IN THE SUPREME COURT OF THE UNITED KINGDOM

UKSC/2025/0070

ON APPEAL FROM HIS MAJESTY'S COURT OF APPEAL OF ENGLAND AND WALES [CRIMINAL DIVISION]

[MACUR L.J., GARNHAM J., HIS HONOUR JUDGE MENARY K.C.]

[2025] EWCA Crim 38; [2025] 1 W.L.R. 2924

BETWEEN:

Director of Public Prosecutions

(On behalf of His Majesty)

Appellant

-and-

Shagufa Yasmin Sheikh

First Respondent

Khalid Majid Sheikh

Second Respondent

Shabnam Shahzadi Sheikh

Third Respondent

Asgar Hussain Sheikh

Fourth Respondent

STATEMENT OF FACTS AND ISSUES

References to paragraph numbers in the Judgment of the Court of Appeal are shown herein as [§…..]

1. The ‘Statement of Facts and Issues’ is structured as follows:

(i) Introduction

(ii) The relevant facts of the case

(iii) The parties’ respective cases at trial

(iv) The Judgment of the Court of Appeal

(v) The Issues for the Supreme Court to determine

(vi) Annex – Chronology of principal events and dates

Introduction

2. The trial of the Respondents took place before Lambert J. and a jury at the Crown Court at Leeds, between 4 October 2023 and 18 December 2023.

3. The Respondents were charged, together with a fifth defendant (Sakalyne Sheikh), on an Indictment which contained 8 counts. Counts 1 to 5 charged each of them, separately, with an offence of ‘causing or allowing serious harm to a vulnerable adult’ contrary to section 5 (1) Domestic Violence, Crime and Victims Act 2004, as amended [“DVCVA”]. Count 6 charged all five defendants with an offence of conspiracy to pervert the course of public justice. Count 7 charged Shagufa Sheikh and Shabnam Sheikh with an offence of ‘doing acts tending and intended to pervert the course of public justice.’ Count 8 charged Asgar Sheikh with a similar offence to that charged in Count 7. The charges in Counts 6 to 8 arose out of the same facts.

4. The alleged victim of the offences charged in Counts 1 to 5 of the Indictment was Ambreen Fatima Sheikh [“V”], then a woman of 30 years of age. She sustained serious physical harm in the form of a severe injury to the brain which rendered her deeply unconscious. The most likely cause of the brain injury was a hypoglycaemic coma. She has never recovered consciousness and remains alive, in a vegetative state, with a reduced life expectancy and requires constant support and care.

5. At the conclusion of the Prosecution’s case, the Respondents made submissions directed to the issue of whether no reasonable jury, properly directed, could convict the Respondents in respect of Counts 1 to 5. Khalid Sheikh (together with Sakalyne Sheikh) made a similar submission in respect of Count 6 of the Indictment. Lambert J. rejected these submissions and gave reasons contained in a written Ruling. The Respondents (and Sakalyne Sheikh) did not

give evidence. One medical expert witness, Mr Burge, a plastic surgeon, was called on behalf of Shagufa Sheikh.

6. On 18 December 2023, the Respondents were convicted of the offences with which they were charged. The fifth defendant, Sakalyne Sheikh, was acquitted of the DVCVA offence charged in Count 4 but was convicted of the offence of conspiracy, the subject of Count 6.

7. The Respondents entered Notices of Appeal in respect of their convictions on counts 1, 2, 3 and 5. Their appeals were focused upon the correct interpretation of section 5 (1) (d) (iii) DVCVA and its application to the facts of the case. They contended that Lambert J. had been in error in refusing their applications that the DVCVA charges should be withdrawn from the jury. The Respondents contended that the 'unlawful act' relied upon by the Prosecution as having caused serious physical harm to the victim was, if proved, not one which "occurred in circumstances of the kind" that the Respondents had foreseen or ought to have foreseen.

8. On 23 January 2025 the Court of Appeal delivered judgment and concluded that the Respondents' submissions in respect of the DVCVA charges should have succeeded. The Court also concluded that even if Lambert J. did not err in rejecting the submission the summing-up was tainted by too broad an interpretation that Lambert J. had given to section 5 (1) (d) (iii) DVCVA. The Court allowed the appeals and quashed the convictions.

9. On 26 March 2025 the Court of Appeal certified that the following point of law of general public importance was involved in the decision to allow the appeals and refused leave to appeal to the Supreme Court:

> "Whether, section 5 (1) (d) (iii) of the Domestic Violence Crime and Victims Act 2004, which provides, as one of the conditions of criminal liability, that "the act occurred in circumstances of the kind that D foresaw or ought to have foreseen", should be construed broadly so as to include any deliberate and harmful act occurring in the context of previous domestic violence that is known to have been perpetrated against the victim within the same household."

