

**IN THE DISTRICT COURT
AT AUCKLAND**

**CRI-2005-004-025661
CRI-2005-004-025650
CRI-2005-004-025659
CRI-2005-004-025651**

THE QUEEN

v

**GURPREET SINGH BUTTAR
GURNAM SINGH BUTTAR
HARPAL SINGH NIJJAR
AMRIT SINGH**

Appearances: Ms M Gatland for the Crown
Ms L Freyer for Gurpreet Buttar and Gurnam Buttar
Mr M Hine for Harpal Nijjar
Mr S Patel for Amrit Singh

Judgment: 14 September 2007

NOTES OF JUDGE FWM McELREA ON SENTENCING

The charges

[1] After a very long process that has occupied the best part of two months the Court has now reached the stage of imposing sentence in respect of four defendants who pleaded Guilty about six weeks ago to the one charge that they each faced of wounding with intent to cause grievous bodily harm. The indictment records the charges being that they on or about 18 November 2005, with intent to cause grievous bodily harm to Hardev Singh Brar, wounded him.

The Summary of Facts

[2] The summary of facts, which is accepted for sentencing purposes despite some equivocation about that at an earlier point, shows that on the day in question (18 November, a Friday), at about 7.40pm the accused Gurnam Buttar was driving his motor vehicle west along Mt Albert Road, Mount Roskill, towards the intersection of Mt Albert Road and May Road. Also with him was his young cousin Gurpreet Singh Buttar and three friends, Harpal Singh Nijjar, Amrit Singh and Kanwaldeep Singh Grewal.

[3] The last-named of those has made a late application for leave to vacate the Guilty plea entered after a sentencing indication six weeks ago. That application is to be heard in the High Court next week. He is therefore not here for sentence today, although his Guilty plea at present stands.

[4] The vehicle which Gurnam Buttar was driving overtook another vehicle travelling in the same direction, driven by the victim Hardev Brar. The summary of facts records, somewhat cryptically, that “the victim and the accused are known to each other.” There is in fact quite a background to that relationship, which I come to later.

[5] Upon overtaking the victim’s vehicle Mr Buttar senior stopped his vehicle in front of the other, causing it to stop and causing a backlog of traffic. The accused got out of their vehicle and approached the victim who was still seated in his. The accused Gurnam Buttar was armed with a traditional sword, and the accused Gurpreet Buttar was armed with a metal rod.

[6] The accused immediately attacked the victim’s vehicle using the weapons, smashing the windscreen and chopping at pillars around the driver’s door. The group pulled the victim from his vehicle and began to strike him numerous times about his head and body using the weapons. Those not armed physically detained him, by holding him, allowing those with weapons to strike him. During the attack he was able to break free and run a short distance from the group but was quickly

caught and was again attacked a second time in a similar fashion. Throughout the attack the victim was repeatedly struck with punches and kicks by all of the accused.

[7] As members of the public began to intervene the accused ran back to their vehicle but Gurnam Buttar stopped just prior to entering the vehicle and raised the sword used in the attack above his head in a victory type salute to those looking on.

[8] As a result of the attack the victim received injuries that necessitated his hospitalisation because there were serious lacerations or cuts to his head and body, and bruising to his head and body. Two of the lacerations had underlying skull fractures. His right arm was fractured under a laceration that required surgery to repair, and the victim also received lacerations to his hands where he attempted to hold the blade of the sword used in the attack.

[9] As a result of the attack, damage was caused to the victim's vehicle. Four days after the attack the accuseds voluntarily presented themselves to the police.

[10] Those are the facts on which the Court must proceed.

Punchayati procedure

[11] I mentioned a sentencing indication at an earlier point. I perhaps should say that after the sentencing indication was given the Court gave an opportunity for the Sikh community to hold a community meeting following a procedure known as Punchayati, which comes from a term meaning a meeting of five or more people. That is a traditional Sikh process of dealing with conflict, and involves five or more senior and respected elders of the community playing a facilitating role.

[12] The Court received an account of that meeting from the restorative justice co-ordinator for the Auckland District Court who was invited to attend the Punchayati meeting.

[13] There had been a desire on the part of the Sikh community to have the victim attend but I did not agree to that, and I need to explain why because there is some

mention made of it by the Sikh people writing in material supplied to the Court today who say that they were prevented from bringing the two parties together.

[14] At the time that that Panchayati meeting was held, the accuseds' pleas were still Not Guilty and a three week trial was due to commence approximately two or three working days later. The Court was not prepared to put a Crown witness, the victim, in a position where he might have been under pressure to change his evidence. That was a concern expressed by counsel for the Crown at the time, and supported by me.

