



SUPREME COURT OF CANADA

CITATION: R. v. Cortes Rivera, 2020
SCC 44

APPEAL HEARD: December 11, 2020
JUDGMENT RENDERED: December 11,
2020
DOCKET: 39084

BETWEEN:

Joaquin Alfredo Cortes Rivera
Appellant

and

Her Majesty The Queen
Respondent

- and -

Criminal Lawyers' Association of Ontario
Intervener

CORAM: Abella, Karakatsanis, Rowe, Martin and Kasirer JJ.

UNANIMOUS JUDGMENT READ BY: Abella J.
(paras. 1 to 2)

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R. v. CORTES RIVERA

Joaquin Alfredo Cortes Rivera

Appellant

v.

Her Majesty The Queen

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and

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Present: Abella, Karakatsanis, Rowe, Martin and Kasirer JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

Criminal law — Evidence — Admissibility — Complainant's sexual activity — Trial judge dismissing accused's application to cross-examine complainant on prior sexual activity — Accused convicted of sexual assault — Court of Appeal holding that trial judge erred in dismissing application — Majority of Court of Appeal applying curative proviso to affirm conviction — Dissenting judge would have ordered that complainant's evidence be supplemented — Conviction upheld.

Statutes and Regulations Cited

Criminal Code, R.S.C. 1985, c. C-46, ss. 276.1 [rep. & sub. 2018, c. 29, ss. 22, 25], 683(1), 686(1)(b).

APPEAL from a judgment of the Alberta Court of Appeal (Slatter, Bielby and O'Ferrall JJ.A.), 2020 ABCA 76, 457 C.R.R. (2d) 223, 453 D.L.R. (4th) 387, [2020] A.J. No. 235 (QL), 2020 CarswellAlta 330 (WL Can.), affirming the conviction entered by Goss J., 2017 ABQB 593, [2017] A.J. No. 1026 (QL), 2017 CarswellAlta 1808 (WL Can.). Appeal dismissed.

Deborah R. Hatch, for the appellant.

Keith A. Joyce, for the respondent.

Megan Savard, for the intervener.

The following is the judgment delivered orally by

[1] THE COURT — We would dismiss the appeal. The parties did not dispute that the trial judge erred in dismissing the accused’s application under s. 276.1 of the *Criminal Code*, R.S.C. 1985, c. C-46, to cross-examine the complainant. In our view, this error did not lead to a miscarriage of justice and falls within the curative proviso under s. 686(1)(b) because the evidence was otherwise overwhelming and a conviction was inevitable.

[2] We do not endorse Slatter J.A.’s application of s. 683(1). Neither party sought this remedy before the Court of Appeal, and in this Court, both parties as well as the intervener urged us to reject his approach.

Judgment accordingly.

Solicitors for the appellant: Deborah Hatch Law Office, Edmonton.

Solicitor for the respondent: Alberta Crown Prosecution Service, Appeals, Education & Prosecution Policy Branch, Edmonton.

Solicitors for the intervener: Addario Law Group, Toronto.