepted by the Crown. They each also pleaded guilty to a charge of riot on Count 2. Each of the appellants received a sentence of 9 years' imprisonment on the first count (the manslaughter charge) and a concurrent 2 year sentence in respect of the riot charge. Andrews was sentenced to 7 years on Count 1 and Martin to 4 years' detention suspended for 3 years.

The background circumstances to this incident on 5 July 1992 can be stated fairly shortly. North Howard Street runs from the Falls Road towards the Shankill Road. About midway along it is an army location with a sangar overlooking a chicane type wall and metal plates to impede or stop the flow of traffic. It had been the site of rioting in the past as sectarian and often hostile crowds approached each other from opposite ends of the street. In the weeks before the "12th July" there is annually much excitement in and around bonfires in the area and unfortunately this can and sometimes does spill over into violence between Protestant and Catholic groups.

5 July was one of those nights. Two crowds gathered. Insults were exchanged - missiles flew. The practice was for an RUC unit to be present in the army barracks and it would sally forth and catch rioters if the situation required such action. The layout of the street and the various obstructions on it is such that members of the Protestant crown could creep up along the sangar side and approach the Catholic crown unnoticed. About 3.00 am a youth so engaged told Guardsman Greig that they were going to "do" a Catholic that night. A small group - about 3 in number - worked its way towards the Catholics followed by a larger Protestant rush. The Catholics retired but one was caught and struck to the ground where he was kicked not only by them but by some of the larger group. This second "wave" included the appellant Kane and he was seized by Constable Shields and subsequently arrested. Constable Shields had also caught another of those kicking the fallen man (who

turned out to be Abram) but he broke loose. Constable Shields shouted for someone else to seize him. Constable Larmour heard the shout and seized a youth running past him. This was the appellant Hagan. For Hagan Mr Eugene Grant argued that we could not be satisfied that Hagan was in fact the man who had been seized by Constable Shields as with Hagan they kicked Abram. He emphasised that the description given by Constable Shields of a youth in a dark bomber jacket did not match Constable Larmour's description of a light blue bomber jacket. At night in a mêlee situation such variations in colour description can easily occur. Hagan's description of his role when interviewed by the police did not embrace a role similar to that of Kane but of course such remarks are self-serving.

There is no doubt that the witnesses were trying to describe as best they could a very confused situation and as is so often the case it is difficult to define with certainty the roles of the various participants. It might have been easier to attempt this difficult task if the case had been fought out. What is undisputed however is that each appellant, as well as Andrews and Martin, pleaded guilty to manslaughter. This could only have been acceptable on the basis that jointly with others they participated in an unlawful attack on Abram but themselves did not have the necessary intent to sustain a charge of murder.

The learned trial judge dealt with this confused factual situation in this way:

"While the police waited inside at the ready a confrontation occurred and it appears that the group already referred to pounced upon the unfortunate young man who became the deceased and subjected him to a merciless beating. Heavy sticks and boots were used and also pieces of wood which had nails driven into them with the heads of the nails still projecting. I have no doubt that the deceased was struck a number of blows by these weapons and that they caused a number of very serious lacerations of his scalp and face.

I have no doubt either that the crime of murder was committed on that evening on the part of a number of persons including anyone who was engaged in the savage beating of the deceased who at the time of engaging in that beating had the intent to inflict or to aid and abet in the infliction of really serious injury to the deceased or to cause his death. However - and it is unfortunate from the point of view of doing justice - it is not possible in the confused situation which greeted the police officers to bring home the crime of murder to any individual.

Those before the court played a part in the riot and the first 4 played some part in the attack on Mr Abram. However in all the circumstances of the case it has not been shown by the evidence - and I do not think that it would have been possible had the case proceeded - to establish beyond a reasonable doubt that any of them was part of the attacking crowd and at the same time it can be shown that they joined in the attack, but it cannot be shown that they really displayed the intent to kill or to cause grievous bodily harm or to aid and abet someone else in so doing".

Reading the papers in the light of these observations by the judge who saw as well as heard those witnesses who were called it seems to us that there were 3 groups involved with differing degrees of culpability.

1. The original 3 who struck Abram down. The learned trial judge would have, rightly, convicted them of murder but he was not satisfied that these accused were in that group.

2. Those who attacked the defenceless Abram as he lay on the ground. Kane was in this group, Andrews the learned trial judge notes as having been involved in kicking the deceased at a time when others were attacking him with sticks.

