

LOW
PRIORITY

NZLR

IN THE COURT OF APPEAL OF NEW ZEALAND

C.A.172/96

PUBLICATION OF NAMES,
ADDRESS OR OTHER
INFORMATION IDENTIFYING
PERSONS PROHIBITED

R

v

K(CA172/96)

Coram: Thomas J
Keith J
Blanchard J

Judgment: 26 September 1996
(ex parte)

JUDGMENT OF THE COURT DELIVERED BY BLANCHARD J

The appellant was convicted after a trial by a jury of the sexual violation of his eleven-month old daughter. He was sentenced to twelve years imprisonment. He now appeals against his conviction.

The evidence showed that the victim was alone in the care of the defendant while the victim's mother was taking a bath. There were some noises after which the defendant appeared with the victim. She was quite obviously seriously injured and bleeding from the rectum. The medical evidence was that there were lacerations consistent with anal penetration by a penis or foreign body. Spermatozoa were found within the rectum, indicating penetration by a penis or object or fingers with seminal fluid on them. The jury evidently accepted the Crown contention that the defendant was responsible for the violation.

The appellant applied to this Court for legal aid. Legal aid was granted for the purpose of detailing grounds of appeal. However, after due consideration of his case by three Judges of this Court, legal aid was declined. The appeal has been determined on the basis of written submissions.

The appellant raises what are essentially three grounds of appeal against conviction. The first is that there is fresh evidence which casts doubt upon his conviction.

The fresh evidence alleged is that of an expert who was contacted by the defence at the time of the trial. It was decided with the knowledge and consent of the appellant that she would not be called. There is therefore no basis upon which her evidence could be said to be fresh and no substance in this ground.

The second ground of appeal is that the main prosecution witness, the mother of the victim, gave statements under pressure which contradicted the statements given by the appellant. There is no evidence in support of this assertion.

The third ground of appeal raised by the appellant relates to the publication in a local paper the night before the third and final day of the trial of an article relating to sexual abuse in the region which contained a brief reference apparently to the appellant's case in the context of an interview with the chief medical witness for the Crown. She is quoted as saying that she has seen a case involving a child of 10 months. Seven of the jurors indicated to the Judge that they had seen the article.

The article was clearly a matter for concern though it contained nothing else connected with the trial and it would have been obvious to the jury from the doctor's evidence that she regarded the case as one of child abuse. The article did not purport to accuse anyone of the offending. Counsel for the defence sought that the jury be discharged and a new trial ordered. However, the trial Judge refused and went to some lengths to reduce the impact (if any) this article had on the jury.

The Judge refers to it at the very start of his summing up, giving a strong direction that the article be disregarded altogether. We are satisfied that no more can be expected in these circumstances. It is common enough that the media make reference to an ongoing case or to a particular kind of offending and in this instance it was dealt with adequately.

The appellant has also sought to re-argue the facts in his submissions. However, they were before the jury and it cannot be said that the verdict was against the weight of evidence.

All the grounds of appeal having failed, the appeal against conviction is dismissed.

The appellant has also submitted that the sentence imposed is excessive. We do not agree. After due consideration of the appalling nature of this crime we are satisfied in the circumstances that the sentence is well within the range available to the Judge.

The appeal is dismissed.

A handwritten signature in black ink, appearing to read "John J. J. J.", with a stylized flourish at the end.