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No: 2008/0032/D2
IN THE COURT OF APPEAL
CRIMINAL DIVISION

Royal Courts of Justice
Strand
London, WC2A 2LL

Wednesday, 20 May 2009

B e f o r e:

LORD JUSTICE DYSON

MR JUSTICE OUSELEY

HIS HONOUR JUDGE RADFORD QC
(Sitting as a Judge of the CACD)

R E G I N A

v

HARMOHINDER SANGHERA

Computer Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7831 8838
(Official Shorthand Writers to the Court)

Mr M Birnbaum QC appeared on behalf of the **Appellant**
Mr P Wright QC and Mr M Nawaz appeared on behalf of the **Crown**

J U D G M E N T
(As Approved by the Court)

1. LORD JUSTICE DYSON: On 29th November 2007 at Manchester Crown Court, by a majority of 11 to 1, the appellant was convicted of the murder of Sana Ali. She appeals against conviction by leave of the single judge.

2. Sana was 17 years of age at the time of her death. She was born in Pakistan and came to England in 2002 and lived in the Cheetham area of Manchester. Sair Ali was her cousin and there had been an understanding in the family for several years that Sana and Sair would marry. They did marry in Pakistan on 22nd December 2006 and returned to Bury in the Manchester area in January 2007. They lived at his family home with his parents and his younger brother Hassan. His two sisters Yasmin and Zaira were also married and lived in separate houses in Bury. By the beginning of 2007 it was known that Sana was pregnant.

3. Sana was a devout Muslim. The appellant, who was known as Mindy, was 22 years of age at the time of the killing. She lived with her parents in Solihull. Her family originated from India and she was a Sikh but not especially religious. She had done well at school and was studying dentistry at Birmingham University. She was due to take her finals in June 2007.

4. She had met Sair Ali in May 2005. They started to have a sexual relationship. They split up for a time in June 2006 when Sair Ali told her that there could be no future in their relationship because he was a Muslim and she a Sikh. He lied to her by telling her that he had told his parents about her and that he was not engaged to be married. When he went to Pakistan to get married he told her that he was going on a pilgrimage.

5. On his return from Pakistan, Sair Ali spent a night with the appellant in a hotel but still did not tell her that he was married. But he did tell her in a telephone call that he was engaged. She was very upset and angry. They had numerous long telephone conversations about it thereafter but she did not end the relationship. Eventually she learnt from a religious leader in Birmingham that he was married. She was extremely upset and threatened to confront him and his family at their home. She was persuaded to meet him elsewhere and they discussed various options, including that he divorce his wife. Shortly after this Sair admitted to the appellant that his wife was pregnant. When Sair said that they had no long term future together a suggestion was made that they delay breaking up until after the appellant's finals.

6. The appellant then decided to visit Sana. She planned her visit for a time when she knew that Sair's parents were away and that Sair and his brother were at Friday prayers. Her case has always been that she intended to tell Sana about her relationship with Sair because she felt that Sana deserved to know and because it would finally bring an end to the affair with Sair. It was in these circumstances that she travelled by car from Solihull to Bury on Friday 11th May 2007.

7. The account of the events of that day that she has consistently given is as follows. She left Solihull at about 9 o'clock and during her journey she exchanged texts with Sair. At 11.42 she spoke to her friend, Sheetal Anand, from a service station for about eight minutes. We interpose that according to Sheetal, who gave evidence, the appellant

seemed composed and normal. Sheetal knew that the appellant was going to Manchester to confront Sana. At 12.52 the appellant spoke to Sair for 21 minutes. She spoke to him again at 13.23, after parking her car. She parked her car about one and a half minutes' walk away from the house at [REDACTED]. She said that she parked there out of habit. Whenever she went to the house she always parked there so that the car would not be seen. Having parked her car she walked to the house at [REDACTED].

8. Sana was alone in the house. The front door had been locked by Sair and he had taken the key. Sana directed the appellant to the back door. As she was going round, the appellant texted Sair because she knew that he needed someone to help him to install a new television and she asked him to text her when he came out of the Mosque because she said she knew someone who might be able to help him. This was at 13.33.

