

IN THE SUPREME COURT OF NEW ZEALAND

**SC 60/2006
[2006] NZSC 81**

DEO DATT SHARMA

v

THE QUEEN

Court: Blanchard, Tipping and McGrath JJ

Counsel: G Gotlieb for Applicant
E M Thomas for Crown

Judgment: 2 October 2006

JUDGMENT OF THE COURT

A. The application for leave to appeal is dismissed.

REASONS

[1] The applicant, Dr Sharma, was convicted following trial in the Auckland District Court on four counts of assault involving his wife and children. He appealed against his convictions on a number of grounds. His appeal was partially successful in that the conviction on one count was quashed with no order for retrial.

[2] Dr Sharma seeks leave to appeal to this Court against the three convictions upheld by the Court of Appeal. The matters which he contends justify the grant of leave involve:

1. The duties of a trial Judge when an accused is unrepresented;
2. Whether the trial Judge's ruling that Dr Sharma could not personally cross-examine the complainants but must do so through counsel appointed for the purpose breached his rights under s 25(f) of the New Zealand Bill of Rights Act 1990; and
3. Whether the proviso to s 385(1) of the Crimes Act 1961 can be invoked in a case where the accused has, as Dr Sharma alleges, been deprived of his right to a fair trial.

[3] The first and third points can be dealt with summarily. The Court of Appeal did not apply the proviso so no issue in that respect arises in this case. The first complaint is general and in itself lacks sufficient specificity to justify leave.

[4] The question whether s 25(f) of the Bill of Rights gives an accused person an irreducible right to cross-examine personally is one of general importance but in this case the Court of Appeal found that Dr Sharma had consented to the course which the Judge proposed. He thereby waived his asserted right to cross-examine personally. In the circumstances Dr Sharma cannot therefore contend that there was any breach of the right which he asserts. Nor are we satisfied that cross-examination by appointed counsel, as against cross-examination by Dr Sharma personally, can reasonably be said to have led to any miscarriage of justice in this case. Dr Sharma provided counsel with a list of questions, which counsel duly asked, with Dr Sharma sitting beside him and able to see and be seen by the complainants.

[5] For these reasons the application for leave to appeal must be dismissed.