interfering with the verdicts or for questioning their safety. Indeed, on these issues, leave to appeal would have been refused.

65 The appeals against conviction are dismissed.

Sentence

66 Judge Loraine-Smith was provided by the Crown with a helpful note addressing the sentencing issue and providing him with a careful analysis of recent sentencing decisions in which the defendant had been convicted of manslaughter in circumstances which were broadly similar to the present case. The note was included in our papers. The decisions included *R. v Johnson* (1990) 12 Cr. App. R. (S) 271; *R. v White* (1995) 16 Cr. App. R. (S) 705; *R. v Staynor* [1996] 1 Cr. App. R. (S) 376; *R v Yates* [2001] 1 Cr. App. R. (S) 124 (p.428) and *R. v Fletcher* [2006] EWCA Crim 105; [2006] 2 Cr. App. R. (S) 57 (p.358). Mr Mendelle also drew our attention to *R. v Bennett* [2004] 1 Cr. App. R. (S) 65 (p.396).

67 We repeat that s.5 of the Act created a new offence. It provides a route to conviction whenever the jury are unable to say which of two (or sometimes more) defendants caused or allowed the death of a child or vulnerable adult. Even if the identity of the person responsible for the fatal injuries cannot be established, the possible range of culpability, both in relation to the circumstances in which death occurred and as between the different defendants, is very wide. The victim may have been killed in circumstances which amount to murder. Culpability for the death may also encompass all the levels of manslaughter, both at the higher and towards the lower end of the scale. In the present case, for example, it is difficult to imagine the state of mind which impelled the deliberate forced fracturing of the left femur on the leg which had only recently been subjected to a fracture of the tibia which was less than an intention to cause really serious bodily harm. At the same time the defendant who allows the fatal injury to be inflicted may, on the evidence, be very close to an accomplice to virtually but not quite the full extent of that violence, or a doomed pathetic individual so dominated by the other defendant that, notwithstanding his awareness of the risk that really serious bodily harm might be inflicted on the victim, lacked a will of his own. Wherever the case may fall in terms of the culpability of the perpetrator, a conviction of the s.5 offence means that it has been established that the defendant who failed to protect the victim either appreciated, or ought to have appreciated, that there was a significant risk that the victim would endure serious harm at the hands of the ultimate perpetrator, in circumstances which that defendant foresaw or ought to have foreseen. Although s.5 of the 2004 Act created a new offence its link with manslaughter is clear and the general approach to sentencing in manslaughter cases provides useful assistance to the court considering the sentencing decision after conviction of the s.5 offence.

68 In the present case, one of these appellants inflicted grievous bodily harm on Talha which resulted in his death, while the other, knowing of the risk that grievous bodily harm would be inflicted on him, failed to take any steps to prevent it. However, the identity of the defendant responsible for causing his death (whether

by a guilty plea or jury verdict) was not established. The judge rightly decided that when neither defendant was convicted of either manslaughter or murder he could not second guess these verdicts and decide for himself which of them caused the fatal injury, and he did not allow himself to make the mistake of approaching the sentencing decision on the basis that as one or other of them had caused Talha's death, they were both to be sentenced as if they had.

69 Judge Loraine-Smith recognised those features of the sentencing decision which were totally dependent on the verdicts reached by the jury and he then carefully examined the questions he was required to address. Both appellants had to be sentenced for allowing the death to occur in the circumstances specified in s.5 itself. Whichever of them broke Talha's femur, Talha was the victim of what the judge rightly described as a ''brutal attack'' and even if the possible fatal consequences of this violence would have been unlikely to have been present in the mind of the assailant, the death occurred in circumstances which were close to murder or manslaughter of the most serious kind. The attack, or something like it, was, or should have been, foreseen and prevented. Whichever defendant deliberately fractured Talha's femur, the other allowed it to occur without taking steps to give Talha appropriate protection from awful, foreseeable violence. Neither was to be sentenced as the perpetrator; both were to be sentenced for allowing the perpetrator to act as he did.

70 Judge Loraine-Smith then addressed the personalities of the appellants as well as their relationship with each other. He adopted as his own analysis Ikram's failure to make any reference to Talha's suffering and that he primarily focussed on ''how the loss of his son had affected him and his own dreams for the future'', and Parveen's demonstrated capacity ''to be highly manipulative and intent on getting what she wants by whatever means . . . untrustworthy, with a need to distort the truth''. In short, as between the appellants, the judge was not able to discern any meaningful distinction between them. This conclusion is critical to any sentencing decision in cases as sensitive as these and must always be regarded as case specific.

71 For a case that lacked any possible allowance for a guilty plea the eventual sentence at the end of the trial, although severe, was not manifestly excessive or wrong in principle. Accordingly the appeal against sentence is also dismissed.

Appeals against conviction and sentence dismissed.