9. She was then admitted to the house by Sana. She said that she asked Sana whether she (Sana) knew of any of Sair's girlfriends. Sana looked a bit confused. She then said that she told Sana that she had come to tell her the truth. She was one of his girlfriends. She said she took off her shoes and went into the kitchen. Sana suggested that they go into an inside room but that before they did that Sana said that they should shut the kitchen window. Sana went to shut the window but could not reach it. The appellant said that she said that she would shut it. She jumped up onto the kitchen top but she could not shut it either. Both women were of the same height. The appellant went out of the back door and tried to shut the window from the outside but she did not succeed in shutting it fully. The blinds were open at the time. The appellant came back into the kitchen and Sana closed the blinds.

10. According to the appellant, they both then left the kitchen and went into the living room where they sat on the sofa and talked for 10 to 15 minutes. The appellant said that Sana was all right and seemed perfectly friendly. She said that Sana said to her: "You are Maryam, aren't you?" The appellant assumed that she was talking about another old girlfriend of Sair's who was called Maryam. The appellant at first said "No", but because Sana seemed confused by this answer she then said "Yes". This seemed to re-assure Sana. The conversation continued. At one point Sana asked the appellant to go with her to her bedroom because she wanted to show her something. They went upstairs and the appellant was shown a teddy bear on a computer. The appellant told Sana that she had given it to Sair at Christmas 2005.

11. At 13.56, during their conversation, Sana's mobile rang. It was Sana's mother. Sana did not answer the phone. The conversation continued. Sana told the appellant that she had cut herself in the past and she showed her some marks on her arm. They were in the bedroom for about 15 minutes and the appellant then said that she was going. She said that she left at about 14.15.

12. At 14.00, Sana's mother, Maryan Fatima, tried to contact Sair by mobile. He was still at prayers. He contacted her at 14.15 and they agreed to contact his sister Yasmin and sister-in-law Iram to ask them to go round to the house to see if Sana was all right. Phone calls were made by Sair to [REDACTED] at 14.16 and 14.18 which were not answered.

13. At 14.19.22, Sair sent a text message to Sana asking her to contact him without delay. This text message has assumed a far greater significance in this appeal than it did at the trial.

14. At about 14.21 the appellant, on her account, was back in her car. As she drove she 'phoned her friend Sheetal. This call is timed at 14.21.49. They spoke for 17 minutes and 46 seconds. Sheetal said in evidence that the appellant seemed her normal self. She was composed and not upset. According to Sheetal the appellant told her what had happened in the house. Much, but not all of the account given by Sheetal of what the appellant told her was consistent with the appellant's account which we have summarised.

15. We should now turn to the evidence of Sair. He said that he and his brother left home at about 12.45 to go to Friday prayers. He was at prayers until about 14.15. On his way to prayers he 'phoned the appellant and told her where he was going and that Sana would be at home on her own. The appellant did not tell him that she was on her way to Manchester to see Sana.

16. After speaking to Maryan Fatima after coming out of prayers, he said that he went to a sHop called "Youth Star" which was run by his sister Zaira's husband. Zaira supported this evidence by saying that he arrived at about 14.30 and that he was still there when she left at about 14.45. A receipt for a package collected by DHL from the shop was apparently signed by Sair and timed 14.35. The contact number entered on the receipt was that of Sair's friend, Nazcat Hussein. Nazcat Hussein said that he collected Sair from the shop at about that time and said that the two of them then went to the Shisha Lounge, arriving there before 15.00. There were no calls recorded between Sair and the appellant between 14.20 and 15.08. At 15.08 the appellant called Sair. They discussed their plans for the weekend and a possible trip to Milan.

17. Sana was discovered at about 16.00. Iram, her two children and Yasmin approached the house and noticed the blinds in the bedroom were closed. This was unusual. They let themselves in to the house. Yasmin went upstairs and found Sana bleeding and a knife. The phone was ringing. It was Sair. Yasmin told Sair what she had found and then dialled 999 at 16.07, saying that she thought that her sister had stabbed herself and that she did not know whether she was dead or alive.

18. A photograph of the knife was shown to Sair, his parents, brother and sisters. They all said that it was not a knife that they owned or used. Ambulances arrived and Sana was taken to hospital. She was declared dead at 17.30.

19. Sair spoke to the appellant several times, telling her first that Sana was injured having stabbed herself and then that she was dead. He told her, "I have killed my wife." Nazcat Hussein said that Sair was swearing and shouting and in a terrible state. Police Constable Wakeham spoke to Sair at the hospital and noted that he seemed to be hysterical, although he calmed down when she asked him some questions. He said that he had last seen her at 12.30 and she seemed fine. When asked if she had ever tried to harm herself he pointed with his right hand towards his left forearm and ran his finger from his wrist to his elbow. The officer commented that he seemed uneasy and his

demeanour odd. Sair Ali was clean and smelt fresh. There was no sign of blood on him.

