PUBLICATION OF NAME OR IDENTIFYING PARTICULARS OF COMPLAINANT PROHIBITED BY S 139 CRIMINAL JUSTICE ACT 1985.

IN THE SUPREME COURT OF NEW ZEALAND

SC 1/2011
[2011] NZSC 24

HP

v

THE QUEEN

Court: Elias CJ, Blanchard and Tipping JJ

Counsel: G King for Applicant
M D Downs for Respondent

Judgment: 18 March 2011

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant seeks to appeal from a judgment of the Court of Appeal[1] dismissing his appeal against conviction on 24 representative charges of sexual offending. The offending all concerned a single complainant and was alleged to have taken place between January 1981 and May 1994 when the complainant was living with the applicant and his wife. The complainant was 11 years old when the offending began.

1 *P v The Queen* [2010] NZCA 617.

[2] The applicant maintained that the judge erred in not giving a warning under s 122 of the Evidence Act 2006, which permits directions to be given to the jury about the need for caution in accepting and deciding what weight to give to evidence. Such a warning may be given if the judge is "of the opinion that any evidence given in [a] proceeding that is admissible may nevertheless be unreliable". The applicant submitted to the Court of Appeal that such a warning should have been given because the complainant had convictions for offences involving dishonesty and a motive to implicate the applicant (to obtain sympathy for her own tax difficulties and because she had not received an interest in the former family home). The offending also occurred more than 10 years beforehand (a circumstance that requires the judge to consider giving a warning).

[3] Although the judge did not give a formal direction of the kind envisaged by s 122(1), he made it clear that the case against the applicant turned on the credibility and reliability of the complainant. Her history of dishonesty was acknowledged in the evidence and referred to by the judge in summing-up. The matters of suggested motive were also fully canvassed in evidence and were referred to by the judge in his summing-up. The judge also referred to the defence contention that the delay in reporting the complaints suggested fabrication.

[4] As the Court of Appeal, which considered the matter carefully, made clear, the potential unreliability of the complainant's evidence was "conceded by the Crown, vigorously emphasised by the defence, and explicitly dealt with by the judge in his summing-up".[2] It would have been quite obvious to the jury that it had to take care in considering the complainant's evidence. The complainant's reasons for resentment of the applicant were also fully canvassed. The suggested motivation arising out of a wish to obtain sympathy in proceedings brought against her under the Tax Administration Act 1994 is not at all convincing.

[5] We are not persuaded that there is any question of general principle entailed in the proposed appeal. Nor do we consider that the absence of a separate formal warning could in context possibly have led to a substantial miscarriage of justice. The Court of Appeal did not err in declining to admit further evidence of the

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2 At [94].

complainant's convictions and other allegations she had made. For these reasons leave to appeal must be declined.

Solicitors:
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