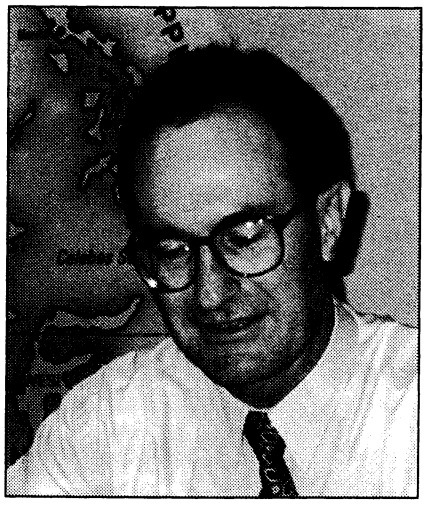
CASE NOTES

REGINA v SJB

New South Wales Court of Criminal Appeal [2002] NSWCCA 163

Judgment of Sheller JA, Levine and Simpson JJ delivered 31 May 2002



Mark Hunter

CRIMINAL LAW - SEXUAL OFFENCES - "LONGMAN" DIRECTION

The appellant was convicted at trial in the Bega District Court in respect of sexual and indecent assaults committed upon his partner's twelve year old daughter in 1983-84.

The alleged offences were first disclosed in 1987 to one of the complainant's adolescent friends, who also gave evidence. The authorities were not notified until 2001. Between 1983 and 1987 the complainant lived with her mother.

She admitted enjoying a close relationship during those years with her mother, natural father, sister, friends and teachers. As to the substantial delay in disclosing the alleged offences, the complainant told the jury she *"...didn't know why I didn't say anything, I wish I had done"*. She claimed that she did not want to upset her mum, and that she felt ashamed and scared.

The Crown led no evidence of a corroborative kind. As the only defence witness, the appellant claimed a total fabrication by the complainant.

The trial judge refused to include in his summing up a warning to the jury that it would be dangerous for them to convict the appellant by reason of the complainant's three year delay in disclosing the alleged offences.

HELD

1. The circumstances of the case required a *warning* to the jury that it would be *dangerous* to convict.
2. Appeal allowed / conviction and sentence quashed / new trial ordered.

APPEARANCES

Appellant - Newell / Kennedy & Cooke (Solicitors)

Crown - Barrett / DPP (NSW)

COMMENTARY

This decision is important because sexual assault trials comprising the uncorroborated evidence of a complainant, non existent or delayed complaint and a general denial by the accused are not uncommon. A direction to the jury in the terms specified in *SJB* will significantly impact upon the Crown's prospects of securing a conviction.

The sometimes misinterpreted line of three High Court authorities on this subject begins with *Regina v Longman* (1989) 168 CLR 79. The other relevant decisions are *Regina v Crampton* (2000) 117 A Crim R 222 and *Regina v Doggett* (2000) 119 A Crim R 416.

The Court of Criminal Appeal in *SJB* affirmed the correctness of a detailed analysis of these authorities which was recently undertaken by Sully J in *Regina v BWT* (unrep.NSWCCA 12/4/02).

Justice Sully concluded that in any case where there has been *substantial* delay in complaining of a sexual offence it is, on that account alone, imperative for the trial judge to give a warning to the jury that it would be dangerous for them to convict on the uncorroborated evidence of the complainant.

Where some other corroborative evidence supports the complainant's story *"...the framing of a satisfactory Longman direction will be a much more fraught and difficult experience"*. (Sully J).

The NT Court of Criminal Appeal has held that, in an appropriate case, the failure by a trial judge to give the jury a *Longman* type direction may constitute appealable error - *Latcha v The Queen* (1998) 104 A Crim R 390.

Territory judges *must not* suggest to a jury that sexual offence complainants are generally unreliable witnesses and that it is *for this reason* unsafe to convict upon their testimony where it is uncorroborated - *Sexual Offences (Evidence & Procedure) Act, 1983* (NT), s4(5)(a).

Furthermore, judges in the Territory *must* in delayed complaint sexual offence trials direct the jury:

(i) that such delay is not necessarily indicative of fabrication by the complainant; and

(ii) that there may be good reasons why a victim of a sexual offence may *hesitate* in complaining about it - s4(5)(b).

Speculating to the jury as to possible reasons for a failure to complain or delay in complaint is an appealable error by a trial judge - *Regina v Williams* (1999) 104 A Crim R 260 at 265-6.