10. On 28 November 2025 the Supreme Court granted the Appellant permission to appeal.

The Facts

11. V was born on 22 January 1985 in the Islamic Republic of Pakistan. On 3 May 2014, while still living in Pakistan, she entered into an arranged marriage with Asgar Sheikh, who lived

with his mother and father and his brother and sister at 15 Clara Street, a mid-terrace house in Huddersfield, West Yorkshire.

12. The family structure was as follows:

Khalid Majid Sheikh: father of the three children of the family.

Shabnam Shahzadi Sheikh: mother of the three children of the family.

Shagufa Yasmin Sheikh: daughter.

Asgar Hussain Sheikh: oldest son.

Sakalyne Sheikh: youngest son.

13. On 13 May 2014, V applied to the British High Commission in Islamabad for entry clearance to the United Kingdom as the spouse of Asgar Sheikh. This was granted on 10 November 2014. V arrived in the United Kingdom on 16 November 2014 and thenceforth, until her admission to hospital, lived with the Respondents and Sakalyne Sheikh at 15 Clara Street.

14. Shabnam Sheikh suffered from diabetes, for which she had been prescribed anti-diabetic medicines, which, from 17 October 2012, included glimepiride. By 23 June 2014 Shabnam Sheikh was being prescribed 6mg glimepiride per day in the form of 2mg and 4mg tablets. Apart from Shabnam Sheikh, none of the Respondents had been diagnosed at this time with diabetes, nor had Sakalyne Sheikh. V was not diabetic.

15. At 01:12 on 1 August 2015 Shagufa Sheikh made an emergency call to the ambulance service in which she reported that V could not breathe properly, and an emergency ambulance was needed. In response to the call, an ambulance arrived at 15 Clara Street at 01:31. The ambulance personnel were admitted by Asgar Sheikh, who showed them into a bedroom where V was lying in bed. Shagufa Sheikh and Shabnam Sheikh were in the bedroom; Sakalyne Sheikh was in an adjoining room; Khalid Sheikh was not in the property.

16. V was unconscious and unresponsive with a Glasgow coma score of 4. Her breathing was very noisy. A decision was made to transport V to hospital.

17. On admission to hospital at 02:05, V was found to be in a very serious condition. She had a high temperature and was deeply unconscious. A CT head scan revealed generalised swelling of the brain. Her Glasgow Coma Score was assessed as being 7 and her breathing was abnormal. During 1 August, a decision was made to conduct a lumbar puncture with a view to

confirming or excluding the presence of infection in the cerebro-spinal fluid, meningitis having been on the list of differential diagnoses. For these purposes the nursing staff rolled V over so that her back was exposed in order that a doctor could conduct the procedure. Once V's back was exposed it revealed the presence of a very severe lesion over the sacrum which measured 10 inches by 4 inches ["the sacral lesion"]. The skin was black with raw exposed subcutaneous tissue at the edges. The Hospital Authorities reported the condition of their patient to the police. Because it was considered that V might not survive, the police asked a Home Office Pathologist and a plastic surgeon to examine her body. Other lesions and marks were noted. These included a lesion to the right ear, scattered lesions over her back and what appeared to be pressure marks to the toes and one of her heels. Radiographs revealed the presence of a lung infection, consistent with her high temperature on admission. The infection was caused by inhaling gastric content while unconscious and thereby unable to protect her airway. The results of the lumbar puncture excluded infection as an explanation for the brain injury.

18. V had not sought any medical attention for the sacral lesion, nor had any been obtained for her, whether from a general practitioner or from a hospital.

19. The police searched the property inside and outside 15 Clara Street. They recovered from a wheelie bin at the rear of the house a pair of trousers which had been worn by V. The trousers smelled strongly of urine and contained black particulate debris from the sacral lesion. They were stained with a 'bleached' appearance over an area which corresponded with the site of the sacral lesion. The police recovered a pillowcase from the bin which was stained with vomit, urine and dilute blood, which had emanated from V. In a ground floor room, the police found a false fur bed throw which was lying underneath unconnected items. The throw was stained with urine and dilute blood which had emanated from V. A pair of trousers which V had been wearing when the ambulance personnel entered the bedroom were seized by the police and scientifically analysed. They were clean and devoid of any urine, vomit or blood staining.