[15] In any event surrogate victims came forward from the Sikh community and were able to speak of their experiences as victims. All of the defendants spoke and expressed their remorse as to what had happened. They also accepted that reparation needed to be paid to the victim, and they left it to the Panchayati committee to approach the victim to see what might be appropriate.

[16] The Court appreciates the efforts made by the Sikh community in arranging that conference. It was an important step in my view in the process of bringing about a resolution of this matter.

Restorative justice process

[17] The next day after counsel had taken instructions from their clients, Guilty pleas were entered by all five defendants and the trial fixture was vacated. At the request and initiative of the defence, the Court adjourned the matter for the possibility of a restorative justice process to be followed. The normal process in such cases in this Court was applied, which meant that the restorative justice co-ordinator, Mr Takitimu, interviewed each of the defendants to ensure that their acceptance of responsibility was a real one and not just a notional one and, having found them suitable for the conference, that went ahead. The conference took some time to arrange and indeed was held only on Monday of this week.

[18] I have a report of that conference which shows that it was convened by independent facilitators, arranged through the restorative justice co-ordinator at

Court. The conference went on for some three hours and was attended by the victim, all offenders, two facilitators, and a mixture of relatives and friends of the victim and some offenders, plus community representatives - there being five of those, some of whom had been involved in the Panchayati process.

[19] The report of the conference shows that it was a successful conference in that what had been a very distressing experience for the Sikh community (who all know each other as a small community) had been able to be dealt with in a helpful way. The offenders all expressed remorse concerning the offence and there was significant Sikh community involvement, not only at the conference but prior to it. The offenders had publicly acknowledged their offending to the Sikh community and had felt ashamed before their community by what they had done.

[20] Whilst the victim before the conference had expressed a fear of the offenders, as indeed his victim impact statement prepared at that time makes clear, the report states that by the end of the conference the victim said he was no longer afraid of the offenders.

[21] He also accepted the offenders' apologies and was satisfied with the gestures of reparation. These consist of financial reparation, community service within the Sikh temple, and religious and "right living" counselling.

[22] These then were the outcomes of the conference. Each offender had offered an apology which the victim and his wife accepted at the conference. Each offender offered \$10,000 reparation, payable within 14 days. The victim said he was satisfied the money covered his financial, physical and emotional losses. Each offender was to continue with religious and "right living" counselling which the victim said was of value to them, as of course did the Sikh community leaders. Each offender agreed to do 250 hours of community service at the Sikh Temples. This would be supervised by two of the community leaders who are named in the report.

[23] The report concludes by saying that the victim said he was no longer afraid of the offenders and he is actively again now involved in Sikh community activities. The report also notes that the Sikh community leaders said that restorative justice

had been a healing process for all. The offenders have publicly acknowledged their offending to the Sikh community and the leaders believe this incident had led to a helpful reflection by their community.

[24] In short, the process was successful in achieving the important aims of restorative conferencing which usually include involving those most directly affected (including communities) in dealing with conflict and wrong-doing; enabling the victim to express their views and be heard in their concerns; enabling them to ask any questions they may wish to ask and obtain information; enabling apologies to be conveyed if that is the wish of the parties; assisting a healing process so that the parties can talk about making things right rather than continuing to dwell in the past; and allowing the community to grow and move forward. All of those objectives, and others that I will mention later in terms of Sentencing Act purposes, in my view were achieved and it certainly was a good conference.

The victim's views

[25] I have referred to the victim's views expressed at the conference. Subsequent to the conference an updated victim impact statement was supplied by the Crown. This contained the original information which demonstrated the very deep and real hurt, emotional and physical, suffered by the victim as a result of this offending. It demonstrated his fear and the fact that he was thinking of moving to Australia. It demonstrated his concern for the financial costs on himself and his family, and concluded that if he saw them again he would be quite upset. He said at that time that he had seen them at the Temple and had had to leave. He commented "my religion is very important to me, I should be able to go to the Temple".

[26] The updated report adds a few short paragraphs to the original report. It refers to the victim's attendance at the restorative justice meeting with the five men who attacked him. It refers to the apologies that were made and the offers of putting matters right. It says that the victim

felt the agreement showed that the men were genuine and I accepted the offers made. However, this was conditional that they also face a Court-imposed sentence. I believe it is important that these men face the Court's

sanction. It is more relevant than the undertakings they have agreed to as it is imposed upon them as a deterrent for future behaviour.

[27] At the request of one of the defendants I have also heard from the victim, Mr Brar, who has been present in Court today and asked to speak. He spoke briefly, saying that he was very happy with the outcome of the restorative justice process and indicated that he did not want the offender's families to have to go through the sort of pain and suffering that his family had gone through, and that he was content with the proposals from the restorative justice meeting and did not seek any sentence of imprisonment.

