

IN CONFIDENCE

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IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM The Crown Court at the Central Criminal Court
HHJ Moss
T20077149, 150, 160 + 161 and T20067205 + 7244

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/04/2009

Before:

LORD JUSTICE HOOPER
MR JUSTICE JACK
and
MRS JUSTICE SHARP DBE

Between:

Hassan Ahmed Mir
Imran Hussain
Imran Asif Ali
Usman Butt
Noor Kayani
Aazam Mubashir Butt

Appellants

and

The Crown

Respondent

Mr A Glass QC and Mr M Bonnell for Hassan Mir
Mr S W Leslie QC and Mr R Colover for Imran Hussain
Mr J Dein QC for Imran Asif Ali
Mr J Gold QC and Ms L Power for Usman Butt
Mr M F R Holland QC for Noor Kayani
Mr O S P Blunt QC for Aazam Mubashir Butt

Mr C D W Aylett QC and Mr B Fitzgerald for the Crown

Hearing dates: 5, 9, 10, 11, 12, 13 March 2009

DRAFT JUDGMENT

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EX 107

LORD JUSTICE HOOPER :

1. This is a judgment to which all members of the court have contributed. We would like to express our thanks for the huge amount of work done by those representing the Crown and the appellants in the preparation of the appeals. We could not have been more ably assisted. We also express our thanks to Miss Frances Gribben, the CACD case lawyer, who supervised the preparation and presentation of the case with great care and skill.

Introduction

2. Following a seven month trial presided over by HHJ Moss QC the six appellants were convicted in August 2007 of the murder on 22 April 2006 of Mohammed Ali (count 1) and the murder of Hayder Ali (count 2). The judge had directed the jury that if they convicted on counts 1 and 2 they need not consider the counts alleging conspiracy to cause grievous bodily harm with intent (count 3) and violent disorder (count 4). Two defendants, Kashif Khan and Sultan Mir, were acquitted on all counts:.
3. Count 4 was introduced during the trial and Hassan Mir, Usman Butt and Noor Kayani had then pleaded guilty to it.
4. Mohammed and Hayder Ali were fatally stabbed shortly after midnight on Saturday 22 April 2006 in the area of the junction of Fircroft Road and Upper Tooting Road in London SW17. The background to the case was a long standing feud between Hassan Mir, the first appellant, and a former friend of his, Hammad Bhatti. It was the prosecution's case that Hassan Mir, the first

appellant, stabbed Mohammed Ali and that he and Imran Hussain, the second appellant, stabbed Hayder Ali. The judge sentenced them both on that basis.

5. The Bhatti brothers, Hammad, the youngest brother, Favaad the middle brother and Javaad the eldest brother, were crucial witnesses for the prosecution in the trial.
6. To prevent the trial from becoming unmanageable, four defendants were tried separately in a second trial: Omar Butt, Quadeer Khan, Shazad Kayani and Bilal Kayani. HHJ Moss was also the trial judge. The Bhatti brothers gave evidence again. In circumstances which we shall look at in more detail later, HHJ Moss ruled that the evidence of the brothers given in the second trial was “irredeemably tainted”. The judge fearing that, nonetheless, the jury might accept the evidence as true, decided that a fair trial was no longer possible. He stayed the proceedings. His decision to stay the proceedings was upheld on an appeal by the prosecution: [2008] EWCA Crim 238.
7. It is submitted by the appellants that the verdicts of the jury are unsafe in the light of the ruling at the second trial and of the unchallenged fresh evidence. That fresh evidence includes evidence of what happened in the second trial leading up to the ruling to stay the proceedings. There is also fresh evidence about a meeting on Sunday 23 April 2006 at the home of the deceased, evidence which, the respondent concedes, should have been disclosed but was not disclosed at the trial. That evidence, so it is said by the appellants, further undermines the credibility of the Bhatti brothers. There is also fresh evidence showing a series of telephone calls now known to have been made during the first trial and involving the Bhatti brothers, the deceaseds’ father, Shahid Ali

and Imran Hussein (not the second appellant, and who, to avoid confusion, we shall refer to as “IH”). IH acted as an “intermediary” between the Bhatti brothers and Shahid Ali. There is also fresh CCTV evidence, overlooked by all parties at the first trial, which shows that a conversation with a man called Zak Uddin took place significantly earlier than the Bhatti brothers were saying. According to them, the conversation took place in the minutes before the stabbings and led them to drive to the area where the stabbings took place. The prosecution relied upon this evidence of the Bhatti brothers to show a deliberate and pre-planned ambush on the part of the defendants. In fact the meeting with Zak Uddin took place some one hour and twenty minutes earlier.

