



**Supreme Court of New Zealand  
Te Kōti Mana Nui**

**8 September 2016**

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**TONY GORDON BEST v THE QUEEN**

**(SC 57/2015) [2016] NZSC 122**

**PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court’s judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest [www.courtsofnz.govt.nz](http://www.courtsofnz.govt.nz).**

The publication of the name, address, occupation or identifying particulars of the complainant is prohibited by s 203 of the Criminal Procedure Act 2011.

Mr Best was found guilty of one count of sexual violation by rape and two counts of sexual violation by unlawful sexual connection after a jury trial in the District Court at Christchurch on 7 March 2014.

In a pre-trial ruling in the District Court, Mr Best’s trial counsel applied to cross-examine the complainant and call evidence on a prior complaint made by the complainant against a different alleged perpetrator with a view of establishing that the prior complaint was false. Counsel was permitted to question the complainant on her knowledge of the processes that are followed in the event of a rape complaint, and in particular her knowledge of the investigation of text messages, but further cross-examination and the leading of evidence on the prior complaint was not permitted. This was upheld in a ruling on the morning of the trial and later by the Court of Appeal.

The Supreme Court granted leave to appeal on the question of whether Mr Best’s counsel should have been permitted to cross-examine the complainant as to the prior rape complaint and lead evidence to the effect that it was false.

The Supreme Court has unanimously dismissed the appeal. Elias CJ, Glazebrook, Arnold and O'Regan JJ held that evidence of an allegedly false prior complaint would be primarily relevant to whether or not the complainant has a tendency to be mendacious and as such is governed by the veracity evidence rules in s 37 of the Evidence Act 2006. In a case such as this, where the prior complaint involved sexual activity, s 44 (which controls examination of a complainant in sexual cases on prior sexual experience) is also engaged.

Where s 44 is engaged, there must be some evidential foundation that the prior complaint was in fact false before it can even be raised before the judge. If there is such an evidential foundation, the complainant should be asked (in the absence of the jury) to confirm whether or not the prior complaint was false. There should be no further examination and no cross-examination unless and until the judge has made a ruling on ss 37 and 44.

The proper approach then is first to consider whether evidence of a prior allegedly false complaint is substantially helpful under s 37. This will require consideration of all relevant factors in the particular circumstances of the case.

In this case, the complainant was not asked whether or not the prior complaint was false. Assuming the complainant had been asked and maintained that the prior complaint was true, the Judges considered that leading evidence regarding the prior complaint in the particular circumstances of this case would not have been substantially helpful and therefore would have been inadmissible under s 37.

If the complainant had acknowledged that the prior complaint was false this would have been substantially helpful in assessing her veracity. As veracity was a major issue in the trial, the evidence would also have been admissible under s 44. That section would, however, have controlled the manner in which the evidence was given.

Applying the miscarriage of justice proviso under s 385 of the Crimes Act 1961, however, the Judges dismissed the appeal on the basis that, even assuming the evidence as to the prior complaint had been called, conviction was inevitable.

William Young J joined the majority in result but differed as to reasons. He considered that, in the absence of any narrative by Mr Best as to the events, the challenge to the complainant's credibility was gratuitous and its value was insufficient to satisfy the test under s 44.

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