20. A post mortem examination by Dr Lumb revealed that Sana had suffered from a minimum of six stab wounds and 40 incised wounds. There were two deep wounds which were closely connected on the left upper chest which had caused the lung to collapse. There was a deep wound to the right upper abdomen. There were a number of wounds to the wrist which were typical of self-inflicted injuries. These may have been inflicted at about the same time as the other injuries, or they may have been inflicted by an attacker to mimic self-inflicted injuries. Other injuries were consistent with Sana holding up her arms to protect herself from attack or from grappling for the knife.

21. Examination of the house and Sana's clothing by forensic scientist, Geraldine Davidson, indicated that the assault had taken place in the bedroom where Sana was found. Blood staining on the floor indicated that she had been face down on the floor as she bled heavily from the stab wounds to the abdomen and chest. No blood was found in the appellant's or Sair's car. No blood staining was found on the appellant's handbag or any item of clothing recovered from her.

22. The Crown case in summary was that the appellant had killed Sana with a knife that she had brought with her to the house for the purpose. It was a carefully planned murder, calculated to make it look like a suicide. She had concocted a story which would account for any forensic evidence linking her to any parts of the house. Reliance was placed on the footprints on the kitchen worktop to show that she had left the house through the window. It was also said that the deep wound to the abdomen was connected to Sana's pregnancy and that that too indicated that the appellant was the assailant.

23. The case for the appellant, in summary, was that Sana was alive when the appellant left her. Reliance was placed on the consistent account given by the appellant in interview and in her evidence. It was pointed out that there were no footprints on the kitchen top progressing out of the window. It was said that evidence that Sana had self-harmed pointed to difficulties in the marriage and suggested that Sair was the killer. His comment that he had killed his wife should be taken as a confession. The evidence of Police Constable Wakeham suggested that Sair had changed his clothes before coming to the hospital and that his distress was not genuine. The nature of the injuries suggested an attack in anger, probably by Sair, rather than the carefully planned attack suggested by the Crown. Sair was a practised liar who had involved his friends in lying and concealing things for him in the past and this undermined his evidence and that of Nazcat Hussein that he was elsewhere at the time of the murder.

24. That is a sufficient account of the evidence that was given at the trial by way of an introduction to the issues that arise on this appeal.

The grounds of appeal

25. There are five grounds of appeal. The first ground on which the single judge gave leave to appeal is that the judge erred in answering questions asked by the jury after they had retired in a manner which (i) left it open to them to experiment and (ii) was ambiguous. The second ground, on which the single judge also gave leave to appeal, is that the judge misdirected the jury as to expert evidence. The third and fourth grounds were referred by the single judge to the full court. The third ground is that there was material within the prosecution papers but not adduced at trial which strongly suggests that the deceased opened a text message after the appellant was said to have killed her. The fourth ground is that newly discovered material suggests that a prosecution witness, Farrha Khawaja, perjured herself and/or concealed relevant evidence. The fifth ground of appeal (which was not considered by the single judge) is that the investigation and the trial were conducted on the basis that the killer was either the appellant or Sair. Fresh material suggests the possibility that someone else may have killed Sana.

Ground 1

26. After they had retired the jury asked to see the window which was an exhibit in the case and was at the back of the court. There was discussion in the absence of the jury between the judge and counsel as to how to respond to the jury's request. The window was too large to be moved into the jury room. The judge directed the jury in the following terms:

> "... so what we are going to do is allow you in here with nobody here, so the court itself will be your room for that purpose. There will not even be the bailiffs in here, they will be outside that door and when you have decided, when you have finished doing what you want and looked at it as much as you need, knock on the door, they will collect you and take you back. I hope that's satisfactory but this comes with a number of caveats.
>
> The courts are very nervous and for good reason, of experiments being carried out by jurors, on exhibits which may not exactly replicate what the situation was at the time. For example, if you are going to try and open and shut the window to find out how difficult it was, you can do it although you must wear gloves please because we provide you with special gloves to do it, it is only because it has been treated with fingerprint powder. It is no longer in the building itself, it is no longer attached to the building and things may be different. It may be easier or more difficult to open, things may not be exactly the same, so everyone is concerned about you doing (inaudible) perhaps getting the wrong impression. So please bear that very much in mind. I am afraid I am not a structural engineer but one can well imagine things can operate differently when it is attached to a building than where they are not.
>
> The other thing that we are keen we should not do, as much because of danger as anything else but also our concern about experimentation being carried out, that is trying to get out of the window. I think that you may have some risk attached to it if you do that. Also you do have agreed

evidence about it as I said to you at the stage we put agreed facts before you, and when there are agreed facts that's the basis on which you have to operate, that's by both prosecution and defence. So you and I are bound by the agreed facts and agreed fact 34 says this:

It is feasible that a person of light build to exit the open window at the subject property. So that's the agreed evidence on which you must operate because that's the way everyone in the case is operating. It's not advisable to get through the window."

27. The jury had also asked the judge whether the signature of Sair on the DHL receipt had been verified. As to this, the judge said this at 58B:

"Now first, can I emphasise something I said before, and that is I can't find you new evidence. I can only remind you of the evidence there has been in court, I can't find something else. What I can do is tell you what the evidence in relation to that was and if I don't give you enough summary of it then come back and ask me for more details. What the evidence was if we all go through the notes comprehensively once, right and the strict answer to question has the signature been verified, the answer is strictly, yes by Sair Ali.

He said he was the person who signed it when he came to the ... when he went to the shop. One reason they went to the shop, DHL were meant to collect a package that day and he went to see if it had been collected. While he was there the man came with the ready made document and he signed it, he says at that time on the document 12.35. Ok. I'm sorry it's 2.35 yes. So he verified it. He did however say that anyone could have signed on his behalf and about it, he actually said he signed it and that's his signature. That is no one else has verified that signature, there is no evidence that anyone has verified that it's his.

The only other evidence about it apart from what he said about that, the officer in charge of the case was asked some questions about it and he told you that the document had come from Sair Ali on 12th May, when he was being interviewed, not as a suspect but as a witness. He would have been asked an open question about his movements, and having told the police his movements he was asked if there was anything to verify the movements and he produced the document in the course of that interview on 12th May. It was the police officer, he then said the authenticity of the document would have been checked but we don't know anything more than that."

28. Mr Birnbaum QC, who did not appear on behalf of the appellant at the trial, criticises both directions. As regards the directions in relation to the window, he submits that the authorities summarised at Archbold 4-417 to 4-420 demonstrate that it is a serious irregularity so to direct a jury as to leave it open to them to conduct a private experiment. The general rule is that once a summing-up is concluded no further

evidence ought to be given: see per Lord Goddard, CJ, in Owen [1952] 2 QB 362, 369. A particular aspect of this rule is the prohibition on enabling, allowing or encouraging the jury to experiment after they have retired. Thus it is impermissible to give the jury equipment with which to conduct their own experiments in their room: Maggs 91 Cr.App.R 243, 245, explaining *Stewart and Sappleton* 89 Cr.App.R 273, where the judge acceded to a jury request for scales with which to weigh drugs and the conviction was quashed on that ground.

29. Mr Birnbaum submits that the directions in relation to the window were wrong in principle in that they did not specifically forbid experiment. They were inconsistent in so far as they forbade experiment but also allowed it at least to the extent of opening and closing the window, and allowed the jury to draw unknowable and unfounded conclusions adverse to the appellant from their own opening and closing of the window.

30. We cannot accept this submission. There is no doubt that the judge told the jury that they should not try to get out of the window. The thrust of Mr Birnbaum's criticism relates to what the judge said in respect of the opening and closing of the window. The judge started by warning them in general terms of the dangers of experimentation. With particular reference to the dangers of experimenting by opening and closing the window, he rightly told the jury that, because the conditions were no longer the same now that the window was not attached to the building, "everyone is concerned about you doing (inaudible) perhaps getting a wrong impression." He then went on to say: "The other thing we are keen we should not do..." In our judgment, the combined effect of (i) the general warning about the dangers of experimenting, (ii) the particular warning about the dangers of opening and closing the window, and (iii) the judge's statement that his warning against their trying to get out of the window was another thing that he was quite keen that they should not do must have brought home to the jury that they should not experiment with the window. It is true that he said that if they were going to try to open or shut the window they should wear gloves, but in our judgment that was not an encouragement that they should do something which he clearly told them they should not do. The judge could have expressed himself a little more clearly here and it may be that what he said was borne of a concern that the jury might try to open and close the window despite his warnings and that if they did so they should wear gloves. In our judgment there was no misdirection here. Alternatively, if there was, it was of no significance.

31. As regards the directions given in relation to the signature of Sair, Mr Birnbaum submits that these might have led the jury to suppose that there was more independent support for Sair's alibi than was in fact the case. The jury may have taken the reference to the authenticity of the document as having been checked as some confirmation of Sair's account.

32. We reject this criticism for the reasons given by Mr Wright. There was no ambiguity in what the judge said about the receipt. He made it clear that the only person who said that the signature was that of Sair was Sair himself. The authenticity that was checked by the police was that of the document, not that of the signature.

Ground 2

33. This ground of appeal relates to the evidence of Geraldine Davidson. At one stage the prosecution suggested that the appellant had changed her clothes before she went to the Solihull Police Station. Her case was that she had been wearing clothes recovered from her bedroom by the police, in particular a top exhibit MK/2. Images of the appellant at the service station in Solihull taken early on 11th May were exhibited. Miss Davidson suggested in one of her reports that MK/2 was not the top shown in the images. For tactical reasons, no objection was taken by Miss Wass QC (then representing the appellant) to the admission of this evidence. Miss Davidson accepted in cross-examination that she was not an expert in the identification of clothing. Later, Mr Wright told Miss Wass that he was no longer relying on the change of clothing point and he did not do so.

34. The judge gave an impeccable general direction about expert evidence at page 6 of the transcript. Having said, "We do not have trial by expert in this country", he said this at 6E:

> "A good example of that in this case is the evidence of Geraldine Davidson. She looked at the clothing recovered from the defendant's home and she compared it with the photograph taken at the service station in Solihull on the Warwick Road early on 11th May when she was setting off to Bury and she thought none of that clothing which she recovered actually matched the clothing on the photo. And she said well I don't really have any actual real expertise in that and you have now had different or more evidence, you have had the opportunity of seeing the defendant actually wearing the article of clothing that was recovered from her home and she said she was wearing at [the] service station, and having seen that you are perfectly entitled to and at liberty to disagree with the view that Geraldine Davidson gave. And if on the evidence you think it clearly matches or may well match then you are bound to do that and you will have to say well Geraldine Davidson was simply wrong about that part of her evidence."

It is submitted by Mr Birnbaum that the judge misdirected the jury because Miss Davidson had no relevant expertise and the Crown had not pursued the point in their final speech. The jury were concerned about the clothing because they asked to see it and the photographs of it during their retirement.

35. In our judgment there is nothing in this ground of appeal. The judge was in essence telling the jury that this part of the evidence of Miss Davidson was of no value and they should disregard it. Whether the clothing shown on the images was that same as MK/2 was a question of fact for the jury and one in respect of which Miss Davidson had no expertise. The judge's direction was perfectly adequate.

Ground 3

36. This ground centres on the text message sent by Sair to Sana which was sent on 11th May and which was received on her mobile at 14.19.22. By the time the police took possession of this mobile at about 17.30 that day the text had been opened. The fact that the text had been opened was not disclosed to the jury at the trial. Mr Birnbaum submits that the fact that this text was opened was an important piece of evidence which might have influenced the jury's verdict. If the jury decided that Sana opened or might have opened the text then the appellant could not have been the killer. It is not disputed by the Crown that, if Sana did open the text, then the appellant could not have been the killer because she was already in her car when she made her call to Sheetal, at most two minutes 27 seconds after Sair's text was sent to Sana at 14.19.22. Mr Wright submits, however, that the text could have been opened by the appellant or by mistake in the confusion that arose when Yasmin and Iram arrived at the house to find Sana. He submits that the possibility that Sana opened the text message is wholly unrealistic. He says that there is other evidence which indicated that Sana did not open the text. Her family were concerned that she was not answering her mobile. As we have stated, the appellant said that Sana showed her phone to her whilst her mother was calling her. This was the call at 13.56. If she was alive at that time, Sana would have known that her mother wanted to speak to her. In addition, between 13.56 and 14.19 there were two calls by Sair to the landline phone at the house and one call by him to Sana's mobile. None of these was answered. Further, the text message from Sair at 14.19.22 asked her to phone him quickly. It follows that by the time of that text message not only had Sana missed her mother's calls to her mobile and Sair's calls to her landline and mobile, but if she was alive she knew that Sair wanted her to call him quickly, yet she did not answer any of these calls and did not call anyone at any time after the appellant entered the house. The schedule of phone calls also shows that there was a missed call on her phone at 14.29.55 -- in other words only about ten minutes or so after the appellant must have left the house.

37. Mr Birnbaum submits that the appellant could not have opened the text message since she was on the phone to Sheetal at 14.21.49 - that is at most two minutes and 27 seconds after the text message was received. Even if she left the house immediately after opening the text message, she could not have walked the distance (one and a half minutes) to her parked car, started to drive and then made the call to Sheetal. In any event, if she opened the text she must have done so in the bedroom and would have had one minute to go downstairs, wash her hands, take off her shoes, climb out the window, put on her shoes, close the window so far as she was able to do so, and retrieve her bag.

38. In his written submissions Mr Wright argues that the appellant could have had time to open the text. The distance between the house and the car was between 150 and 200 metres. The cell site which served the appellant's call to Sheetal was the same as that which served her call to Sheetal when she arrived and parked her car. It follows that even if she was driving at the time of the call to Sheetal, she is likely only just to have started her journey. If she made a call to Sheetal immediately on starting her journey that would be in keeping with her very calculated actions that day.

39. The possibility that the appellant opened the text was not developed by Mr Wright in his oral argument. Rather he concentrated on his other submission that the text message was opened in the confusion that followed the discovery of Sana at about

16.00 hours. Yasmin said in her third statement that at some point she recalled taking possession of Sana's phone from Zaira. She did not know how Zaira came to have it. She, Yasmin, checked the phone and it did not show any new messages. She did not open any new messages herself. The two sisters and Iram (the sister-in-law) were understandably in a state of shock and distress at the time. The 14.19.22 text message would have generated a message in Sana's mobile handset. There were subsequent calls to her mobile made between 14.28 and 16.03 from Sair Ali and Maryan Fatima which would also have generated a message which would be updated with each successive call. There is no doubt that when Police Constable Rasul checked the phone at about 17.30 all the messages had been opened. There were no unopened messages. It is not in dispute that, by the time Sana was discovered, to open both the 14.19.22 message and the other updated message would have required four key strokes involving three different keys. The messages could not have been opened inadvertently. Mr Birnbaum submits that this fact casts considerable doubt on the theory that the 14.19.22 text was opened after Sana was discovered at about 16.00. But the fact remains that the updated message, which reflected all the calls that had been made up to 16.03, had also been opened. There can be no doubt that this message must have been opened after the discovery of Sana. In these circumstances the fact that the text of 14.19.22 was opened was, as Mr Wright submits, unremarkable.

40. In his amended reply to Mr Birnbaum's summary arguments, Mr Wright says this:

> "The fact that the text appeared to have been opened by the time of the expert's examination of the phone was raised by the Investigating Officers and ventilated in consultation. Neither leading nor junior counsel have any precise recollection of the matter ... At no stage was it considered capable of supporting the defendant's case. The material was made available to the defence. The view shared by prosecution and defence at trial was that the telephone was hopelessly compromised by its subsequent handling. The prosecution were incapable of relying upon the fact of the text being opened as evidence in support of the proposition that the defendant had read the text. The fact that the defence did not introduce the status of the text message (even if by oversight) is within the context of an exhibit that was considered (by both sides) to be entirely compromised and wholly neutral. The prosecution did not attach to it the significance for which the appellant now contends. For the reasons set out herein it is respectfully submitted that the status of the text message remains neutral and that it would have made no material difference."

We agree with this assessment. The assessment made by prosecution and defence of the relevance of the fact that the text had been opened was in our judgment correct. If this material had been deployed before the jury it could not have assisted them. Whoever opened the texts, it could not have been Sana.

Ground 4

41. Farrha Khawajah was called as a prosecution witness. She had been become a friend of Sana when they were at school and they had remained friends. She said that they were

almost sisters. She said that Sana and Sair seemed to her to be in love with each other and very happily married.

42. In cross-examination she was asked about her witness statement of 12th June 2007 in which she had painted a less glowing picture of the marriage. In her statement she said that she had had long phone conversations with Sana on 9th and 10th May. Sana had said that she was sad. She referred to Sair as "this man" and complained that he used to come home at four and five in the morning some nights. There was talk of his having lots of girlfriends which made her angry. Sana said she was upset on one occasion when Sair said he would like to spend the night with a porno-style actress whom he had seen on television. In her evidence Farrha said that the statement was inaccurate in a number of respects.

43. The principal basis of this ground of appeal is the evidence of Ravinder Gill, a solicitor friend of the appellant's family. After the trial she carried out some research on references to the appellant on the internet and she came across the website www.gonetoosoon.co.uk. There was a site dedicated to the memory of Sana. This site allows anyone to leave a tribute to a deceased. Miss Gill came across numerous messages from Farrha since 18th May 2007. It is not in dispute that Farrha is Farrha Khawaja. It is not necessary to set out all the entries relied on by Mr Birnbaum. It is sufficient to give one example:

> "Under the heading in bold type 'Concealing and lying is there a difference? She writes:
>
> "San, tomorrow I'm going, what will happen, nobody knows. Concealing and lying, are they two different things or same?
>
> There might be a difference, but the consequence is same though ... HIDING THE TRUTH!
>
> Right or wrong?
>
> With the willing of god hope something happens that is the vision of judgement.
>
> Even if someone tries to make me say the wrong thing from my voice it is the truth that will be sad.
>
> You know right on judgement day a lie does not come out of the mouth, words are destroyed ... hope something like this happens Sana..
>
> This is my prayer, my hope ... just hope it all turns out ok, everyone will be judged on judgement day ... but those who give pain on this earth they will have to pay for it on earth ...
>
> Up to today I upon blood, on wrong doing or some tarapte. I have never had the courage to look it in the eye, I have never looked ALL MY LIFE I have never had the courage ... but now I swear I will look, at that

destruction ... what kind of criminal am I that I am asking for someone's destruction/ruin ... but San its in this there is justice for you and the path of our heart is written."

44. It is submitted by Mr Birnbaum that entries such as this suggest that Farrha concealed relevant information and/or lied in her evidence about matters which she believed were of great importance and that she was upset about not having told the entire truth. Secondly, Mr Birnbaum submits that there is a strong inference that Farrha did not disclose to the police all relevant material in her possession. In her "gonetoosoon" entry for 6th June, Farrha writes that she still has "every single email, texts, letters and many other weird things that rarely people would save." Copies of 170 emails between August 2004 and December 2006 were made available by the CPS. Mr Birnbaum submits that this cannot be the complete record of emails between Farrha and Sana. He also relies on the emails that were disclosed to support the suggestion that Sana's mother, Maryan Fatima, was violent towards her and that Sana's feelings for Sair were less than warm.

45. Farrha was interviewed by the police after the trial on 10th September 2008. She was asked about her statement to the police and her evidence at trial. She identified a number of parts of the statement as being incorrect. Apart from the reference to the porno-style actress, the points in the statement which she identified as wrong were different from those identified by her as wrong in the interview. Mr Birnbaum submits that it follows from what she said in the interview that almost everything she said in her statement about Sair and Sana was correct.

46. She was then asked many questions about the emails and about the website entries. Her answers about the website entries are not always easy to follow. They include that she was worried about whether others would lie or conceal the truth, in particular Sair as regards his relationship with the appellant. A little later she said that she hoped that those who did bad deeds would be punished on this earth rather than after death. At one point the officer said of an answer that it suggested that Farrha had other things to reveal in court that she had not mentioned. She answered that this was being taken the wrong way.

47. It is not suggested on behalf of the appellant that Farrha might have been the killer. Mr Birnbaum submits that there is no satisfactory explanation for the differences between Farrha's statement and her evidence. Her explanation for the website entries are unconvincing. She was not agonising about whether others might lie or conceal. She was talking about herself. Mr Birnbaum submits that read as a whole the entries convey the impression that she thought she knew something of great significance to the case which she was reluctant to reveal and which she wanted to "scream out" at trial. There is a striking difference, he says, between two of Farrha's accounts of what Sana told her about Sair after the marriage. In her interview when explaining the "gonetoosoon" entries, she said how much she liked Sair and what a loving person he was, all based on what she claimed Sana had told her about him. Mr Birnbaum submits that there must be a concern that Farrha had contact with the family of Sair and Sana before giving her evidence. The issue of the state of the marriage was of importance at the trial.