[28] As the Courts have remarked before, while the Courts must take into account victims' views about such matters the fact that a victim does not see imprisonment as necessary or appropriate is of course not binding on the Court. The Court has a much wider mandate and must represent the interests of all concerned including society as a whole. That is not to say that the Court treats such people as not caring about violent offences of this type, but simply to say that it has to make its own mind up on these matters.

Taueki analysis

[29] The submissions filed by the Crown very helpfully take the Court through the processes which are set out in the Court of Appeal's guideline decision *R v Taueki* [2005] 3 NZLR 372. The matters which were suggested as being relevant contributors to the seriousness of offending of this type, grievous bodily harm, are set out at paragraph 31 of that decision.

Extreme violence

[30] The question of extreme violence is the first matter raised. I do not put this case quite in that category. There was very considerable violence but it was not prolonged and the effects of it fortunately, perhaps by the grace of God, were not permanent. The victim has recovered, it appears fully, from the physical effects of the attack.

Premeditation

[31] The second matter raised is premeditation. At the time of giving a sentencing indication I proceeded on the basis that this was a case where there was a considerable, if not high, level of premeditation. Reflecting on the matter and hearing counsel since, I have come to the conclusion that that is not necessarily so.

[32] And I pause at this point to mention evidence given today by a leader from the Sikh community, Mr Ajit Singh (not the same person as the Judge of that name) who is a community leader. He describes the conflict that can arise for Indian people where there is for some a history of arranged marriages and for others a growing tendency for the marriage partners to choose their husband or wife themselves.

[33] I am told by Mr Singh, and I accept it because it is not disputed by the Crown, that there was a background of such tension between the principal parties in this case, and by that term I mean the victim and Mr Gurnam Buttar. That defendant and his wife had entered into what is called a “love marriage” when there had been an expectation on the part of some members of the community, including it appears the victim, that an arranged marriage involving one of them would take place. (There is other information in Mr Singh’s memorandum which deals with possible financial gain to people that might be associated with arranged marriages, but I put that aside entirely because there is no evidence of that beyond the statement and it is a matter that would be aggravating as far as the victim is concerned without the Crown having a chance to counter it. So I ignore that aspect). But I accept that there was here a history of bad feeling which indeed Mr Singh says “led to a feud situation” between those who wished to prosecute the arranged marriage and those who were supporting Mr Gurnam Buttar and his new wife.

[34] Whilst at the time of the sentencing indication I considered that any such background could only be an aggravating matter as it might have pointed towards a revenge response, I am now of a different view and partly assisted by Mr Ajit Singh’s advice to the Court, but also in response to submissions made by counsel for Mr Gurnam Singh Buttar, I accept that there was no provocation on the part of the

victim, but certainly a history of bad feeling amounting to a feud which put both men and their families under very heavy and direct stress.

[35] I accept in the case of Mr Gurnam Buttar that, as Ms Freyer put it, under that stress on this particular day he “snapped”. And I gather that there was some question of people making rude gestures to each other immediately prior to this assault. I am not suggesting that was the victim’s fault, I am simply saying that it appears that given a background involving a feud, something came to a head very quickly and somebody who is normally of peaceable character did snap.

[36] I therefore put the level of premeditation on the part of that defendant at a moderate rather than a high level and I accept that the other defendants, who have said through their counsel that there was no plan in advance of their going in the car that day, is not inconsistent with the summary of facts. Several of them say that they were contacted by their friend Gurnam Buttar about going to an Indian movie and they were in his car for that purpose. I proceed on the basis that that may well be the position; as I say, it is not inconsistent with the summary of facts and it would suggest that the element of premeditation was very low for the others who in truth got involved at very short notice once Gurnam Buttar got out of his car and “led the charge”.

[37] With that necessary digression on the subject of premeditation I move on, but I just pause to say that I have taken some time on that point because it has led me to reduce slightly the starting point that I had indicated at the time of the sentencing indication, for all parties.

Serious injury

[38] The next heading in the list of contributing factors in ***Taueki*** is that of serious injury. I have already noted that whilst it was serious in its own way, and could have had much worse consequences, the results in fact have been remarkably or blessedly healed.

Use of weapons

[39] The next heading is the use of weapons and this, as the Court notes, is a serious aggravating factor. The ceremonial sword, whilst not as sharp as a sword intended for true military purposes, was sufficiently sharp to be able to inflict serious injuries and was a weapon of that type. The iron rod seems to have been something that came to hand rather than being carried in the car for the purpose of its being used, and it was perhaps more in the nature of somebody picking up a piece of wood off the street or a fencepost.

Other factors

[40] Attacking the head is an aggravating aspect and that certainly applies here, particularly in respect of Gurnam Buttar.

[41] The next two factors do not apply, that is using violence to facilitate some other crime, or to pervert the course of justice.

