S.C.C. No. 02726

NOVA SCOTIA COURT OF APPEAL

Hallett, Freeman and Roscoe, JJ.A.
Cite as: R. v. L.R.S., 1993 NSCA 90

BETWEEN:

L. R. S. Appellant - and - HER MAJESTY THE QUEEN Respondent	)	The Appellant appeared in person Dana W. Giovannetti for the Respondent Appeal Heard: March 26, 1993 Judgment Delivered: April 6, 1993

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

THE COURT: Appeal against convictions and sentences dismissed, per reasons for judgment of Roscoe, J.A.; Hallett and Freeman, JJ.A. concurring.

ROSCOE, J.A.:

By an indictment dated April 30, 1992 the appellant was charged:

"COUNT NO. 1: THAT between the 20th day of August, 1975, and the 19th day of August, 1976, at or near [...], in the County of Hants and Province of Nova Scotia, he did commit acts of gross indecency with [C.A.S.], contrary to Section 157 of the ***Criminal Code***, R.S.C. 1970;

COUNT NO. 2: THAT between the 20th day of August, 1975, and the 19th day of August, 1976, at or near [...], in the County of Hants and Province of Nova Scotia, he did have sexual intercourse with [C.A.S.], knowing that [C.A.S.] was his niece, contrary to Section 150 of the ***Criminal Code***, R.S.C. 1970."

He was further charged pursuant to an indictment dated May 11, 1992 as follows:

"COUNT NO. 1: THAT at or near [...], in the County of Hants and Province of Nova Scotia, between the 1st day of January, 1966, and the 31st day of December, 1976, he did commit acts of gross indecency with [J.S.], contrary to Section 157 of the ***Criminal Code***, R.S.C. 1970;

COUNT NO. 2**:** THAT at or near [...], in the County of Hants and Province of Nova Scotia, between the 15th day of October, 1973, and the 31st day of December, 1976, he did being a male person have illicit sexual intercourse with [J.S.], his foster daughter, contrary to Section 153(1)(a) of the ***Criminal Code***, R.S.C. 1970;

COUNT NO. 3: THAT at or near [...], in the County of Hants and Province of Nova Scotia, between the 1st day of January 1966, and the 15th day of October, 1973, he did being a male person have sexual intercourse with [J.S.], a female person not his wife and under the age of fourteen years, contrary

to Section 146(1) of the ***Criminal Code***, R.S.C. 1970;

COUNT NO. 4: THAT at or near [...], in the County of Hants and Province of Nova Scotia, between the 26th day of June, 1966, and the 25th day of December, 1975, he did have sexual intercourse with [W.S.], knowing that [W.S.] was his daughter, contrary to Section 150 of the ***Criminal Code***, R.S.C. 1970;

COUNT NO. 5: THAT at or near [...], in the County of Hants and Province of Nova Scotia, between the 26th day of June, 1966, and the 25th day of December, 1975, he did commit acts of gross indecency with [W.S.], contrary to Section 157 of the ***Criminal Code***, R.S.C. 1970."

The appellant pled guilty to the first count in the first indictment, that is with respect to an act of gross indecency against C.A.S., his niece, and after a trial before Chief Justice Glube and a jury was found guilty of Counts 1, 3, 4 and 5 in the second indictment, that is, gross indecency against J.S., statutory rape of J.S., incest with W.S., and gross indecency against W.S. He was found not guilty by the jury of the second count in the second indictment, that is, illicit sexual intercourse with J.S.

The trial judge imposed sentences as follows:
Count No. 1 on the first indictment - 6 months;
Count No. 1 on the second indictment - 18 months;
Count No. 3 - 36 months;
Count No. 4 - 24 months;
Count No. 5 - 12 months;
all to run consecutive, for a total of 8 years imprisonment.

The appellant, who is unrepresented by counsel, appeals the four convictions and sentences arising from the indictment dated May 11, 1992. In the notices of appeal he states his grounds as follows:

1. "I am charged for things I did not do. I feel the sentence is too severe for the crimes committed."

2. "I feel that although my lawyer had access to important information regarding my claim of innocence that he did not introduce it into the record."

