



Supreme Court of New Zealand

17 December 2010

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

SINGH v R (SC 42/2010)
[2010] NZSC 161

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 www.courtsofnz.govt.nz.

In November 2008 Dushkar Singh was convicted on charges of violence against his partner and of two associated counts of perverting the course of justice and forgery. His appeal to the Court of Appeal was allowed in relation to the forgery count but otherwise dismissed.

At various points prior to his trial his partner Ms D made statements about the appellant's behaviour. Some of these were on oath. They were by no means consistent. On some occasions she made detailed allegations of violence and of pressure she had come under to have the prosecution stopped. On other occasions she denied that she had been pressured to stop the prosecution and at least to some extent tried to distance herself from the violence allegations. At trial she sought to invoke the privilege against self-incrimination. The Judge rejected her claim to privilege. In the course of her evidence, she repudiated the allegations she had made against the appellant. After she was declared hostile, the prosecutor introduced into evidence through her a number of her earlier statements. Some of these provided some support for the appellant but most of them were

inculpatory of him. At a late stage in the trial, and after Mr Singh's partner and the police officers who had dealt with her had given evidence, the defence sought to have certain additional statements produced. The Judge determined that these were prior consistent statements and not admissible under section 35 of the Evidence Act 2006 (which governs the admission of previous consistent statements of witnesses). Alternatively, even if they had been admissible under section 35, the Judge would nonetheless have excluded them as they would have had an unfairly prejudicial effect and needlessly prolonged the proceeding (grounds for exclusion under section 8 of the Act).

Mr Singh's appeal to this Court challenged the Judge's rulings rejecting the claim to privilege against self-incrimination and refusing to admit the additional documents and also challenge the fairness of the trial.

This Court has unanimously dismissed the appeal. The claim to privilege was rightly denied as the possibility of self-incrimination was insufficiently likely to engage the privilege. As well, Mr Singh had no standing to complain of the Judge's decision to decline privilege: a claim of privilege by a witness can be asserted only by that witness and not by a party to the case. In relation to Ms D's previous consistent statements, the Court considered these were inadmissible under s 35(1) unless necessary to respond to the challenge to her veracity made by the Crown and thus admissible under s 35(2). The Court concluded that they were not relevantly necessary: they added nothing material to the defence case and if admitted would have caused prejudice which could only have been addressed by a needless prolongation of the proceedings. The Court was also not persuaded that the trial was unfair.

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