[42] The fact that there were multiple attackers is a factor here that is present.

[43] The next issue is vulnerability of the victim and that does not apply here apart from his being outnumbered which is already dealt with by the multiple attackers. There was no home invasion involved, no gang warfare, no public official involved and in my view this is not to be seen as vigilante action or a hate crime.

Crown submissions

[44] The Crown suggested, and I think quite responsibly, that given all of those factors a starting point for Gurnam Buttar might appropriately be one in the range of eight to ten years, looking only at the factors relating to the offending itself and leaving aside for the moment all personal factors. The Crown submitted that a lesser starting point (something in the range of six to eight years) might be appropriate for the other three defendants, but perhaps slightly more for Gupreet Buttar because of his being the other person with a weapon. On the other hand it was acknowledged

that he gets a discount at a later point, which the others do not get, on account of his extreme youth.

Fixing the starting points

[45] At the time of hearing submissions for the purposes of the sentencing indication I indicated a starting point in respect of Gurnam Buttar of seven-and-a-half years. I now think, having regard to the slightly different view I have about premeditation and the role of this feud which has been explained to me, that a starting point of seven years instead of seven-and-a-half is appropriate.

[46] I indicated for Gurpreet Buttar a starting point of six years; and five to five-and-a-half for the other defendants. The six years was based on the fact that he had a weapon and the others did not. Because of the lesser role of premeditation in respect of these three defendants, and indeed I put it at a very low level, my view is that the starting point should come down slightly for them as well.

[47] For Gurpreet Buttar I start at a point of five-and-a-half years; and with the other two a starting point of five years, the half year being the reflection of his taking hold of the weapon and involving himself with that.

Personal factors

[48] It is then important to have regard to the number of personal factors which are mostly common to all defendants. For all of them this offending was quite out of character. None of them has any previous convictions and although nearly two years has gone by since this terrible incident happened, none has got into any other trouble. They therefore come before the Court with excellent references from people who know them, and the Court is able to treat this as conduct quite out of character for all of them.

[49] They are all relatively young men, the oldest Gurnam Buttar being 31. He is married with three children, two of whom are eight-week old twin girls. Gurpreet Buttar was 18 at the time, and is now 20 years old. He was in New Zealand as a

student. Harpal Nijjar was 26 and is now 28. He is married with two children aged three and four. Armrit Singh was 30 years old, is now 32 years old and is married with two children aged three, and ten months. They are therefore mostly people with family responsibilities whose families will be severely effected by any sentence the Court imposes.

[50] Next I need to mention that Gurnam Buttar has provided evidence of considerable changes in his own personal life. He used to drink and smoke sometimes but he has given that up altogether. He is now a regular attender at the Temple, going there I gather on a daily basis to pray. The references supplied for him show that he has involved himself fully and deeply in his Sikh religion.

[51] In respect of Gurpreet Buttar there is no suggestion that he needed to make any changes in his life. His young age and the fact that he was only in New Zealand for about a month before this happened and was staying with his uncle, Gurnam Buttar, enables counsel to submit that he was more easily led because of his youth and his relationship with one of the parties to the feud. I accept those as personal mitigating factors.

[52] In respect of Harpal Nijjar I note that he has never used alcohol or drugs and so any question of him needing make changes for the better does not arise - and I assume, or gather, that the same is true for Mr Armrit Singh.

[53] Nevertheless, as a result of this incident all defendants have undergone anger management courses and are part-way through a lengthy course. All will suffer, not only through their families' suffering, but also in terms of loss of work or other opportunities. At least two of them, that is Harpal Nijjar and Gurnam Buttar, have lost their taxi driver licences and are unlikely to get those back. Mr Harpal Nijjar I note has always been a very hard worker, holding down two, or sometimes three jobs and never being on any form of benefit. The general picture that I have is that these are good hardworking citizens and the loss of their jobs is going to pose serious financial problems for those who depend upon them.

[54] In respect of the student Gurpreet Buttar his student visa has expired and his counsel says he is most unlikely to get it back as a result of this conviction. He may not be able to remain in New Zealand.

[55] Other mitigating factors besides their personal attributes that I have mentioned include the expression of remorse in a fulsome way, in a direct and personal way through the restorative justice process, and acceptance of responsibility for what occurred. That applies to all four.

[56] There is also the offer of reparation that was made and indeed, on behalf of the four defendants, a senior member of the Sikh community has paid into Court some of \$40,000 to enable a reparation order of \$10,000 to be made against each defendant in fulfillment of their undertakings at the restorative justice conference. The defendants have all agreed to repay the Sikh community for that amount and of course they will know that the victim's financial needs will have been met immediately. They will be grateful to the Sikh community who have made that possible, but they had even prior to this put in train arrangements to borrow money from family members in order to make payments. Indeed one of them had come to Court armed with \$5,000 as half of his payment at this stage.