At the trial, J.S., who is now 33 years old, testified that she had been placed in the appellant's home as a foster child in 1965 and stayed there until 1973. Her mother confirmed these dates. She testified that the first sexual incident occurred shortly after she moved into the appellant's home. This incident consisted of the appellant touching her vagina while she was sitting on a tractor. She testified that the appellant had sexual intercourse with her when she was eight years old. She further described an incident when she was nine or ten years old of the appellant attempting to direct "a dog's penis into my vagina". She also described another incident when she was between fourteen and sixteen years of age when the appellant removed her clothes and lay on top of her but she was not able to specifically recall what else happened at that time.

W.L.S., the daughter of the appellant, is now 35 years old. She testified that the first sexual contact with her father was when she was nine or ten years old and she was sleeping outside in a tent. At that time he touched her vaginal area. She also had a specific recollection of an incident of sexual intercourse when she was fourteen years old. She also testified about an incident that happened on Christmas Eve one year when the appellant performed oral sex on her. That incident, she said, ended when their housekeeper, Mrs. E., came into the room. Although W.L.S. said there were numerous other acts of sexual interference and intercourse while she was a child, she could not remember specific details of them.

Mrs. E., the appellant's housekeeper in 1974 and '75, corroborated W.L.S.'s evidence with respect to the incident involving oral sex.

The appellant testified at the trial and denied any wrongdoing. He denied owning a tractor as described by J.S. and a tent, as described by W.L.S. With respect to the allegation of oral sex he said, "I don't think I done nothing but a lot of times when I come home from a dance I don't know what I done for sure

cause I, I'm out then". It was clear from the appellant's other evidence that he meant that he was drunk at the time.

In his submissions to this Court, the appellant pointed out inconsistencies in the evidence of the victims and the housekeeper. He thought that his lawyer should have called some evidence to rebut the allegations regarding the tractor and the tent. He also thought a witness should have been called to attack the credibility of the housekeeper. He denied any opportunity to commit the crimes alleged because there were so many people living in his house at the relevant times. The appellant suggested that the victims collaborated and lied in order to obtain money as victims of crime.

I have carefully reviewed the record and find that the appellant's counsel at trial thoroughly cross-examined all of the Crown witnesses and effectively highlighted inconsistencies in their testimony and lapses of memory. In his submission to the jury he questioned the credibility of the complainants, pointed out the possibility of collaboration, the lack of opportunity of the appellant to commit the crimes alleged, and emphasized the presumption of innocence. Defence counsel was, in my view, well prepared and performed his role competently.

I have carefully reviewed the evidence and the trial judge's charge to the jury. The charge is complete and fair. The trial judge emphasized the presumption of innocence, the requirement for proof beyond a reasonable doubt, the requirements regarding corroboration on some of the counts, and the danger in convicting without corroboration on those where it was not required. The trial judge also carefully and correctly charged the jury regarding the use of the similar fact evidence that was properly admitted. No objection was taken by defence counsel regarding the charge.

In one respect, the charge was more favourable to the accused than it should have been regarding the necessity that the corroboration "confirms that the accused committed it".

The charge was, however, improper in one detail regarding the fourth count. The trial judge told the jury that they could find corroboration of W.S.'s testimony respecting that count in her other evidence. That, with respect, was in error (see ***Thomas v. R.***, [1952] 2 S.C.R. 344). However, since there was substantial evidence capable of corroborating the evidence regarding the fourth count, I find there was no substantial wrong or miscarriage of justice.

The appellant says in relation to the sentence appeal that his sentences were longer than others had received for similar crimes. The trial judge, in her sentencing decision, said:

> " Nothing, nothing can make up or give back normal lives to three people who were under the trust and care of Mr. S. The crimes of which you have been convicted, Mr. S., are ones in which you exploited the vulnerability of three young persons, and you have taken a large step towards destroying their lives, but hopefully with this process over they will now truly be able to start the rebuilding process.
>
> This case does involve a serious breach of trust - a parent, as a father or foster parent or someone who takes a child into their home, lets that child believe that they have someone they can rely on. You were clearly not a person they could rely on, not a person who could help them or assist them. You could only hurt them in the way in which you treated them. You abused that trust very definitely and there are a number of factors which have to be looked at in this case. As I have said on previous occasions, matters of this nature involve violence to the person. There may not be a specific physical injury at the time. That does not mean there has not been a violence done to the person by the acts that you committed upon them because there has, in my opinion."

The trial judge properly emphasized deterrence as the sentencing principle that should prevail in crimes of this nature. She also considered the totality of the sentences. In my view, the sentences were not excessive.

The appeal against convictions and sentences is dismissed.

J.A.

Concurred in:

Hallett, J.A.

Freeman, J.A.