

**SUPREME COURT OF CANADA**

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| **Citation:**  R. *v*. V.Y., 2011 SCC 22, [2011] 2 S.C.R. 173 | **Date:** 20110506  **Docket:** 33841 |

**Between:**

**Her Majesty The Queen**

Appellant

and.

**V.Y.**

Respondent

- and -

**Association in Defence of the Wrongly Convicted**

Intervener

**Coram:** McLachlin C.J. and Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ.

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| **Reasons for Judgment**  (paras. 1 to 4): | The Court |

R. *v.* V.Y., 2011 SCC 22, [2011] 2 S.C.R. 173

**Her Majesty The Queen** *Appellant*

*v.*

**V.Y.** *Respondent*

and

**Association in Defence of the Wrongly Convicted** *Intervener*

**Indexed as:** R. ***v.*** V.Y.

2011 SCC 22

File No.: 33841.

2011: April 21; 2011: May 6.

Present: McLachlin C.J. and Binnie, LeBel, Deschamps, Fish, Abella, Charron, Rothstein and Cromwell JJ.

on appeal from the court of appeal for ontario

*Criminal law — Evidence — Burden of proof — Accused convicted at trial of sexual assault and unlawful confinement — Whether trial judge failed to give adequate consideration to question of whether evidence raised reasonable doubt — Whether majority of court of appeal erred in setting aside convictions and ordering new trial.*

Held: The appeal should be dismissed.

**Statutes and Regulations Cited**

*Criminal Code*, R.S.C. 1985, c. C-46, s. 193(1)(*a*).

APPEAL from a judgment of the Ontario Court of Appeal (Laskin and LaForme JJ.A. and Moldaver J.A. dissenting), 2010 ONCA 544, 266 O.A.C. 27, 258 C.C.C. (3d) 281, 79 C.R. (6th) 327, [2010] O.J. No. 3336 (QL), 2010 CarswellOnt 5671, setting aside the accused’s convictions and ordering a new trial. Appeal dismissed.

Lisa Joyal, for the appellant.

Michael G. Engel, Russell Silverstein and Ingrid Grant, for the respondent.

Brian Snell, for the intervener.

The following is the judgment delivered by

1. The Court — The respondent’s convictions for sexual assault and forcible confinement were set aside by a majority in the Court of Appeal for Ontario (2010 ONCA 544, 266 O.A.C. 27). The Crown appeals as of right pursuant to s. 693(1)(*a*) of the *Criminal Code*, R.S.C. 1985, c. C-46.
2. The majority intervened with the verdict mainly on the basis of the trial judge’s findings in respect of particular items of evidence, and his failure to explain why certain “factors did not raise a reasonable doubt that the accusations may have been fabricated” (para. 35).
3. While we do not agree on all aspects of the majority’s approach, we are not persuaded that it erred in the result in setting aside the convictions and ordering a new trial. Based on our review of the trial judge’s reasons as a whole, we agree that he erred in law by failing to give adequate consideration to the question of whether the evidence raised a reasonable doubt.
4. The appeal is dismissed.

*Appeal dismissed.*

*Solicitor for the appellant:  Attorney General of Ontario, Toronto.*

*Solicitor for the respondent:  Michael G. Engel, Toronto.*

*Solicitor for the intervener:  Association in Defence of the Wrongly Convicted, Toronto.*