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IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI

**SC 3/2020
[2020] NZSC 33**

BETWEEN SEETHA RAMA RAO SALVAJI
Applicant

AND THE QUEEN
Respondent

Court: Glazebrook and Ellen France JJ

Counsel: Applicant in person
J E Mildenhall for Respondent

Judgment: 15 April 2020

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

Introduction

[1] Mr Salvaji, the applicant, was convicted after trial of historical sexual offending against a young relative.¹ The incidents giving rise to the charges took place over a two year period at a time when the complainant was 10 and 11 years old and the applicant was in his early 30s.² The applicant was sentenced by the trial Judge,

¹ The applicant was acquitted of one of the 12 charges he faced.

² At the time of trial the complainant was 25 years old.

Judge Down, to a sentence of 14 years' imprisonment with a minimum period of imprisonment of seven years.³

[2] The applicant appealed unsuccessfully to the Court of Appeal against conviction and sentence.⁴ He now seeks leave to appeal to this Court against conviction and sentence on the basis that there is a risk of a miscarriage of justice.⁵

Background

[3] The complainant and her family lived close to the applicant and his family over the relevant period. She described a range of sexual activity over a period ending in mid-2005 ranging from indecent assaults to sexual violation by unlawful sexual connection and rape. She did not disclose any offending until 2014 when she wrote to a friend and later, in 2015, sent a copy of the same letter to another relative. A complaint to the police was not made until July 2017.

[4] At the suggestion of the police, the complainant telephoned the applicant and put her allegations to him. The Court of Appeal noted that parts of the conversation "were capable of being construed as admissions".⁶ The call was recorded and formed part of the evidence at trial along with the translation of the call into English by an interpreter.

[5] The appeal to the Court of Appeal focussed on alleged failures by the applicant's trial counsel including the fact the applicant and other witnesses, particularly the applicant's wife, were not called to give evidence, and as to the way in which counsel cross-examined both the complainant and the interpreter who translated the record of the telephone conversation. In addition, there were challenges to the admission of evidence from the friend and the relative as to the letters they received and as to the admissibility of the recorded telephone call.

³ *R v Salvaji* [2019] NZDC 9078.

⁴ *Salvaji v R* [2019] NZCA 611 (Cooper, Lang and Mander JJ) [CA judgment].

⁵ Senior Courts Act 2016, s 74(2)(b).

⁶ CA judgment, above n 4, at [5].

[6] The Court of Appeal had evidence from the applicant and from trial counsel. The Court rejected the complaint about counsel advising the applicant not to give evidence, concluding that the judgement made was one another competent counsel may well have made. Nor did the Court consider this was a case which fell “at that end of the spectrum where [trial counsel’s] advice amounted to an error that effectively prevented [the applicant] from presenting his defence”.⁷ The Court accepted trial counsel’s evidence that he did not have instructions to call the applicant’s wife as a witness. The Court said that decision was one open to competent counsel and, in any event that decision could not have affected the outcome of the trial.

[7] The Court considered there was nothing of significance in any of the criticisms relating to cross-examination, and noted the cross-examination of the interpreter was successful in some respects. On the admissibility of the evidence relating to the letters, the Court took the view that the letters responded to the claim of invention inherent in the defence that the offending never occurred. The Court found that the evidence of the telephone conversation was not unfairly obtained and was properly admitted.

The proposed appeal

[8] On the proposed appeal, the applicant would essentially seek to re-run the arguments made in the Court of Appeal. He maintains his complaints against trial counsel as to the cross-examination of the complainant; generally not following his instructions; not calling possible witnesses, particularly his wife; and being less competent than the prosecutor. In addition, he continues to challenge what can be made of the recorded telephone call, pointing to aspects which have been misconstrued or impacted by the translation or the transcript. He also sees the conversation as evidence of the manipulative approach of the complainant. In relation to this alleged manipulation, he argues the complainant has falsified her stories with a view to framing him or that she is delusional, and he advances possible motives for her approach such as animosity between the families. On sentence, one of the points he wishes to make is that the relevant period of offending should be calculated as one year, not two. Another is that he has a lot he can, and has, contributed to society.

⁷ At [19].

Assessment

[9] We are satisfied the application does not meet the criteria for leave to appeal. The proposed appeal would be fact-specific. No issue of general or public importance arises.⁸ Nor is there an appearance of a miscarriage of justice.⁹ The matters that the applicant wishes to raise were generally considered by the Court of Appeal and nothing raised by the applicant, including his specific criticisms of the Court's decision, gives rise to the appearance of an error in that assessment. We add that, as has been noted, trial counsel did obtain an acceptance that phrases used in the conversation might have had meanings favourable to the applicant.¹⁰ The applicant's alternative interpretation of the recorded telephone conversation was before the jury.¹¹ Nor does the applicant point to any matter that gives rise to any error in the Court of Appeal's assessment of the sentence appeal.

[10] The application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

⁸ Senior Courts Act, s 74(2)(a).

⁹ Section 74(2)(b).

¹⁰ The applicant relies, for example, on a phrase which was initially translated as "naïve girl". The interpreter accepted that this could mean "mad ["as in crazy"] girl". Further, as a result of cross-examination of the interpreter, trial counsel was able to make a submission in closing that in a part of the conversation the applicant had been referring to an incident when he said the complainant had climbed into his bed.

¹¹ The applicant is correct in his reply submission that, contrary to the submission for the respondent which refers to an uncorrected exhibit, the interpreter accepted at trial that the word "weak" in a phrase translated as "that weak moment made me to do that" could be translated as "the" or "that" moment.