IN THE SUPREME COURT OF NEW ZEALAND

SC 41/2016
[2016] NZSC 142

BETWEEN	MRINAL SARDANA Applicant
AND	THE QUEEN Respondent

Court: William Young, Glazebrook and Ellen France JJ

Counsel: Applicant in person
I R Murray for Respondent

Judgment: 1 November 2016

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was found guilty by a jury of obtaining property by deception. The property in question was money which he had obtained from the complainant and the deception alleged was that he had falsely represented to the complainant that there was no risk of loss for the complainant as he was financially able to repay the money.

[2] The applicant unsuccessfully appealed to the Court of Appeal against conviction and sentence.[1] He now seeks leave to appeal.

[3] He contends that he was wrongly convicted on the evidence. The case against him was unusual in that the complainant acknowledged that she knew that the money she gave the applicant would be used for gambling on her behalf. There

[1] *Sardana v R* [2016] NZCA 138 (Winkelmann, Peters and Collins JJ) [the Court of Appeal judgment].

was, however, an evidential basis for the Crown case and the issue which the jury had to determine was explained to them carefully by the Judge.[2]

[4] The applicant also wishes to raise a unanimity argument which, as we understand it is as follows:

(a) the Crown case was based on a number of remarks made by him to the applicant;

(b) the jury should have been told that they could only find the applicant guilty if unanimous as to a particular set of remarks; and

(c) no such direction was given.

[5] In agreement with the Court of Appeal we consider that no such direction was required.[3] There was only one transaction in issue – the payment of money – and the events which preceded it lay within a narrow compass. All remarks relevantly attributed by the complainant to the applicant were to the same general effect, namely that he was in a position to repay the money and that the complainant's money was not at risk. If the jury were unanimous as to the substance of the representation, there was no need for unanimity as to the particular words or phrases by which this representation was conveyed. In this respect the case differs from *Carlos v R* in which the Court of Appeal stressed the need for a unanimity direction where distinct and different representations are relied on by the prosecution.[4]

[6] The applicant also maintains that his sentence (four months community detention, 250 hours community work and reparations of $15,000 for the money obtained and $5,000 for emotional harm) was excessive. His submissions in support of this aspect of his application identify no point of principle.

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2 See the Court of Appeal judgment, above n 1, at [20]–[26].
3 At [26].
4 *Carlos v R* [2010] NZCA 248.

[7] The proposed appeal raises no question of general or public importance and there is no appearance of a miscarriage of justice. The application for leave to appeal is accordingly dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent