



PRESS SUMMARY

3 March 2015

Pora (Appellant) v The Queen (Respondent) [2015] UKPC 9 *On appeal from the Court of Appeal of New Zealand*

JUSTICES: Lord Kerr, Dame Sian Elias, Lord Reed, Lord Hughes and Lord Toulson

BACKGROUND TO THE APPEAL

Susan Burdett was raped and murdered in her home in March 1992. In May 1994 Teina Pora (“the Appellant”) was convicted of the rape and murder of Ms Burdett and the aggravated burglary of her home. In 1999 the New Zealand Court of Appeal quashed his convictions and ordered a re-trial following the conviction of Malcolm Rewa on the charge of rape of Ms Burdett. In March 2000, after his second trial the Appellant was again found guilty. The Appellant appealed to the Court of Appeal against conviction unsuccessfully in October 2000. He now appeals from that decision.

On 18 March 1993 the Appellant, then aged 17, was interviewed by the police in relation to a stolen vehicle. In the course of this interview he asked whether the police had apprehended anyone for the murder of Ms Burdett. When he was told that they had not, he said that he knew who had committed the crime. There then followed a series of interviews over the course of four days during which the Appellant gave various accounts, first of his knowledge of and later his involvement in the burglary, rape and murder of Ms Burdett. These confessions were put to the jury in both of his trials by the Respondent as evidence of his guilt.

Mr Rewa was convicted of the attack on Ms Burdett on 17 December 1998. He has been convicted of 27 rapes in most of which he apparently acted as a lone predator. He suffered from erectile dysfunction, which the Appellant suggested explains his lone offending. The fact of his erectile dysfunction was not before the jury at the Appellant’s re-trial, although the thesis that he acted alone and the fact of his conviction for Ms Burdett’s rape were put to the jury.

The Appellant now appeals to the Judicial Committee of the Privy Council. He relied principally upon two grounds of appeal:

- (1) Whether the confessions which he made concerning his complicity in the crimes have been shown to be unreliable by new evidence, in particular evidence that the Appellant suffers from a neurodevelopmental disorder; and
- (2) Whether evidence of Mr Rewa’s erectile dysfunction should have been admitted at the appellant’s trial.

JUDGMENT

The Judicial Committee of the Privy Council humbly advises Her Majesty that the appeal against conviction should be allowed. Lord Kerr gives the advice of the Board.

REASONS FOR THE JUDGMENT

The Appellant sought to adduce evidence from Dr McGinn, a clinical neuropsychologist, and Dr Immelman, a psychiatrist. Dr McGinn concluded that the Appellant fulfils the diagnostic criteria of an alcohol-related neurodevelopmental disorder, consistent with undiagnosed foetal alcohol syndrome disorder (“FASD”). She noted that the Appellant’s executive mental functions, those required to plan

and think through to the consequences of one's actions, showed significant deficits. Her tests showed that the Appellant tended to respond without due consideration, especially in complex situations, that he tended to confabulate without realising that he was doing so and that, while he could not comprehend more complex words or sentences, he tended to respond as if he understood. In particular, she emphasised that persons with the Appellant's condition could not be considered as reliable informants [37].

Dr Immelman found that the Appellant had great difficulty in understanding questions put to him and remembering the content of the question when composing his reply. He had no demonstrable capacity for abstract thought and a strong tendency to maintain a position even when it was shown to be entirely untenable [45]. He confirmed Dr McGinn's diagnosis of the Appellant's FASD and stated that this condition meant that responses in an interview setting can be unreliable [46].

The Board permitted the reports of both Dr Immelman and Dr McGinn to be admitted, on the grounds that the evidence that the Appellant suffered from a form of FASD, which could potentially have had a significant impact on the safety of the conviction, was not before the jury [40, 42, 48]. The overriding question was whether the evidence was relevant and reliable [41]. The Board held that, since this evidence was not before the jury at either of the Appellant's trials, it meant that there was no explanation for his having confessed to the crimes [55]. In the absence of any explanation for giving a false confession, the intuitive reaction of a jury to a confession of guilt will be to assume that it is true [57]. The combination of the Appellant's frequently contradictory and often implausible confessions with the diagnosis of FASD leads to the conclusion that reliance on his confessions gives rise to a risk of a miscarriage of justice. Therefore the Board deemed that his convictions must be quashed [58].

The Board refused to allow evidence of a third expert, Professor Gudjonsson, to be admitted on the grounds that he had exceeded his remit as an expert witness by asserting that the Appellant's confessions were unreliable and advancing a theory as to why this was so [24]. It also refused to admit other evidence which the Appellant sought to adduce. Evidence from those involved in the investigation of Ms Burdett's death was neither fresh, nor would it have been admissible at trial [50]. Affidavits from the Appellant were clearly not fresh evidence and of dubious credibility. In any case, there was no risk of a miscarriage of justice if they were excluded [49].

On the matter of Mr Rewa, the Board was not satisfied that the failure to adduce evidence of his erectile dysfunction at the Appellant's retrial gave rise to a risk of miscarriage of justice. The suggestion that the jury would have been more disposed to find that the Appellant was not present because of Mr Rewa's erectile dysfunction was speculative [54]. New evidence which the Appellant sought to adduce about Mr Rewa's erectile dysfunction was therefore not relevant to the safety of the Appellant's conviction and inadmissible [51].

The Board also gave the parties the opportunity to make written submissions as to whether a re-trial of the Appellant should take place [60].

References in square brackets are to paragraphs in the judgment.

NOTE

This summary is provided to assist in understanding the Committee's decision. It does not form part of the reasons for that decision. The full opinion of the Committee is the only authoritative document. Judgments are public documents and are available at: www.jcpc.uk/decided-cases/index.html.