8. We should add that there was evidence about which the appellants knew and which they decided not to use at trial. It is said, particularly by Mr Dein QC, that evidence which related to an incident at Tesco and to a conversation between Shahid Ali and the police showing that Shahid Ali was discussing the evidence given by Hammad Bhatti when he should not have been (the so-called “Sohail incident”) would have been put if the evidence relating to what happened at the second trial had been known at the time of the trial. It is not necessary for us to deal with these submissions.
9. Leave to appeal conviction was granted to the six appellants on the basis of the fresh evidence. It is said completely to undermine the credibility of the evidence given by the Bhatti brothers at the trial. Their credibility was very much in issue at the trial. Indeed the prosecution conceded that in certain respects they were lying in their evidence and had agreed to lie in evidence. The judge directed the jury in the summing up with what he was later to

describe as strong a warning as he had ever known. The only issue between the appellants and the respondent is as to the conclusions which this court should draw from that fresh evidence. It is the respondent's case that, notwithstanding the fresh evidence, the convictions are nonetheless safe. It is the appellants' case that the jury might reasonably have reached different verdicts if they had known what is now known about the Bhatti brothers. The respondent does not dispute that this is the appropriate test to apply in this case and that if the jury might reasonably have reached different verdicts the convictions are not safe. The appellants pointed to the fact that the Bhatti brothers explained various substantial changes in their accounts of the events (being changes adverse to the appellants) as being due to an improvement in memory over time and due to "visions". Javaad said, for example: "As time went on I had visions of what happened and my memory got better". It is submitted on behalf of the appellants that, as the fresh evidence shows, the changes came about in pursuance of a plan to pervert the course of justice by "framing" defendants. By "framing" we mean giving evidence inculcating defendants in circumstances in which the witnesses were pretending to remember events of which they had no memory.

The events of 21-22 April 2006- in outline

10. On the evening of Friday 21 April there were a number of separate incidents in the area of the Upper Tooting Road leading to the stabbing in the early hours of the Saturday. We shall call the group which included the two deceased men the "victims' group" and the group containing the appellants "the defendants' group". There can be no doubt that both groups were intent that night on

having a fight. The victims' group lived a little way away from the Tooting area in Colliers Wood and on two occasions came into the Tooting area that night to find and fight with the defendants' group. Likewise the defendants' group were waiting for the victims' group and wanting a fight with them. Indeed there was mobile phone contact between the two groups. In outline, the victims' group won some of the earlier incidents that night whereas the fatal stabbing occurred when the victims' group in a white van were attacked in the area of Fircroft Road and Upper Tooting Road by the defendants' group. By this time they considerably outnumbered the victims' group and out-armed them.

11. In the white van occupied by the victims' group were, in addition to the two deceased, the three Bhatti brothers. These three brothers were the principal witnesses for the prosecution as to what had happened before and at the time of the stabbing. There were in addition a number of independent witnesses describing the events of the evening, including the events leading to the stabbing, but these witnesses did not identify any of the participants. There was also important scientific evidence to which we return later.
12. We shall summarise the evidence relating to the incident which resulted in the fatal stabbing and then summarise the evidence relating to the earlier incidents. Having done that we shall look at the fresh evidence and then examine the impact of that fresh evidence on the case against each appellant.

Fatal incident in Fircroft road

13. At around 12:10am the white van with eleven occupants including the two deceased and the three Bhatti brothers was driving along Fircroft Road

towards the Upper Tooting Road. As the van reached the junction with the Upper Tooting Road it stopped. The prosecution asserted that the van stopped because of the deliberate actions of a white car driven by a member of the defendants' group. The van was then attacked by a group of about 20 men who ran across the Upper Tooting Road from the mouth of Foulser Road. The van was being driven by Javaad Bhatti and in the back of the van were Hammad Bhatti, Favaad Bhatti, the two deceased and others. Leaving Hammad and David Sackey in the van, the others all got out. Those who left from the back of the van went down Fircroft Road away from the Tooting Road. In Fircroft Road, not far from the van, Mohammed Ali was stabbed in the stomach. As he fell to the ground he was attacked by members of the defendants' group. Seeing his brother in trouble Hayder Ali went to help but he too was stabbed and then attacked as he lay on the ground. Both Mohammed Ali and Hayder Ali sustained injuries which quickly proved fatal. The police later recovered from the scene a substantial number of weapons. They included two knives, four baseball bats, poles, lengths of wood, three screwdrivers, a machete, a wheel jack, a hammer, a knuckle duster, a broken bottle and a pair of scissors. In all 39 weapons were recovered from the area around where the attack had taken place. Although some of those had come from the van, the large majority were brought there by the defendants' group. Both knives had black handles and they had distinctive blades. They had been brought to the scene by one of the defendants' group, Imran Aslam. He, on the prosecution's case, had played a significant part in the fatal incident in Fircroft Road. However he was not on trial, having fled to Pakistan. The two knives

were butchers' knives, the blades of which had become significantly worn down by repeated sharpening, as the photographs show.

The incident at Chicken Cottage

14. Earlier that night at around 9pm, Hammad Bhatti was driving along the Upper Tooting Road in traffic. As he drove past the Chicken Cottage he said that he saw Hassan Mir, the first appellant, on the street. On the evidence of the prosecution Hassan Mir came over to Hammad Bhatti's car and asked him what he was doing in Tooting. Hassan Mir was then said to have slapped Hammad Bhatti in the face with the back of his hand through the open window of the car. Hassan Mir was alleged to have said "I am waiting here. Come back. We will sort it out later". Hammad Bhatti drove to his father's shop in Colliers Wood and over the next hour or so a number of people were recruited in order to go to Tooting to confront Hassan Mir and his friends (although Hammad Bhatti and his brothers denied this). The van was then driven back into the Tooting area.

The incident at Foulser Road

16. At around 10:15pm occupants of the van noticed Imran Hussain, the second appellant, and Imran Aslam at the junction of the Upper Tooting Road and Foulser Road. Imran Aslam, so it was said, was armed with a knife. Javaad Bhatti placed a knife in the possession of Imran Hussain, the second appellant, but his account of the incident was confused both as to time and place. Hammad Bhatti and his friends got out of the van and chased after Imran Aslam. There was evidence that one or more of Hammad Bhatti's group was armed. An independent witness saw a hammer being carried. Imran Aslam ran

down Foulser Road. Parked in Foulser Road were two cars, a green Volkswagen Polo belonging to Aazam Butt, the sixth appellant, and a black Polo belonging to Kashif Khan. The green Polo was attacked and a hammer was used to smash the rear windscreen. Hammad Bhatti and his group ran off.

The incident at Dafforne Road

17. At around 10:40pm the van was still in the Tooting area and was recorded by a CCTV camera as it stopped in Trinity Road close to the junction with the Upper Tooting Road. Two or three of the occupants of the van got out and went to speak to the driver of a car that was parked by the side of the road. The driver of that car was the man named Zak Uddin. AS we have mentioned this is of particular importance in this appeal and we return to it later. Uddin was in telephone contact with Omar Butt, the brother of Aazam Butt, the sixth appellant. Shortly afterwards the van drove along the Upper Tooting Road and at 10:45pm the van drove past the junction with Dafforne Road. As it did so the van was attacked by members of the defendant's group who were standing in the mouth of the junction. The van drove away. Following this incident at Dafforne Road the van went back to the shop owned by the Bhatti family in Colliers Wood.

The alleged threat to Sheila Nazir

18. At around 11:15pm that night Sheila Nazir, a sister of the Bhatti brothers, was driving through Tooting with two other sisters and a friend. As they were driving along the Upper Tooting Road, Mrs Nazir became aware of a large group of men who had congregated in the area around the junction of the Upper Tooting Road and Foulser Road. Mrs Nazir said there were as many as

30-40 in the group. It was her evidence, which was challenged, that Imran Hussain, the second appellant, approached the car and showed a knife to Mrs Nazir. She alleged that he said “I am going to get your brothers with this.”

The incident at Noyna Road

19. Although the victims’ group were by now aware that the defendants’ group were armed and looking for trouble, the victims’ group drove back in the van into the area where the defendants’ group were. At around 12:05am on what was now Saturday 22 April, the white van came to a halt at the junction of Upper Tooting Road and Noyna Road, Noyna Road being only a few roads north of Fircroft Road where the fatal stabbings were to take place. Several of the occupants of the van got out. There was then a second attack on the green Polo of Aazam Butt, the sixth appellant. There was evidence that a member of the victims’ group used a machete to cut the black plastic lining which by now had been put in place on the rear window earlier broken by the hammer. There was also evidence that one of the tyres of the Polo was stabbed. The green Polo was later to be found by the police in Foulser Road with the damage to the rear makeshift plastic window and with a flat tyre. The van then drove away. A very short time later the van was being driven down Fircroft Road where the fatal incident occurred. At the scene of the fatal stabbing was found a machete with Hammad Bhatti’s full DNA profile on the blade. When giving evidence he could not explain how his profile came to be on the blade.

