

[2011] CCJ 4 (AJ)

**IN THE CARIBBEAN COURT OF JUSTICE
Appellate Jurisdiction**

ON APPEAL FROM THE COURT OF APPEAL OF BARBADOS

**CCJ Application No AL 1 of 2011
BB Criminal Appeal No 22 of 2008**

BETWEEN

JIPPY DOYLE

APPLICANT

AND

THE QUEEN

RESPONDENT

Before The Honourables **Mr Justice Nelson
Mr Justice Saunders
Mme Justice Bernard
Mr Justice Wit
Mr Justice Hayton**

Appearances

Sir Richard L Cheltenham KA QC PhD, Mr Marlon M Gordon and Ms Shelley-Ann W Seecharan for the Applicant

Mrs Donna C B Babb-Agard QC and Mr Elwood Watts for the Respondent

JUDGMENT

of

The Honourable Justices Nelson, Saunders, Bernard, Wit and Hayton

Delivered by

The Honourable Mr Justice Rolston Nelson

on the 21st day of March 2011

- [1] The intended Appellant Mr. Jippy Doyle, an evangelist, was convicted of the rape which occurred on May 12, 2001 of a girl, then aged 13. Mr. Doyle was then the pastor of a church, Dominion Life Centre, at Haggatt Hall, St. Michael. The young girl and her mother were members of the congregation at the Dominion Life Centre. Mr. Doyle was convicted of the rape on July 31, 2008. He was remanded in custody and sentenced to ten (10) years' imprisonment on October 31, 2008, the sentence to begin on the date of his conviction.
- [2] Mr. Doyle appealed to the Court of Appeal against his conviction and sentence. The Court of Appeal held that the learned judge had misdirected the jury when she directed them on the charge of rape that the virtual complainant (hereinafter "the complainant"), then aged 13, was as a matter of law "incapable of giving her consent to sexual intercourse" and that if the jury found that the accused had intercourse with the complainant there would be no difficulty in finding that the accused had committed the offence charged. The Court of Appeal held that the misdirection rendered the verdict of the jury unsafe or unsatisfactory and acquitted Mr. Doyle of rape. However, the Court of Appeal pursuant to Section 5 of the Criminal Appeal Act, Cap. 113A substituted for the jury's verdict of guilty of rape one of guilty of the lesser offence of indecent assault, of which on the facts proved the jury could have found him guilty, as section 36 of the Sexual Offences Act Cap. 154 provides. The Court of Appeal after carefully complying with the sentencing guidelines in the Penal System Reform Act, Cap. 139 sentenced the intended Appellant to three (3) years' imprisonment from the date of the original sentence taking into account his ordeal pending trial and conviction and the further delay of three months in custody between conviction and sentence on October 31, 2008. Mr. Doyle (hereinafter called "the Applicant") now seeks leave to appeal against the verdict of guilty of indecent assault and the sentence of three years' imprisonment substituted by the Court of Appeal.

Leave to appeal in criminal cases

- [3] In *Cadogan v The Queen*¹ Hayton J., delivering the judgment of the Court pointed out that although the grant of special leave was a matter of discretion, if there was “a realistic possibility of a miscarriage of justice if leave is not given for a full hearing, then leave will be given.” Hayton J. stipulated that an applicant should raise an arguable case “highlighting points in his Notice of Application or in his skeleton argument[s].”
- [4] Generally, this Court will only intervene in criminal cases in circumstances where a serious miscarriage of justice may have occurred in the court below or where a point of law of public importance is raised and the applicant persuades the Court that if not overturned a questionable precedent might remain on the record. In such a case the grant of leave to appeal is not necessarily an indication that the Court agrees with the point, but only that the point of law is arguable.
- [5] The Court will not lightly interfere with findings of fact implicit in the verdict of the jury or those made by the court from which the appeal originates. Where, as in this case, the judge and jury were faced with a stark conflict of evidence turning on credibility alone, the Court will not disturb the verdict of the jury sanctioned by the decision of the appeal court. On the facts of this case in the absence of any misdirection, the alibi defence raised an issue of fact and is covered by this proposition.
- [6] Where the Court of Appeal exercises a discretion and sets out the grounds for its exercise of that discretion the Court will not review it unless the grounds relied on cannot support the conclusion reached. In so far as this case is concerned, we think that the Court of Appeal properly exercised its discretion in replacing the jury’s verdict of guilty of rape by a conviction for indecent assault taking account of section 11(2) of the Sexual Offences Act Cap. 154. Tangentially, the Court

¹ [2006] CCJ 4 (AJ)

holds that it was open to the Court of Appeal in substituting the verdict of guilty of indecent assault to direct that the sentence in that regard should commence from a date later than the date of the original sentence: see section 33(5) of the Criminal Appeal Act, Cap. 113A.

Evidence on special leave applications

[7] Counsel for the Applicant contended that the trial was unfair for a variety of reasons. He submitted that the cross-examination of the Applicant was calculated to stir up antipathy in the jury and was also irrelevant and prejudicial. He further contended that the closing address of the Director of Public Prosecutions was inflammatory and aggressive.

[8] Counsel for the Applicant did not provide any specific evidence in support of these allegations despite the requirements of Rule 10.13 of the Appellate Jurisdiction Rules as amended. It will usually be important to specify the particular items of evidence or passages in the summing-up on which reliance is placed in order to provide a basis for the grant of special leave. Further, the question whether counsel's conduct in a particular case violates the standards of good professional practice is a matter of degree, on which we are content in this case, to accept the finding of the Court of Appeal that the conduct of the Director in the context of the trial as a whole was not such as to deny the Applicant a fair trial.

Conclusion

[9] The application for special leave to appeal was flawed on all of the points of practice and procedure described earlier in these reasons. Apart from those points, the Court refused special leave because no arguable case was made out that the Court of Appeal was wrong. Therefore, as a consequence the application for leave to appeal as a poor person could not be granted.

/s/ R F Nelson
The Hon Mr Justice Nelson

/s/ A Saunders
The Hon Mr Justice Saunders

/s/ D P Bernard
The Hon Mme Justice Bernard

/s/ D Hayton
The Hon Mr Justice Hayton

/s/ J Wit
The Hon Mr Justice Wit