|  |
| --- |
| **SUPREME COURT OF CANADA** |
| **Citation:** R. *v.* Cortes Rivera, 2020 SCC 44, [2020] 3 S.C.R. 906 |  | **Appeal Heard:** December 11, 2020**Judgment Rendered:** December 11, 2020**Docket:** 39084 |
| **Between:****Joaquin Alfredo Cortes Rivera**Appellantand**Her Majesty The Queen**Respondent- and -**Criminal Lawyers’ Association of Ontario**Intervener |

|  |
| --- |
| **Coram:** Abella, Karakatsanis, Rowe, Martin and Kasirer JJ. |
| **Unanimous Judgment Read By:**(paras. 1 to 2) | Abella J. |

|  |  |  |
| --- | --- | --- |
|  |  |  |

r. *v.* cortes rivera

Joaquin Alfredo Cortes Rivera Appellant

v.

Her Majesty The Queen Respondent

and

Criminal Lawyers’ Association of Ontario Intervener

**Indexed as: R. *v.* Cortes Rivera**

2020 SCC 44

File No.: 39084.

2020: December 11.

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, 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.