The evidence of the pathologist, Dr Fegan-Earl

20. The evidence of the pathologist was summarised as follows in the summing-up:

“So far as Mohammed Ali is concerned, there was a single stab wound to the abdomen with a single-edged weapon. It had passed through the skin, fat, muscle and into the abdominal cavity and the lower part of the liver just above the stomach, through the pancreas and downward into the left loin, close to the kidney. The direction was front to back, above and downwards, from his right to his left. It was 15 centimetres, that is about 6 inches, in length. There was two litres of blood in the abdominal cavity -- that is apparently a third of the total blood volume -- and that caused death. At least moderate force was required for the wound to be inflicted.

Dr Fegan-Earl told you that there are very few injuries that cause instant death or collapse and, with a fit young man with adrenalin flowing, the victim could run following that injury and you would not expect outer bleeding to be immediate. Indeed most of the bleeding here was internal and the blood on the ground had come later than the stabbing itself.

The grazing and so forth that is shown on the body map does not preclude, said Dr Fegan-Earl, ferocious kicking. There were no defence injuries that he could find on Mohammed Ali which might indicate that he was incapacitated early or taken by surprise and the cause of death was given as shock and haemorrhage due to stab wound to the abdomen.

So far as Hayder Ali is concerned, again his injuries are shown in Exhibit 5. There were a number of injuries: first a stab wound with a single-edged knife from below and heading up through skin, fat and muscle but which had not penetrated the chest cavity and was not a fatal wound, second a stab wound through skin, fat and muscle through the ninth intercostal space -- that is between the ninth and tenth ribs -- which then accessed the chest into the aorta 2 to 3 inches. That was thought to have been the fatal wound. Third, there was a linear scratch which only penetrated the upper layer of skin, not fat or muscle, consistent with the tip of the knife passing across the skin. Dr Fegan-Earl suggested that injuries 1 and 2 showed penetration followed by withdrawal and that number 3 was a superficial scratch consistent with the use of a knife tip and the body may have moved away slightly.

The fourth injury, thought to be a potentially fatal injury, was a stab wound through the skin, fat and muscle and the back of the abdomen, penetrating through the inferior vena cava and into the base of the liver. There was significant haemorrhage, the wound track was 6 to 7 centimetres -- that is about 3 or so inches -- from below and upwards, back to front, from the deceased's right to left.

A stab wound was shown also to the left thigh with a single-edged weapon or knife, through the skin and fat and into the muscle of the left thigh, to a depth of 3 to 5 centimetres. There was further a puncture wound to the upper left thigh. The features were not typical of the features of a knife and were consistent with the use of a screwdriver. Indeed at the post mortem Dr Fegan-Earl was aware that there were significant numbers of potential weapons available for consideration, including screwdrivers. The depth was 5.8 centimetres into the muscle of the inner part of the thigh so far as that wound was concerned. There was also a teardrop-shaped area of grazing; query, said Dr Fegan-Earl, a screwdriver passing across the skin. There were signs of blunt force trauma, first to the right side of the head, a blow from a blunt object, a laceration and the scalp was bruised underneath the skin but there were superficial hemispherical fractures of the skull surrounding the wound. Severe force had been employed here caused by a blunt object with a curved presenting face; query baseball bat and so forth. Secondly, to the left side of the head a cigar-shaped area of heavy abrasions -- that is to say grazing -- deep bruising but not fracture and no injury to the brain, moderate but not severe force used. There were grazing injuries shown, which are shown in the graphics, caused by contact with a rough surface; query a fall to the ground or kicks. There were also grazes shown caused by a possible fall to the ground or a strike from a weapon to the shoulder. Possible defence injuries to the palm of the right hand suggesting clean and very shallow slices into the skin, possible defence wounds but comparatively trivial, said Dr Fegan-Earl, caused by glancing contact plus deep bruising on the back and, at the top mid-line, a further area of deep bruising that could not be seen externally, about 3 to 4 centimetres only and not extensive. There was a blow shown to the upper back and the mid-line.