3. Others who participated more peripherally in the unlawful joint enterprise.

The learned trial judge treated Hagan and Kane alike in that each received a sentence of 9 years' imprisonment. He emphasised that though Kane was the oldest of those before him (Kane was 26 and Hagan 21) he would deal with them in the same manner due to Kane's immaturity of which there was evidence. Andrews' sentence was one of 7 years and the learned trial judge distinguished him from Hagan and Kane as being younger, 18½. The learned trial judge did not seek to analyse the precise role of each individual as he sentenced him which is perfectly understandable as it is difficult to do so with precision and also when persons engage upon an unlawful joint enterprise the particular role of each is of comparatively little significance when sentencing.

We suspect that the facts have probably been analysed more fully in this court than in the course of counsel's submissions prior to sentencing. To that extent we are in a slightly better position than the learned trial judge. We have carefully considered Mr Grant's submission that we cannot be sure that Hagan was a culpable as Kane. It may be that Hagan was the man who escaped from the grasp of Constable Shields but we feel that there is a possibility that they may not be so and so feel that a small distinction should be drawn between Kane and Hagan.

That brings us to the real issue in this appeal. Is a sentence of 9 years manifestly excessive in the case of Kane? Mr Philip Mooney QC (who appeared with Miss Orr) submitted that it was and he referred us to various authorities in ***Current Sentencing Practice*** under the heading ***"Manslaughter arising out of fights"*** pages 20401 and following. It is well known that determining the appropriate sentence in a manslaughter case is one of the most difficult tasks faced by a sentencer. As Lord Lane CJ said in R -v- Walker [1991] 13 CAR (S) 474:

"It is a truism to say that of all crimes in the calendar, the crime of manslaughter faces the sentencing judge with the greatest problem, because manslaughter ranges in its gravity from the borders of murder right down to those

of accidental death. It is never easy to strike exactly the right point at which to pitch the sentence. This case is a very good example".

The learned trial judge has great experience and after 3 days of evidence must have had a good flavour of the viciousness of this attack which led to the merciless killing of young Abram by blows and kicks.

The language of Lord Lane in R -v- Eaton [1989] 11 CAR (S) 474 seems to reflect the behaviour of these 2 groups on this particular night:

"The present offence is unhappily an example of the comparatively recent manifestation of brute violence starting off with excessive drinking by young men in their late teens or their early twenties, and developing into a group attack, each member of the group stimulating the others to violence, a sort of 'wolf pack' syndrome, the violence to be wrecked upon another group, because of some supposed slight".

The evil which the Chief Justice was there describing is, of course, compounded when it is sectarian in nature and a part of the ongoing and persistent sectarian violence which has bedeviled life in Northern Ireland for many years.

How should such lawless behaviour be viewed by a sentencer? It must, especially where someone has been killed, attract a lengthy prison sentence to mark not only the abhorrence of civilised people but the determination of the courts to seek to deter the repetition of such behaviour. We would adopt the words of Watkins LJ in R -v- Silver and Gosling [1982] 4 CAR (S) 48:

"We are conscious of the effect that heavy terms of imprisonment have upon young men such as these appellants. It is almost catastrophic at their time of life. However, we have others to think of. We have to consider, too, the prevalence of this kind of violence which inevitably carries with it the risk of serious injury, if not death. Nowadays, at football grounds, in clubs, in pubs and on the street, no sooner do young men start to fight and one of them goes to the floor, than one or more of the others put in the boot. When that happens and the offenders are apprehended it is incumbent upon courts to inflict serious punishment to mark the seriousness of such conduct. Any sentence passed must have inbuilt a measure of deterrence".

We have already commented upon the unacceptable sectarian nature of this incident and the appalling manner in which Abram was killed. This was not just a "level" fight which had an unfortunate result - there was an organised plan to "cut out" a member of the opposing faction and attack him in a merciless fashion. The plan was carried out in a ruthless manner. Those involved merit no sympathy. We do not consider that 9 years was an excessive sentence. Kane's appeal against sentence is dismissed. We would add that the fact that Martin was dealt with in a mercifully lenient fashion does not assist the others in any way.

Andrews has not appealed. The learned trial judge was entitled to have regard to his age though age of itself is by no means a reliable yardstick by which to measure culpability.

We return to Hagan. After considerable reflection, we consider that it is proper to reduce his sentence to one of 7 years and to that extent his appeal is allowed.

By way of conclusion we would wish to state that a sentence of 9 years is not to be considered the maximum appropriate for this type of manslaughter. If sectarian rioting should return to the streets in the future and in its course a death or deaths occur, then it must be anticipated that sentences for manslaughter (if that be the appropriate offence) may be well in excess of 10 years. The public is entitled to expect that the courts will seek to deter such behaviour by lengthy custodial sentences.