The guilty pleas

[57] There is also of course the importance of the Guilty plea that has been entered. Often that is the only mitigating factor and it should not be downplayed in this case by being allowed to be swamped by all the other factors that are being mentioned. I accept that the Crown submission that they are not entitled of course to the full remission of penalty that would accompany an early Guilty plea, because the matter had to go through the legal process for nearly two years to reach the stage of a trial, and the Guilty pleas were entered only a few days before trial. Nevertheless it did save the victim from having to give evidence against these four people. It saved other people from having to come to Court and, depending on the outcome of application for leave to change plea made by the fifth defendant, there may be no evidence needed at all. That benefits not only those who have to put themselves out to give evidence and go through the trauma that can be involved, especially for

victims appearing in Court as a witness; it also saves the State cost of the trial process.

[58] I say here that in the circumstances of this case, and particularly in the case of the youngest defendant Gurpreet Buttar, that his immaturity may have played a part in his indecision as to plea. I consider that all defendants on the Guilty plea alone should be entitled to a discount in the order of 15 to 20 percent.

Other factors

[59] There is also the fact that they handed themselves into the police, which shows an early acceptance of responsibility, as well as an element of co-operation. There is the element of “unbearable stress” that I have already mentioned raised by Ms Fryer for Gurnam Buttar. I accept that description of what may have been going through Mr Buttar’s mind prior to this incident.

[60] I accept also her submission on behalf of Gurpreet Buttar that he was more easily led because of his young age and the fact that he looked to his uncle Gurnam Buttar for support, and yet he was the person that he was caught up with. I also accept that he may have wanted to break up the fight, but got caught up in it.

[61] Something similar is said on behalf of the other two defendants Harpal Nijjar and Armrit Singh both of whom were in the back seat of the car and got out, it seems, last and second last. Mr Harpal Nijjar, through the Probation Officer, says he went over to stop the fight but it is clear that nevertheless he got involved in it, and at that point formed the necessary intention. Mr Armrit Singh was also one of the last out of the car and, in my view, was not in the front row.

[62] All defendants have been assessed by the Probation Officer who interviewed them, as being of low risk to the community. That is, the chance of reoffending is accepted to be very low.

Cultural spokesperson

[63] There are two major factors I have yet to deal with and they are the restorative justice process and the Sikh community process. I have already described what happened in the restorative justice process. So before coming back to that I propose to say something more about the Sikh community process and the advice to the Court by the cultural spokesperson on behalf of that community, Mr Arjiit Singh, today. He provided the Court with a document signed by five senior members of the New Zealand Sikh Society Auckland, namely the President, past-President, the Secretary and two of the Panchayati members.

[64] I am going to read this into the record because I think it is important that the Court notes the contribution that this Society and its members have made to try and deal with this matter.

The New Zealand Sikh Society would like to make the following Submission on behalf of the Sikh Community.

- (1) We would like to bring to the attention of the honourable Judge that this has been test case for Society & community where we have worked hard to resolve some of the issues involved and if the court endorsed this effort than this will have a positive impact on the Sikh Community and any such future incident can easily be Contained in the Sikh community.*
- (2) The NZ Sikh Society AKL have given 1 to 1 counselling to all 5 accused and they have been doing volunteer work in the Gurdwara (Sikh Temple) from last one year.*
- (3) The Panchayati System has played a proactive role can be established to be recognised in future.*
- (4) The Panchayati has nominated at least 250 hours voluntary community work to each of the accused.*
- (5) All the accused are changed persons now in their daily lives and have assured the Sikh Society this will not happen in the future.*
- (6) The Society has brought the victim back in the Society and now he is actively involved in the Society Sports Committee.*
- (7) With the efforts of Sikh Society the Victim is having no fear now in living a normal life and he also has confirmed that he has no desire for the accused to sent be sent to Imprisonment and he is only want them to do community work in the Gurdwara which will be widely advertised in the congregation & community will become aware of what they have done?*

(8) Gurnam Singh Buttar's wife Paramjeet recently had twin babies and she really needs help and support from her husband. It is our humble submission that Gurnam Singh can be given home detention or suspended sentence.

(9) The Society as agreed will be willing to monitor their community work and would be happy to give any undertaking if they are sent to home detention.

[65] I thank the Society for their contribution and their advice to the Court. I say that sometimes there is real good that can come out of serious harm, and in this case it may be that your community is now empowered through its Panchayati system and its collective community consciousness to take preventative steps to ensure that this sort of thing does not happen. If you had been able to intervene in this feud before blood was spilled, that would have been the greatest contribution. I hope that you are encouraged to take preventative steps of that type.