The cause of death, so far as Hayder Ali was concerned, was shock and haemorrhage due to stab wounds to the chest and abdomen.”

21. Dr Fegan-Earl identified various weapons as being weapons which could have caused the injuries which he had found. Dr Fegan-Earl agreed in cross-examination by Mr Glass QC on behalf of Hassan Mir that there were no stab wounds to the back of Mohammed Ali and no stab wounds to the front of the abdomen of Hayder Ali.

The aftermath of the fatal stabbings

22. Unfortunately the police took some time to get to the scene notwithstanding 999 calls. This was because there had been another incident that night in the area which had attracted considerable police involvement.
23. The first police officers who were to start the investigation into what had occurred arrived at about 12:30am, some 20 minutes after the stabbings and some 10 minutes after the arrival of the ambulance service.

Evidence relating to what the Bhatti brothers did and said at the scene

24. Although Favaad Bhatti knew that Mohammed and Hayder had been “plainly mortally injured” (a 999 call was made from his mobile phone at 12.17) and although, so he said, he was still at the scene when the police arrived and were speaking to his brothers, he left the scene without offering the police any assistance. According to the summing up:

“[Favaad] agreed that when the incident finished, he had told the police officer that he had been there at the incident but did not tell him that he had seen two stabbings and who was involved and agreed that he had not given any list of names at the scene.”

25. Hammad and Javaad spoke to the police at the scene and we start with the account of the events given to them by Hammad Bhatti at the scene.
26. During the 20 minutes before the police arrived it seems clear that Hammad Bhatti had put a Stanley knife down a drain in Fircroft Road, a fact he did not disclose at the time and later denied. An independent witness had described seeing: “a man put a rag or plastic bag down a drain in the street” and that the man who had done that was later arrested and released. This

must have been Hammad. The bag was retrieved and had a Stanley knife in it. It is the case of some of the appellants (a case not put at trial), that during this 20 minutes Hammad Bhatti and Javaad Bhatti had decided to tell lies about their involvement in the events of that night. It is clear that, on being seen by the police shortly after the stabbings, Hammad Bhatti did lie. PC Harding spoke to Hammad Bhatti at the scene. Having been told that Hammad Bhatti was a witness to the assaults, PC Harding took him to his vehicle and spoke to him there. Hammad Bhatti gave the officer a list of names which the officer wrote down on a piece of paper and which Hammad Bhatti then signed. That list included the following names (we have corrected the spelling and included missing but unchallenged details): Hassan Mir (the first appellant), Kadir Khan (defendant in second trial), Imran Aslam (fled to Pakistan), Bilal Kayani (second trial), Noor Kayani (the fifth appellant), Shazad Kayani (second trial), Kashif Khan (acquitted defendant at first trial) and Imran Ali (the third appellant). Hammad Bhatti was later to say that the fact that a person's name was on the list did not mean that that person was necessarily one of the attackers in Fircroft Road. Having given the officer the list, Hammad Bhatti pointed out a house in the area which he rightly said was the address of Hassan Mir, the first appellant.

27. PC Harding then took a statement from Hammad Bhatti while sitting in the car. The statement was timed at 3:15am. Hammad Bhatti had had an opportunity to speak to Javaad Bhatti before the arrival of the police but no opportunity to speak to him following the arrival of PC Dean shortly after 12:30. Nor had he had an opportunity to speak to Favaad Bhatti after the

arrival of the police because Favaad Bhatti (on his account) had left the scene shortly after the arrival of the police at about 12:30 am.

28. In his statement Hammad Bhatti said that he had been with his brother Javaad Bhatti and his two cousins Hayder and Mohammed, the two deceased. He said that they had been in the family van on the way to a pizza shop in the Upper Tooting Road and that his brother Javaad was driving, that he was sitting next to him with Hayder and Mohammed also on the front seat.
29. That statement by Hammad was replete with lies. It deliberately omitted the presence of Favaad Bhatti and the six other occupants of the van. Whilst it is true that Javaad Bhatti was driving, Hammad Bhatti was later to admit that he, Hayder and Mohammed were not in the front seat, but were in the back of the van. Whereas if he had been in the front of the van he would have had a good view of what was occurring, in the back of the van his view was limited to what he could see through an aperture in the wall between the back of the van and the driver's compartment. That aperture was about 12" x 8" and he was much later to say that he was looking through the aperture with his brother Favaad. (Yassin Bashir also described what he could see looking through the aperture.) The statement that they were on their way to a pizza shop in Tooting Road was also a lie. There was no mention of the earlier incidents to which we have referred and it is abundantly clear that the victims' group were spoiling for a fight and that is why they had come to the Fircroft Road area. There was also no mention of the Stanley knife which he had put down a drain.
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30. The statement by Hammad goes on to read as follows:

“As we were driving down Fircroft road towards the Upper Tooting Road I saw a group of about thirty people on the opposite side of the road, one of them threw a brick at the windscreen of our van.