48. For the reasons given by Mr Wright, however, we are not persuaded that there is substance in ground 4. As regards the emails, the suggestion of violence on the part of the mother has no bearing on the murder of Sana. Of the 170 emails there is only one isolated reference to disagreements between Sana and her mother. There is no suggestion anywhere of any actual violence by Maryan Fatima against Sana. The evidence at the trial was that Maryan Fatima loved her daughter. Her evidence was that she was trying to contact her daughter from about 11.00 on 11th May and that she telephoned ten to fifteen times during that day. It is true that the schedule of calls shows that this evidence was exaggerated, but there were calls from Maryan's mobile at 13.56 and later calls from her landline at 15.34, 15.51 and 15.53. There may have been other calls too. The email relied on in relation to Maryan was sent in April 2006, more than one year before the murder. As for the suggestion that after May 2006 Sana stopped referring to Sair in her emails, Mr Wright makes the point that throughout the period covered by the 170 disclosed emails Sana rarely made any reference to Sair. The pattern did not change after May 2006. Farrha readily accepted that she was the author of the entries on the "gonetoosoon" website. She said that she was paying tribute to her best friend via that website. It is clear from the postings that she was deeply affected by her death. During her interview she was asked about the "gonetoosoon" text of 15th May in relation to "concealing and lying". She was asked about what she was referring to and after reading it through she said that she was worried whether others would lie or conceal the truth - in particular Sair in regard to his relationship with the appellant. The answer that she gave was this:

> "I was thinking that, if he hides things you will never know cos that girl who's done all this. We don't know what she's saying true or she isn't cos really however much investigation we bring to this case, none of us know what actually happened in that room between them two, I mean Sana's gone she can't tell us and the other girl, Mindy, whatever she would say, I mean we don't know if it's true or not and apart from that its Sair's statement that matters, I mean that, his statement means a lot, we'll know about Mindy and Sair's relationship he'll know how Mindy was, about how, only Sair would tell about her obviously I mean he'll tell about Mindy and we'll know her from Sair and just very worried and curious about what Sair would say, would he hide things, thinking that its not lying."

Mr Birnbaum submits that this answer was virtually incoherent. We accept the submission of Mr Wright that Farrha was clearly asserting that the frankness of Sair was crucial to the case. If he did not reveal that he had been having an affair with the appellant, the court might not be aware that the appellant had a motive for the murder. She was expressing the view that, without the evidence of Sair and his relationship, the appellant would be able to conceal her motive.

49. There is no evidence in our judgment that Farrha perjured herself. She was most willing to assist the police and allowed herself to be interviewed at length after the trial. The suggestion that she might have been the killer that was initially advanced has been abandoned. The suggestion that the mother may have been the killer -- it is unclear to

us whether that suggestion is still persisted with, but at all events that suggestion has no evidential foundation.

50. The only other submission which is arguably advanced by the suggestion that Farrha perjured herself is that it provides some support for the case that Sair was the killer. But we can see no basis for that. The possibility that Sair was the killer was before the jury. The point that the marriage was not as happy as Farrha's evidence tended to suggest (in contrast to the picture painted in her witness statement) was explored before the jury. His alibi evidence was tested thoroughly in cross-examination and fully deployed by the judge in his summing-up. In our judgment there is nothing in the new material which carries that point further.

Ground 5

51. The final ground of appeal is that Farrha's evidence might form the basis of the case that the killer was some unknown third person not previously identified. In particular, Mr Birnbaum makes the point that Farrha provided an alibi for Hassan (Sana's brother) that he was in the Cheadle Hulme area between 12.30 and 16.00 on 11th May and said in her statement to the police that she had spoken to him twice on the telephone. This contradicts any claim that they had spent the afternoon together. However, the suggestion that Hassan may have been the killer has absolutely no foundation. It is fair to say that Mr Birnbaum did not spend much time on the fifth ground of appeal. He was right not to do so. In our judgment there is nothing in it.

52. To conclude, the evidence against the appellant was very strong indeed. We do not need to elaborate on the respects in which it was so strong. That must have emerged clearly what from we have said earlier in this judgment. Mr Birnbaum realistically does not seek to argue otherwise. Equally realistically, Mr Birnbaum acknowledges that his main grounds of appeal are grounds 1 and 3 which, he says, to some extent reinforce each other. But for the reasons that we have given, we are unpersuaded that there is any force in either of them or indeed in any of the other grounds. We have reached this conclusion despite the painstaking thoroughness of Mr Birnbaum's submissions and the tenacity with which he developed them.