[66] I acknowledge on behalf of the Court, and of Auckland society generally, that you have done an important job in trying to deal with this matter and bring peace to a fragile and no doubt volatile situation. I have already said that the Court can only place limited weight on a victim's views but I thank you for passing that on.

[67] In addition, Mr Ajit Singh addressed the Court, as he did prior to the sentencing indication. I found his comments, again, of considerable assistance. He mentioned how hard the community had worked on this case and how positive it had been for the community, and he mentioned the term "deterrence". This, to me, is an important observation on his part - that the process that the community has followed through the Panchayati system, supported as it was by the restorative justice process, has been an important learning lesson for all members of the Sikh community and that lesson will already have gone out providing deterrence in a form other than punishment.

[68] In one Canadian case the appellate Court upheld a sentence (in that case, simply one of community work) on the basis that the educative value of the outcome, where a young man went and spoke in numerous schools about what it is like to kill your best friends in a motor accident, was very significant. The sentence of community work was appealed and the Court of Appeal of Manitoba

(*R v Hollingsky* (1995) 103 CCC (3d) 472) pointed out that the actual sentence imposed could have greater deterrent effect than a sentence of imprisonment.

[69] As one of the Appeal Court Judges asked, “How is the principle of general deterrence better served than by speaking to 8,200 students about the tragedy of drinking and driving?” (See internet commentary at http://www.scg-scc.gc.ca/text/pblct/satisfy/e_jus1.shtml). I understand the statistics of young people dying on the road the following summer in that part of Canada showed the deterrent value of that sentence. It is something that has been commented on in respect of restorative justice outcomes in the resource management context. I note that because it is relevant when one comes to look at the question of deterrence.

[70] Mr Singh also said that the value of the process that had been followed involved not only the deterrence to others, but the changes that were made by the defendants themselves, and the way in which the victim and his family had been brought back into the community. It is peace-building of that type which, in my view, the Court must recognise and encourage. Mr Singh had said it had been a “healing process” and he was referring there to both the restorative justice conference and the Panchayati process.

Sentencing Act – s 10

[71] Under the Sentencing Act, there are different sections to which counsel can refer in what Mr Hine and others submit is a unique sentencing exercise. First of all, there is s 10, which requires the Court to take into account:

- Any offer of amends, whether financial or by the performance of any work or service made by or on behalf of the offender to the victim. Here we have the offer of financial compensation to cover his losses.
- Any agreement between the offender and the victim as to how the offender may remedy the wrong, loss, or damage caused and ensure that the offending will not continue or recur. That emphasis on prevention is also relevant and

has been part of the outcome of the two processes (the Panchayati and the restorative justice process). That is also important.

- The response of the offender or the offender's family to the offending is also to be taken into account - and that has been wholly positive.
- Any measures taken or proposed to be taken to (i) make compensation, (ii) apologise, or (iii) otherwise make good the harm, must also be taken into account. All three of those sub-paragraphs apply here.
- Any remedial action proposed to be taken by the offender in relation to the circumstances of the offending. That, I apprehend, is aimed at preventative steps.

[72] Further, under subs (2) the Court is to take into account whether or not the offer was genuine and capable of fulfilment, and whether it has been accepted by the victim as "expiating or mitigating the wrong". Parliament has made that requirement. It was actually there in the predecessor to the Sentencing Act, this concept of the victim's view of the offer and the extent to which it expiated or mitigated the wrong (s 12(2) Criminal Justice Act 1985). Parliament requires the Court to take that into account and hear the victim's view - and as I understand it, this victim's view is that these people must be sentenced by the Court, but the offer that they have made does demonstrate their genuineness and does expiate the wrong.

Section 8 (j)

[73] Then under s 8(j) the Court must take into account any outcomes of restorative justice processes that have occurred or that the Court is satisfied are likely to occur in relation to the particular case, including without limitation anything referred to in s 10.

Section 27

[74] Finally, there is s 27, which provides that an offender may request the Court to hear any person or persons called to speak on, amongst other things, the personal, community, and cultural background of the offender; the way in which that background may have related to the commission of the offence; any processes that has been tried to resolve, or that are available to resolve, issues relating to the offence involving the offender and his or her family, whanau or community and the victim or victims of the offence; how support from the family, whanau or community may be available to help prevent further offending by the offender; and lastly, how the offender's background or community support may be relevant in respect of possible sentences.

[75] I comment, with some regret, that it is very rare that the Court is asked to hear such spokespeople. That provision has been there for a long time and it is rarely used. In this country, one would have hoped that Maori and Pacific Island people would frequently take advantage of it and it hardly ever happens. However, today is a case where it has occurred and this is the first sentencing I have done where serious attention must be given, not only to s 27 but also to the restorative justice process. Just about every aspect of s 27 that I read out has application here.