My brother stopped the van short of the junction and Hayder and Mohammed jumped out and started to run back up Fircroft Road.

The group then started running towards us, Hassan Mir, Imran Aslam and Shezad Kiani, all run straight past the van on the passenger side up Fircroft Road. My brother had also run up Fircroft Road. I managed to lock myself in the van. The rest of the group started to hit the van and windscreen with bricks, baseball bats and a road sign. I got out and run to the back of the van and locked the back door and then the side door. I could hear loud bangs on the other side of the van. Someone wearing a brown hoody got into the van and tried to start it up, when it wouldn't start he got out and took the keys with him.

I had locked myself in the back of the van, I was looking through the window between the seats and the cargo compartment.

I heard sirens and someone shouted, ‘the Feds are coming.’ Some of the group started to run away. I saw Shezad, Hassan and Imran run past the front of the van. Hassan run over the road and disappeared from sight. Imran, Shezad and Noor and Kashif got into a black Volkswagen Polo which had blacked out windows, the vehicle then made off towards Balham High Road.

I got out of the van and run up Fircroft Road, where I saw Mohammed lying on the floor. I could see that he was bleeding from his back and his front. I don't think he was breathing. I run further up the road. Hayder was lying on the floor, he was bleeding from his head. I tried to hold it together and stop the bleeding. He was not saying anything he was just making noises. Lots of people were starting to come out of their houses. The ambulance arrived but could not get into the road because our van was blocking it. My uncle was with Hayder so I tried to push the van out of the way. I was grabbed by a male and a female, they said that they thought I was a suspect and kept hold of me until the police arrived. I have known Hassan Mir for about eight years as I went to school with him. He was wearing grey Nike Airmax tracksuit top and bottoms. In his right hand he had a large knife.

I have known Imran Aslam for about eight years, I also went to school with him, he was wearing a blue sweat top, blue jeans and white trainers. In his right hand he had what appeared to be

a kitchen knife which had blue and yellow tape around the handle. I have known Shazad Kayani for about three years also through school. He was wearing a grey T-shirt. In his right hand he had an object that he was using to smash the windscreen and attack the van. I am willing to attend court re this matter.”

31. Hammad Bhatti’s evidence as to his position in the van and whether he remained in the van was to go through a number of changes. As we have already said, it became clear that he was not in the front of the van at the time of the attack. It is also to be noted that he referred to his uncle being there with Hayder Mohammed, the deceased. The uncle’s name was Ashfaq Razak. Ashfaq Razak was in fact in the van in the front seat contrary to what was said in the earlier part of the statement. At the second trial Hammad Bhatti was to say that he had remained in the back of the van throughout the incident.
32. Although this statement contains the lies to which we have referred, what Hammad Bhatti said in this statement about the appellants formed an important part of the prosecution’s case at trial and the respondent’s case on the appeal. However, that case was inevitably flawed by the fact that Hammad was purporting to describe things through the front window rather than through the aperture with the consequence that at least some of the things that he described as occurring could not have actually been *seen* by him.
33. We turn to what Javaad said at the scene. PC Parker arrived at the scene at about 12.30. He was near the metal gates at the rear of the Classic Club, which is near the junction of Fircroft Road and Upper Tooting Road. Javaad Bhatti approached him and said that weapons had been thrown over the gate by a man called Hassan (the first appellant). Later a knife used to stab Hayder Ali (ETK/7) was found at the rear of the Classic Club, as well as a hammer

and a baseball bat. Javaad told PC Parker that his brother (i.e. Hammad) knew Hassan's address. PC Parker's statement dated 22 April then reads as follows:

“He then told me that he had been driving the white van R62AET when it had been attacked by a group of 15+ males armed with various weapons. He had run up Fircroft Street with his younger brother and cousins pursued by these males, who then violently assaulted his cousins. As [Javaad Bhatti] was a victim and witness I passed him over to PC 552WW Dean to take details.”

