

IN THE COURT OF APPEAL OF NEW ZEALAND

CA630/2014
[2015] NZCA 17

BETWEEN PETER DOUGLAS ZOHRAB
 Applicant

AND THE QUEEN
 Respondent

Hearing: 11 February 2015

Court: Wild, MacKenzie and Lang JJ

Counsel: Applicant in person
 Y Moinfar for Respondent

Judgment: 19 February 2015 at 10 am

JUDGMENT OF THE COURT

The application for special leave to appeal against conviction is dismissed.

REASONS OF THE COURT

(Given by Lang J)

[1] Following a defended hearing in the District Court, Mr Zohrab was convicted on charges of assault and disorderly behaviour. On 25 March 2014, Judge Tompkins sentenced Mr Zohrab to 60 hours community work.¹

[2] Mr Zohrab appealed against conviction, but Goddard J dismissed his appeal on 26 June 2014.² Goddard J also subsequently declined an application by

¹ *New Zealand Police v Zohrab* DC Wellington CRI-2012-091-3317, 25 March 2014.

² *Zohrab v New Zealand Police* [2014] NZHC 1457.

Mr Zohrab for leave to appeal to this Court.³ He now seeks special leave to appeal under s 144(3) of the Summary Proceedings Act 1957.

Background

[3] The charges were laid as a result of an incident that occurred on a commuter train travelling into Wellington on the morning of 18 October 2012. Mr Zohrab was a passenger on the train, as was the female complainant.

[4] The prosecution alleged Mr Zohrab became upset when another male passenger shut the window above his seat without consulting him, on the request of a female passenger seated nearby. Four eye-witnesses, including the complainant, told the Court Mr Zohrab had become abusive and sworn at the passenger who had shut the window. Although the female passenger apologised, he continued to swear and shout abuse at her as well.

[5] The complainant then became involved in the incident. Mr Zohrab allegedly swore at her, and then punched or pushed her in the chest after she “wagged” her finger at him. Another passenger seated behind Mr Zohrab then restrained him, and the police were called.

[6] Mr Zohrab defended the case on the basis that he did not assault the complainant. Rather, he contended he was the victim of a conspiracy. He said the complainant had punched him on the chin and nose. He also denied swearing or using abusive language during the course of the incident.

[7] Judge Tompkins accepted the evidence of the prosecution witnesses. He rejected Mr Zohrab’s claim that the complainant had punched him, and also his claim that he had not used obscene or abusive language. He therefore determined the prosecution had proved both charges.

³ *Zohrab v New Zealand Police* [2014] NZHC 2631.

Jurisdiction

[8] The charges were laid before the relevant provisions of the Criminal Procedure Act 2011 came into force. As a result, the case remains subject to the provisions of the Summary Proceedings Act.⁴ Section 144(3) of that Act permits this Court to grant special leave to appeal if it is of the opinion that the question of law involved in the appeal is one which, by reason of its general or public importance or for any other reason, ought to be submitted to the Court of Appeal for decision.

The proposed questions of law

[9] In the written materials he submitted prior to the hearing, Mr Zohrab listed 13 proposed grounds of appeal. During the hearing, however, he agreed that these could be distilled into the following questions:

1. Did Goddard J act illegally and in breach of Mr Zohrab's common law and statutory rights in purporting to determine the appeal under the Criminal Procedure Act rather than the Summary Proceedings Act?
2. Was Goddard J's judgment irrational?
3. Did Goddard J demonstrate apparent or actual bias against Mr Zohrab?

Did Goddard J act illegally and in breach of Mr Zohrab's common law and statutory rights in purporting to determine the appeal under the Criminal Procedure Act rather than the Summary Proceedings Act?

[10] This issue arises because, in discussing the approach she was required to adopt in relation to the appeal, Goddard J said:⁵

Approach on appeal

[18] Section 232 of the Criminal Procedure Act 2011 provides that an appeal must be allowed if in the case of a Judge-alone trial, the Judge erred in his or her assessment of the evidence to such an extent that a miscarriage

⁴ See now the Criminal Procedure Act 2011, s 397.

⁵ *Zohrab v New Zealand Police*, above n 2.

of justice has occurred. Miscarriage of justice means any error, irregularity, or occurrence in or in relation to or affecting the trial that has created a real risk that the outcome of the trial was affected or has resulted in an unfair trial or a trial that was a nullity.

[19] The Court on appeal must be mindful of any disadvantage in not having seen and heard the witnesses. When dealing with an appeal against a decision where the Judge's findings were based on their assessment of the credibility of the witnesses, some deference should be given to that assessment.

[11] It is common ground that Goddard J erred in this respect, because the charges Mr Zohrab faced were laid prior to the date upon which the procedural provisions contained in the Criminal Procedure Act came into force. As a result, the Judge ought to have determined Mr Zohrab's appeal using the procedure prescribed by the Summary Proceedings Act.