The respective cases in the Crown Court

20. The Prosecution's case was that the sacral lesion was caused by the unlawful and deliberate application of some form of caustic substance to the body of V which had taken place a number of days before she sustained the brain injury which was also caused unlawfully ["the unlawful act"]. The Prosecution could not prove who had been responsible for inflicting either of these injuries but asserted that they were caused by one or more of the defendants; consequently, the

Prosecution presented its case against the Respondents and Sakalyne Sheikh on the basis that each defendant had "caused or allowed" the serious physical harm arising from the unlawful act. The Prosecution was not required to prove which of these alternatives applied (section 5 (2) DVCVA). The elements of the Prosecution's case against each of the Respondents (and Sakalyne Sheikh) were as follows:

(i) V was a 'vulnerable adult' within the meaning of section 5 (6) DVCVA.

(ii) The unlawful act was caused by one or more of the defendants and amounted to serious physical harm. While the precise mechanism by which the injury to the brain was caused could not be proved with certainty, it was likely to have been due to hypoglycaemia, resulting from ingestion of the anti-diabetic agent glimepiride.

(iii) The onus was on the Prosecution to prove that if the cause of the brain injury was the ingestion of glimepiride it had not been ingested accidentally or by V's own deliberate and voluntary act. For such purposes the Prosecution relied upon the evidence that neither V nor any of the defendants had sought medical help for the sacral lesion, together with the evidence which had been adduced in support of Counts 6, 7 and 8.

(iv) The defendants were all members of the "same household" as V, and each of them had "frequent contact" with her (section 5 (1) (a) (i) and (ii) DVCVA).

(v) At the time of the unlawful act there was a significant risk ["the risk"] of serious physical harm being caused to V by the unlawful act of such a person (section 5 (1) (c) DVCVA).

(vi) The defendants were or ought to have been aware of the risk. The Prosecution contended, as a matter of inference from the circumstances, that each defendant was aware that the sacral lesion had been inflicted unlawfully by one or more of them. The Prosecution acknowledged that it was "critical" to the Prosecution's case to prove that the sacral lesion had been inflicted prior to the unlawful act, as evidence of actual or constructive awareness of the risk for the purposes of section 5 (1) (d) (i) DVCVA.

(vii) The defendants had failed to take any steps to protect V from the risk in circumstances in which they could reasonably have been expected to do so (section 5 (1) (d) (ii) DVCVA); and

(viii) The unlawful act occurred "in circumstances of the kind" that the defendants foresaw or ought to have foreseen (section 5 (1) (d) (iii) DVCVA). The Prosecution contended that the subsection should be construed broadly, that the jury was required to consider all the circumstances and not just whether a defendant had actual or constructive foresight of the act or type of act which resulted in the serious physical harm.

21. The Respondents presented their respective cases in common with each other and contended that, for the following reasons, the Prosecution had failed to prove their case on Counts 1 to 5 of the Indictment:

(i) The Prosecution had not proved that V was a 'vulnerable adult' within the meaning of section 5 (6) DVCVA.

(ii) If it was proved that the brain injury which V sustained was not due to natural causes and, as asserted by the Prosecution, that it was caused by the ingestion of glimepiride, the Prosecution had failed to prove that V did not ingest the drug accidentally or deliberately and voluntarily. Since one 2mg tablet of glimepiride would be sufficient to induce a hypoglycaemic coma in a non-diabetic, the amount ingested may not have been any greater and there was a realistic possibility that the drug had been consumed accidentally.

(iii) The sacral lesion was not a caustic burn but was a pressure sore which was caused by V lying inert because of the brain injury which had rendered her unconscious. Consequently, the Prosecution had failed to prove that the sacral lesion was caused before V suffered the brain injury and there was therefore no evidence of any antecedent event which could have created an awareness of the risk for the purposes of section 5 (1) (d) (i) DVCVA.

(iv) Section 5 (1) (d) (i) DVCVA should be construed strictly so as to mean that D must be proved to have had actual or constructive awareness of a risk of serious physical harm being caused by an unlawful act which falls within the same category as the antecedent events which led to the awareness of the risk. Consequently, on a correct construction of section 5 (1) (d) (i) DVCVA, if the unlawful act was committed by any other means, D could not be proved to have had the necessary awareness of the risk.

(v) Since section 5 (1) (d) (iii) DVCVA required proof that the unlawful act occurred in "circumstances of the kind" that the defendant foresaw or ought to have foreseen, and that

the administration of glimepiride was a wholly different set of circumstances to those which involved the application of a caustic substance to V's body, then on a correct construction of section 5 (1) (d) (iii) DVCVA, the act of administering one or more tablets of glimepiride did not occur in "circumstances of the kind" that any defendant foresaw or ought to have foreseen.