34. Mr Leslie QC for the second appellant submitted to us that the reference to the younger brother going up Fircroft road was a reference to Hammad and that Javaad had deliberately omitted to mention Favaad, who had by now left the scene. He submitted that this deliberate omission was a result of a conversation with Hammad before the police arrived, during which they had both agreed to conceal from the police Favaad's presence in the van. Mr Aylett QC for the respondent submitted that the reference to the younger brother was a reference to Favaad, Hammad having remained in the rear of the van until after the stabbings. This point made by Mr Leslie not having been made at trial, it is not easy for us to resolve this discrete issue now, but we return shortly to the issue of whether the brothers had agreed at this early stage to conceal information from the police.

35. PC Dean takes up the next stage. PC Parker informed him that Javaad was a key witness and then another officer arrived with Hammad. PC Dean's statement dated 19 May 2006, reads in part as follows:

“In the interest of continuity I explained to the two males that I would take their details but would need to keep them apart to prevent them from discussing what they had seen so I could obtain the best account from both of them. Both were happy to do this. I asked the younger of the two to wait at the front of a house while I spoke to his brother. While I was taking details

the male I had spoken to and requested to wait was led away to the end of the road by another officer who I believe took his account and details. I decided to take [Javaad] back to my police vehicle where I could take his account without anyone overhearing, contaminating their views. Once inside the police vehicle he gave his address as [Javaad] then described the first suspect to me. He described him as an Asian male, stocky build, about 18-19 years old, with short hair and a possible goatee. The suspect was wearing a hoodie which was grey and black, black tracksuit bottoms and trainers. He stated he knew this male as Hassan but did not know his surname. He then described another male to me as an Asian male, 5' 9" tall, 18-19 years old, who was skinny. He was wearing a white shirt with some sort of dinner jacket. (page 33 of my pocket book). [Javaad] stated that the first suspect had stabbed both of the victims using a knife which he described as having a 8-9 inch blade which was silver, with a black handle.

He also stated he saw a second knife about the same size with a brown handle. He then described a third suspect to me as an Asian male, 5' 8", 18-25 years old wearing a grey hooded top. He stated this male was gaunt looking and had gold teeth, he said he knew his street name to be 'switch'. [Javaad] then told me that the two people who had been stabbed were his friends, the first being named Mr Mohammed Ali, approximately 25 years old. He stated he saw the first suspect stab Mr Ali in the centre of his chest underneath his rib cage, swinging his arm round in a cross motion. He then stabbed the victim again in the back as he fell. He then stated that he witnessed the first suspect stab the second victim in the back. [Javaad] gave the second victims details to me as Hayder Ali, approximately 23 years old. [Javaad] was becoming more upset as he was unaware of what had happened to his friends. I managed to keep him calm and continued talking to him for approximately three hours until his dad arrived and broke the bad news to him."

36. In so far as Javaad was saying that Mohammed Ali had been stabbed a second time in the back by Hassan Mir, that was not consistent with the evidence of the pathologist. Javaad was later to change his account to say that Mir only stabbed him once in the abdomen, bringing his evidence into line with that of Favaad on this topic.
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37. We return to the issue of whether the brothers had agreed at this early stage to conceal information from the police. The fact that Hammad had listed the names of those in the van omitting reference to the presence of seven others including Favaad (who had left the scene notwithstanding the fatal injuries to his cousins), the fact that Javaad makes no reference to anyone in the van other than “his younger brother and cousins” and the fact that neither Hammad nor Favaad made any reference to the previous incidents suggest strongly, in our view, that Hammad and Javaad had agreed at this early stage to conceal some information from the police.

Bhatti brothers' significant witness interviews and subsequent first statements

38. In this part of the judgment we shall concentrate on the accounts given by the brothers in so far as they describe what they were doing. Their descriptions of what the appellants were doing will be examined later.

39. Hammad Bhatti was interviewed in the afternoon of 22 April. He described how, when the van arrived in Fircroft Road just before the stabbings, he was in the front of the van with Javaad driving, that the deceased were also in the front, that Favaad was in the back and that they were on the way to buy pizzas. There was only the five of them. Apart from the fact that Javaad was driving and that Favaad was in the back (a fact earlier omitted), the remainder of this account was untruthful. Many of the earlier events of that evening were omitted.

