

BATEMAN, J.A.:

This is an appeal from a decision of Justice Hiram Carver wherein he convicted the appellant on one count of indecent assault and on a second count of sexual assault, each offence committed against his step daughter.

The appellant raises a number of grounds of appeal which, to summarize, challenge the Trial Judge's finding of credibility; suggest that the Trial Judge failed to appreciate material inconsistencies in the evidence; and allege that the Trial Judge improperly used evidence submitted to rebut the defence allegation of recent fabrication.

The standard of review on such an appeal is set out by the Supreme Court of Canada in **R. v. Yeboes**, [1987] 2 S.C.R. 168 and in **R. v. Burns**, [1994] 1 S.C.R. 656, in which latter case McLachlin, J. said at p.663:

In proceeding under s. 686(1)(a)(i), the court of appeal is entitled to review the evidence, re-examining it and re-weighing it, but only for the purpose of determining if it is reasonably capable of supporting the trial judge's conclusion; that is, determining whether the trier of fact could reasonably have reached the conclusion it did on the evidence before it: . . . Provided this threshold test is met, the court of appeal is not to substitute its view for that of the trial judge, nor permit doubts it may have to persuade it to order a new trial.

We have reviewed, re-examined and re-weighed the evidence in the above context.

Justice Carver made express findings of credibility which resulted in the

appellant being found guilty on two counts of a three count indictment. Not only did he disbelieve the evidence of the accused, he found that it did not raise a reasonable doubt as to his guilt.

In **R. v. W.(R.)** (1992), 74 C.C.C. (3d) 134 (S.C.C.) the Supreme Court of Canada cautioned appellate courts with respect to showing deference to findings of credibility made at trial. At p.142:

"This Court has repeatedly affirmed the importance of taking into account the special position of the trier of fact on matters of credibility ... The trial judge has the advantage, denied to the appellate court, of seeing and hearing the evidence of witnesses."

We are satisfied that there was evidence here upon which the findings of guilt could properly be based.

Accordingly, the appeal is dismissed.

Bateman, J.A.

Concurred in:

Clarke, C.J.N.S.

Flinn, J.A.

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

R. R. D. W.)

Appellant)

- and -)

HER MAJESTY THE QUEEN)

Respondent)

REASONS FOR
JUDGMENT BY:

BATEMAN, J.A.
(Orally)