The Judgment of the Court of Appeal

22. The Court of Appeal concluded that the statutory construction adopted by Lambert J in respect of section 5 (1) (d) (i) DVCVA was correct and that the emphasis was upon the reasonable foreseeability of the risk, thereby rejecting the Respondents' submissions on this point [§28] - [§30].

23. The Court rejected the prosecution's submission that "circumstances of the kind" will necessarily encapsulate all and any serious harm caused or inflicted by any unlawful means if it occurs within the domestic setting and concluded that if the Prosecution was correct in this respect section 5 (1) (d) (iii) would become otiose [§31].

24. The submission of 'no case to answer' regarding Counts 1 to 5 should have succeeded. The administration of a minimal quantity of glimepiride, even if established to be with unlawful intent, was so "utterly different" from the infliction of the sacral injury that the Court doubted that a reasonable jury properly directed could conclude that it "occurred in circumstances of the kind that D foresaw or ought to have foreseen" [§41].

25. Even if the Court of Appeal had concluded that Lambert J. did not err in rejecting the submission of 'no case to answer' the summing-up was tainted by too broad an interpretation given by Lambert J. to section 5 (1) (d) (iii) DVCVA which did not sufficiently assist the jury [§39] / [§42].

26. The Court of Appeal also commented adversely upon the following aspects of the prosecution's case and Lambert J.'s ruling: (i) the case against the appellants was riddled with evidential difficulties [§36]; (ii) the direction to the jury needed to address each possible causative act of commission where one or other of a specified unnatural and necessarily unlawful act occurred to cause death or serious physical injury [§37]; (iii) section 24 Offences against the Person Act 1861 was engaged and the Judge should have specifically addressed the question of intent [§38 / §42] (iv) there was nothing in the Judge's ruling to indicate that Lambert J. had regard to the evidence that glimepiride appears only "very, very rarely" as a

weapon given deliberately to cause an overdose and hypoglycaemia [§39]; the probative value of factual elements of the case [§40 / §41].

The issues for the Supreme Court to determine

27. Where antecedent events establish, for the purposes of section 5 (1) (d) (i) DVCVA, that D was or ought to have been aware of a significant risk of serious physical harm being caused to V by reason of violence which is perpetrated against V in a domestic setting, should section 5 (1) (d) (iii) DVCVA be construed broadly, so that any subsequent unlawful act which occurs in that setting and causes serious bodily harm to V will amount to "circumstances of the kind that D foresaw or ought to have foreseen"?

28. If the "unlawful act" resulting in serious physical harm was, for the purposes of section 5 (1) (a) DVCVA, one of administering to V, or causing V to ingest, a single tablet of the drug glimepiride and was therefore "utterly different" to the antecedent unlawful act of applying a caustic substance to V's body, could a reasonable jury, properly directed, convict if D is proved to have had actual or constructive awareness that there was a significant risk of serious physical harm being caused to 'V' but did not have actual or constructive foresight of the means by which such harm was to be inflicted or the desired outcome for which it was to be inflicted, on the basis that "circumstances of the kind" encapsulates any or all serious harm caused or inflicted by any unlawful means if it occurs within the domestic setting?

29. Whether the certified point should be answered in the affirmative or the negative. If in the affirmative, whether the decision of the Court of Appeal should be reversed and the convictions restored or whether, if the Court of Appeal's conclusions at [§36] to [§42] of the judgment were correct, they are sufficient to render the convictions unsafe; alternatively, whether the issues raised at [§36] to [§42] therein should be remitted to the Court of Appeal in order for that Court to determine whether they are sufficient to render the convictions unsafe.

ANNEX – CHRONOLOGY OF KEY DATES

04 October 2023 – Trial commences at Leeds Crown Court

07 December 2023 – Summing-Up Part 1

12 December 2023 – Summing -Up Part 2

18 December 2023 – Verdicts returned

14 February 2024 – Defendants sentenced

26 July 2024 – Leave to Appeal granted by the single judge

04 December 2024 – Hearing of the combined appeals before the Court of Appeal

23 January 2025 – Judgment of the Court of Appeal handed down

26 March 2025 – Court of Appeal certifies the point of law and refuses leave to appeal

16 April 2025 – Application for Leave to Appeal / Grounds of Appeal

28 November 2025 – Leave to Appeal granted

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