[12] Goddard J did not make the same error when she subsequently declined Mr Zohrab's application for leave to appeal to this Court. In that judgment, Goddard J observed that the charges had been laid prior to the commencement of the Criminal Procedure Act and that the Summary Proceedings Act therefore applied to Mr Zohrab's application for leave to appeal.⁶

[13] Mr Zohrab contends that in purporting to determine his appeal under the Criminal Procedure Act, Goddard J acted illegally. He says the Judge also breached his right to natural justice under the common law and s 27(1) of the New Zealand Bill of Rights Act 1990.

[14] The Summary Proceedings Act does not contain an equivalent provision to s 232 of the Criminal Procedure Act. Rather, s 121(1) of the Summary Proceedings Act requires the High Court to hear and determine every general appeal, and make such order in relation to it as the Court thinks fit. In the case of an appeal against conviction, the High Court may confirm the conviction, set it aside or amend it.⁷

[15] Although the Judge clearly erred in purporting to determine the appeal under the Criminal Procedure Act, we do not consider such an error raises a question of

⁶ *Zohrab v New Zealand Police*, above n 3, at [3].

⁷ Summary Proceedings Act 1957, s 121(2).

law of any general or public importance. The error is restricted to the present case, and has no wider significance.

[16] We are also satisfied the error did not produce a miscarriage of justice. The Judge evaluated and reached a decision on each of the three grounds of appeal advanced by counsel who appeared for Mr Zohrab in the High Court. She would have been required to undertake exactly the same methodology had she determined the appeal in accordance with s 121 of the Summary Proceedings Act. Mr Zohrab was therefore not disadvantaged by the Judge applying the wrong legislation in determining the appeal.

[17] We therefore see no merit in this proposed ground of appeal.

Was the Judge's decision irrational?

[18] Counsel for Mr Zohrab advanced three grounds of appeal before Goddard J. These were: the trial Judge had demonstrated apparent or actual bias; the Judge had failed to give sufficient weight to certain evidence; and there was insufficient evidence to discharge the standard of proof.

[19] After setting out the background, the Judge summarised the decision given by Judge Tompkins in the District Court. She then set out the competing submissions in respect of each ground of appeal before reaching decisions on each ground. Reading the judgment as a whole, we do not consider the judgment can be described as irrational. Rather, the Judge reached a reasoned decision using orthodox methodology that took into account the arguments for both parties.

[20] Mr Zohrab refined this ground of appeal somewhat in his oral submissions. He submitted it was irrational for Goddard J to have rejected aspects of the evidence he had given during the hearing in the District Court based on what he described as her "intuition". He developed this argument in the following way:

28. For the Police and Justice Goddard to override my witness statements on the basis of what appears to be intuition, is irrational.
29. On the basis of my experience as a Men's Rights Activist, I have reason to speculate that elements of the Police and Justice systems

might have a world view, according to which men tend to be bad and women tend to be good.

30. Since those four statements of mine show up some women in a bad light, it may well be the case that the Police prosecutor and Justice Goddard found them hard to believe.
31. However, any such unwillingness to believe my testimony would be irrational, rather than evidence-based.

[21] Mr Zohrab wishes to argue this point because he considers it will ultimately undermine several remarks Judge Tompkins made about him, which he believes are unjustifiably derogatory. Again, however, the point does not give rise to any issue of public or general importance. Although Mr Zohrab obviously holds strong views about the decisions reached in the courts below, the reasoning processes used by the Judges in those courts have no significance beyond the present case. It would be wrong for this Court on a second appeal to expend its resources dealing with an issue that has no wider relevance or significance.

Does the judgment demonstrate apparent or actual bias?

[22] This proposed question arises because Goddard J described Mr Zohrab in her substantive judgment as a “self-proclaimed Men’s rights activist”.⁸ Mr Zohrab contends the use of this phrase indicates bias on the part of the Judge. He submits the Judge ought to have used a phrase such as “self-described” rather than “self-proclaimed”.

[23] Goddard J may have had some misgivings about the wording she used in her substantive judgment, because in her subsequent leave judgment she said she had intended no disrespect to Mr Zohrab when she used the term “self-proclaimed” in her earlier judgment.⁹

[24] Although Mr Zohrab is undoubtedly concerned about the Judge’s choice of wording, we do not accept that the words the Judge used are indicative of either apparent or actual bias. Our impression on that point is confirmed when the judgment is read as a whole. As we noted in [19] above, the Judge took into account

⁸ *Zohrab v New Zealand Police*, above n 2, at [3].

⁹ *Zohrab v New Zealand Police*, above n 3, at [10].

both parties' arguments to reach a reasoned decision. We do not consider Mr Zohrab has raised an arguable ground of appeal based on apparent or actual bias.¹⁰

Result

[25] The application for special leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

¹⁰ See *Saxmere Co Ltd v Wool Board Disestablishment Co Ltd* [2009] NZSC 72, [2010] 1 NZLR 35.