[76] As already noted, Mr Ajit Singh and the co-authors of the document that he has provided have between them given the Court relevant information about the cultural background of all of the offenders, and the way in which their background, particularly relating to the topic that led to the feud between the two men, may have been relevant to the commission of the offence. The Court has been told about the processes that have been followed to try and resolve issues relating to the offence and how the Sikh community's input can assist and prevent further offending.

Consistency and flexibility

[77] As counsel have said, this is a unique case. The question is, as put by at least one counsel, whether all of those factors together might bring the eventual outcome of this case from one of several years' imprisonment down to the point at which a

sentence or two years or less might be imposed with possibly leave being given to seek home detention.

[78] It is a very difficult issue that I have given a lot of serious thought. It is important to remember what the Court of Appeal in *Taueki* said about consistency and flexibility. At paragraph 42, under the heading of flexibility there is the following passage:

As the Court noted in Mako [2000] NZLR 170 these illustrations are intended for guidance only, and to minimise the need to refer to the large number of earlier sentencing decisions. But the suggested bands and starting points should be used flexibly, and where any particular feature or combination of features has some unusual character, the starting point should be adjusted to reflect that...

[79] And paragraph 43:

To achieve the objective of greater consistency, it will be necessary for sentencing Judges to articulate in a transparent way the basis on which they have determined the appropriate band, and the factors which have guided their assessment of the starting point. It will be important that the starting point is identified before attention is turned to the personal circumstances of the offender, because the starting point will provide the basis for assessing the consistency of one case with another.
(emphasis added)

[80] The Court does not try and create a consistent sentencing regime by giving bands into which the defendant is to be fitted after all matters relevant to the defendant's personal circumstances are taken into account. I respectfully say that the Court in *Taueki* has shown considerable wisdom in putting the emphasis for consistency on the starting point rather than the finishing point, because the starting point reflects the type of offence and the actual conduct of the parties, the constituent elements of the offence as it was committed, including aggravating and mitigating aspects of the offence. That can be spelled out in the way that the Court of Appeal has very helpfully done for all Courts in *Taueki*.

[81] However, when it comes to applying the circumstances of the offender, there are so many different factors to be taken into account that in my view the question of consistency becomes a much more difficult exercise. The Court is certainly required to have regard to the interests of victims - that is another provision of the Sentencing

Act - and it is required to have regard to s 10, 8(j) and 27, all of which I have just mentioned. The Act does not say precisely *how* the Court takes those into account, and neither counsel nor I are aware of any case where the Courts have attempted that possibly impossible task. Instead, so far it has been approached on a case-by-case basis, remembering in any event that “the general desirability of consistency” (s 8(e)) is one, but only one, of several principles of sentencing, all of which have to be brought into the mix.

Purposes of Sentencing – s 7

[82] Before coming to the final and important task of imposing sentences, I want to lastly go to s 7 of the Sentencing Act which sets out the purposes of sentencing that the Court may use in any particular case. These are not set out in any particular order. It is worth referring to these as a means of focusing the Court’s mind on the wider picture.

[83] It is tempting for the Courts to see the sentencing process and, in particular, the punishment of imprisonment, as the primary means by which many of these objectives are achieved. In my view the Court must strive to fulfil the intention of Parliament that a much wider view be taken of the sentencing process and that it not be limited to dealing with the punishments available through the Sentencing Act as the only way of achieving the purposes of sentencing.

[84] Put differently, the extent to which these purposes are achieved through other means is a relevant fact for the Court to take into account in deciding what sentence needs to be imposed.

[85] Thus, under s 7(1)(a) there is the purpose of holding the offender accountable for harm done to the victim and the community by the offending. I will put that together with the second purpose, which is promoting in the offender a sense of responsibility for an acknowledgement of that harm. Here both of those objectives have been very substantially promoted by the various processes that have been followed pre-sentencing in the community. The offenders have been held accountable by the community that is most important to them, the Sikh Community

of Auckland, and in a very personal and direct way. They have been held accountable for the harm done, not only to the victim, but to their community. The processes of restorative justice and Punchayati have, between them, promoted a sense of responsibility for, and encouraged an acknowledgment of, that harm.

[86] The third purpose is providing for the interests of the victim of the offence. It is increasingly said today, and I think with much merit, that victims are the forgotten party in the criminal justice system because it has grown in recent times to be an adversary system involving two parties only, the State and the defendant. The Courts are now being asked to find a proper place for victims in that process and to have regard to their interests. This Court has enabled that to happen through the different processes that have happened here.

[87] The fourth purpose is to provide reparation for harm done. That has been achieved.

