



SUPREME COURT OF CANADA

CITATION: R. v. D.R., 2022 SCC 50

APPEAL HEARD: December 1, 2022
JUDGMENT RENDERED: December 1,
2022
DOCKET: 40039

BETWEEN:

D.R.
Appellant

and

His Majesty The King
Respondent

CORAM: Rowe, Martin, Kasirer, Jamal and O’Bonsawin JJ.

UNANIMOUS
JUDGMENT READ

BY: Rowe J.
(paras. 1 to 4)

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D.R.

Appellant

v.

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2022 SCC 50

File No.: 40039.

2022: December 1.

Present: Rowe, Martin, Kasirer, Jamal and O’Bonsawin JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR NEWFOUNDLAND AND LABRADOR

Criminal law — Evidence — Assessment — Credibility — Generalizations and stereotypes — Accused acquitted at trial of sexual interference, invitation to sexual touching and

sexual assault in respect of his granddaughter — Crown appealing acquittals on basis that trial judge engaged in impermissible stereotypical reasoning in assessing complainant's credibility — Majority of Court of Appeal holding that trial judge's conclusion that complainant's relationship with her grandfather was strong and normal and therefore not abusive was based on impermissible stereotype — Court of Appeal setting aside acquittals and ordering new trial — Court of Appeal's decision affirmed.

APPEAL from a judgment of the Newfoundland and Labrador Court of Appeal (White, Hoegg and Butler JJ.A.), [2022 NLCA 2](#), 476 D.L.R. (4th) 3, [2022] N.J. No. 15 (QL), 2022 CarswellNfld 2 (WL), setting aside the acquittals of the accused and ordering a new trial. Appeal dismissed.

Jason Edwards, for the appellant.

Shawn I. Patten, for the respondent.

The judgment of the Court was delivered orally by

[1] ROWE J. — This is an appeal as of right from a decision of the Newfoundland and Labrador Court of Appeal setting aside acquittals and ordering a new trial in a case of sexual assault, among other offences.

[2] The accused is the grandfather of the complainant, who was between 7 and 10 at the time of the alleged offences. There was evidence that the complainant was happy to see the accused and exhibited no avoidant behaviour toward him. From this, the trial judge inferred that the complainant had a “strong and normal” relationship with the accused, which caused the trial judge to doubt the credibility of her testimony regarding the alleged offences. Writing for the majority, Hoegg J.A. observed that the trial judge “rested his reasonable doubt on his conclusion . . . that their strong and normal relationship meant that her grandfather could not have been sexually abusing her” (para. 34 (CanLII)).

[3] We agree with the majority of the Court of Appeal that this inference by the trial judge was rooted in stereotypical reasoning, rather than the entirety of the evidence, and that this constituted an error of law. While the trial judge set out other lines of reasoning relating to the complainant’s credibility, his reliance on stereotypical inferences undermines his assessment of her credibility and, thus, his verdict. The majority of the Court of Appeal decided, correctly in the circumstances, that the trial judge’s stereotypical reasoning had a material effect on the acquittal of the accused (see para. 61 and the heading for that paragraph).

[4] Accordingly, we would dismiss the appeal and order a new trial.

Judgment accordingly.

Solicitor for the appellant: Newfoundland and Labrador Legal Aid Commission, St. John's.

Solicitor for the respondent: Special Prosecutions Office, St. John's.