40. Hammad described how Javaad and the deceased got out of the front of the van and his brother Favaad got out of the back. Hammad then described how he got out of the front of the van, what he saw behind the van and how he then

got into the back of the van and looked through the aperture. He gave a detailed description of what he saw through the aperture, happening in front of the van (some of which, to say the least, was inaccurate) and how he then got out of the van when those involved in the attack had dispersed. He also drew a plan which showed, amongst other things, how, on his untruthful account, he had got out of the front of the van and got into the back. When he was re-interviewed on 24 April he accepted that the account which he had given on 22 April was in a number of respects untruthful. In a witness statement dated 27 April he described being in the back of the van, looking through the aperture, opening the door and seeing many of the attackers, getting out of the van, going to the front of the van to recover personal possessions and then getting back into the van again. In evidence in the second trial he said that he never got out of the van at all until after the stabbings (bringing his evidence into line with the account which he had allegedly given to Shahid Ali whilst giving evidence during the first trial, the so-called "Sohail incident" referred to in paragraph 8 above).

41. Favaad Bhatti was interviewed late in the evening of 22 April and in the early hours of 23 April. He gave an untruthful account of events being a similar account to that given by Hammad. For example, he omitted reference to the earlier events, he said that they were on the way to get pizzas and that Hammad was in the front of the van. He described looking through the aperture and seeing various things (the later accounts involved both of them looking through the aperture). He then described getting out of the van.

42. Javaad's account in his first significant witness interview on 22 April was that he was driving, his brothers were in the front seats and the only other occupants of the van, the deceased, were in the back. They were in the van to get something to eat. Even at the trial none of the brothers admitted that their real reason for coming to the area, as the respondent accepts, was to sort the defendants' group out.
43. In his summing up HHJ Moss said this about the accounts given by the Bhatti brothers on 22 April and in the early hours of 23 April and the concessions made by the prosecution in relation to those accounts.

“The three Bhatti brothers, together with Yassin Bashir, a friend of Hammad and of Favaad, have been shown and to a large extent have admitted not to have told the truth in interviews with and statements to the police, which were the precursors to their evidence in this case. [The Bhatti brothers and Bashir] have now given evidence in this trial, which they swear to be true. They have been extensively and properly cross-examined by learned counsel in order to demonstrate the often admitted fact that they had previously not told the truth either by lie or by omission. You have seen and heard examples of such matters in the course of their evidence. They gave reasons for such untrue accounts, of which I will remind you in my review of the evidence, which they, in effect, ask you to accept as genuine. However, it is properly and fairly conceded by the Crown that it must be beyond doubt that these witnesses colluded in the false accounts which, on any view, they at least initially gave. What you make of their evidence is ultimately a matter entirely for you. However, it is right that I should warn you of the special need for caution in evaluating the evidence which they now give and swear to be true. You must bear in the forefront of your minds that these four witnesses may each have a powerful motive not to tell the truth and to give evidence which incriminates or tends to incriminate any of these defendants in these matters. It is clear -- and rightly and fairly conceded by the prosecution -- that the Bhatti brothers in particular colluded in an endeavour to hide from the police in the early stages of this enquiry the true reason for their trips to Tooting on that night and they persisted, did they not, in the same lying account in their evidence to you, so approach their evidence, as I say, with caution.”

44. Mr Aylett accepts that the Bhatti brothers had conspired in the early stages of the investigation to pervert the course of justice. The effect of his submissions is that they did so to conceal their own involvement. However, when Hammad (assisted by the accounts of his brothers) lied about being in the front seat at the start of the fatal incident in Fircroft Road, he was able to give an account of what he then saw. This was an account which he largely maintained, but which is much more difficult to accept as both truthful and accurate if he was only looking through the aperture.

Sunday 23 April

45. At 12.30 pm on the 23rd Hammad Bhatti responded over the phone to questions from DC Briddon about Imran Ali (the third appellant), who had been arrested, and his answers were reduced into a statement made by DC Briddon the next day. During the course of a recorded significant witness interview on 23 April, Hammad Bhatti accepted that DC Briddon had correctly recorded his answers and that they were true. We shall look those answers when we consider Imran Ali's appeal below. Mr Dein, on behalf of Imran Ali, cross-examined DC Briddon in an attempt to show that pressure had been put on Hammad Bhatti to give, for the first time, incriminating evidence about Imran Ali during the telephone call. Mr Dein told us that, had he known about the meeting on 23 April at the home of the father of the deceased, he would have cross-examined Hammad Bhatti to suggest that, in his answers to DC Briddon, he was "framing" Imran Ali.