[88] The fifth purpose is to denounce the conduct in which the offender was involved. Denunciation commonly occurs in a very public way by the Court, on behalf of society, saying that serious crime like this is abhorrent to the community and is not acceptable. I say that again today. I am aware also that the denunciation that has occurred of this conduct within the defendants' own community under the guidance of the Punchayati and the elders of the Sikh community, will probably have much more meaning to them than anything than I say.

[89] The next purpose is deterrence of the offender and others from committing the same or a similar offence. In my view, public deterrence has been partly achieved particularly for the community most directly affected here, through the way in which the Sikh community has responded in the manner described. There has also been very strong individual deterrence of the offenders - and I stress that the sentence that I am going to impose accepts that both public and individual deterrence has been partly achieved already, and will be achieved for the balance through the sentence that I impose.

[90] The next object or purpose of sentencing is protecting the community from the offender. That in my view has been fulfilled already through the processes involved. It is accepted that none of these people is a threat to the community.

[91] The next purpose is assisting in the offender's rehabilitation and reintegration. The processes followed have placed strong emphasis on that. One of the objectives of restorative justice is to restore all parties to a place of respect in the community. I acknowledge what has been done here by the Sikh community and others has already done much to achieve that objective.

[92] The Court can take into account the combination of two or more of those purposes. In my view they are all relevant and all have been, in very substantial measure, partly implemented already. I then have to bring all that into the mix and decide what the appropriate outcome in this case should be.

Deferment of sentence

[93] I have not mentioned, but now mention that I did hear briefly from Gurnam Buttar's wife. She made a plea, a heart-felt plea I know, for her husband to be able to return to her perhaps on home detention and to assist in looking after their three children, two of whom are eight-week old twin girls born prematurely and still in a fragile state of health. I have received from Mrs Freyer an application to defer commencement of sentence for the maximum period of two months on humanitarian grounds so that Mr Gurnam Buttar can assist his wife over the next two months with those two premature babies. I grant that application. That can be done under s 100 of the Sentencing Act regardless of issues of home detention.

Conclusion

[94] I have reached the view that a discount in the order of 50% in total is appropriate. It may be that I am being too conservative, one way or the other. I consider that an element of time served in prison is called for because of the seriousness of this offence and its circumstances. I also accept that this is a most unusual case, that the combination of people acting totally out of character, pleading

Guilty, being part of a community process through the Sikh community as well as a restorative process, being assessed as a low risk to the community, having paid money into Court as a means of reparation, their remorse and acceptance of responsibility, the positive steps they have taken to change their own lives, including things like anger management, the excellent character references that all of them have, mean that a meaningful discount over and above that for a Guilty plea is required.

[95] I think that anything less than a 50% discount in total fails to do justice to what has been put into this case by a very large number of people and to the requirements that Parliament has given to the Courts, in terms of dealing with these community based processes.

[96] Accordingly from a starting point for Gurnam Buttar of seven years I impose a sentence of three-and-a-half years imprisonment, which is deferred for two months.

[97] In respect of Gurpreet Buttar I impose a sentence of two-and-a-half years imprisonment. That is slightly more than 50% because I have started a little higher for him than the other two defendants, because of his use of a weapon. I make a greater discount under personal factors on account of his young age, and his being under the influence of his uncle, the primary offender. The discount for him is slightly more than 50%, but he ends up with the same sentence as the remaining two.

[98] Harpal Nijjar and Armrit Singh, from a starting point of five years imprisonment, receive a sentence of imprisonment of two-and-a-half-years each.

[99] I am not going to impose any minimum term of sentence, which means that these people will be eligible for parole at one-third of their sentence. Whether they receive parole at that point or some later point, is entirely a matter for the Parole Board. I do say that the restorative justice process may still be relevant at that stage. Section 7 of the Parole Act 2002 lists as one of the guiding principles for the Parole Board, “that the rights of victims ... and any restorative justice outcomes, are given due weight.”

[100] Likewise under s 16 of the Parole Act, programmes that may be considered as conditions of release on parole include placement in the care of an appropriate religious group, such as a church or religious order; and furthermore programmes may involve attendance at any cultural or reintegrative programme. So the Parole Board when it comes to consider parole, as it must under the law, at the one-third point, will be having regard to the restorative justice process that has occurred and the outcomes there. It will have regard to the compensation that has been paid and which I am about to order by way of reparation. It will also have regard, I imagine, to the desire of the parties at that conference that these defendants might be under the supervision of the Sikh community and receiving guidance in terms of right living and so on, through the Sikh Temple.

[101] I say to the defendants that if they maintain their present attitude and commitment and do not let the process of imprisonment deter them, then the restorative justice process can continue to have benefits for them and others, even at the stage of consideration of parole.

[102] Finally I impose a sentence of reparation in the sum of \$10,000 on each of the four defendants.

[103] That is the sentence of the Court.

FWM McElrea
District Court Judge