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IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

**SC 98/2024
[2024] NZSC 171**

BETWEEN DALJEET SINGH
Applicant

AND THE KING
Respondent

Court: Ellen France, Kós and Miller JJ

Counsel: R M Mansfield KC and J N Olsen for Applicant
B So for Respondent

Judgment: 11 December 2024

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was tried before a jury in the District Court at Tauranga on 10 charges of sexual violation by rape and unlawful sexual connection, male assaults female, injuring with intent to injure, and attempted poisoning. The Judge, in summing up to the jury, departed slightly from the recommended direction on the standard of proof set out in *R v Wanhalla*.¹

¹ *R v Wanhalla* [2007] 2 NZLR 573 (CA).

[2] The applicant was found guilty on six of these charges, including two representative charges of sexual violation,² and sentenced to seven years and 10 months' imprisonment.³ The Court of Appeal dismissed his appeal against these convictions.⁴

[3] He now seeks leave to appeal to this Court, citing the trial Judge's direction.

The Courts below

[4] We set out the relevant parts of the *Wanhalla* model direction and the direction given in the applicant's case below:

*R v Wanhalla*⁵

The Crown must prove that the accused is guilty beyond reasonable doubt. Proof beyond reasonable doubt is a very high standard of proof which the Crown will have met only if, at the end of the case, you are sure that the accused is guilty.

It is not enough for the Crown to persuade you that the accused is probably guilty or even that he or she is very likely guilty.

On the other hand, it is virtually impossible to prove anything to an absolute certainty when dealing with the reconstruction of past events and the Crown does not have to do so.

What then is a reasonable doubt? A reasonable doubt is an honest and reasonable uncertainty left in your mind about the guilt of the accused after you

*R v Singh*⁶

The Crown must prove guilt beyond reasonable doubt. That is a very high standard which will only be met if you are sure of guilt.

On the other hand, it is impossible to prove something to 100% certainty when you are reconstructing events from the past involving human conduct and the Crown doesn't have to get to 100% certainty.

That raises the obvious question doesn't it, what then is a reasonable doubt? A reasonable doubt is an honest and reasonable uncertainty left in your mind about the guilt of a defendant after you

² The applicant was found not guilty on four of the charges, including the attempted poisoning—not three as the Court of Appeal thought: *Singh v R* [2024] NZCA 364 (Thomas, Fitzgerald and Osborne JJ) [CA judgment] at [2].

³ *R v Singh* [2023] NZDC 7529 (Judge Mabey).

⁴ CA judgment, above n 2.

⁵ *R v Wanhalla*, above n 1, at [49] per William Young P, Chambers and Robertson JJ (emphasis added and formatting adjusted).

⁶ *R v Singh* DC Tauranga CRI-2019-070-002704, 14 November 2022 (Judge Mabey) [DC summing up] at [5] (formatting adjusted).

have given careful and impartial consideration to all of the evidence.

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In summary, if, after careful and impartial consideration of the evidence, you are sure that the accused is guilty you must find him or her guilty. On the other hand, if you are not sure that the accused is guilty, you must find him or her not guilty.

If after careful and impartial consideration of the evidence you are sure that a defendant is guilty then you must find him or her guilty. On the other hand, if after careful and impartial consideration of the evidence you are unsure of a defendant's guilt then you must find that defendant not guilty.

[5] As will be evident, the key difference is the trial Judge's omission of the following words: "It is not enough for the Crown to persuade you that the accused is probably guilty or even that he or she is very likely guilty."⁷

[6] After comparing this omission to a number of other cases concerning deviations from the *Wanhalla* direction, the Court of Appeal concluded:⁸

[40] It is plainly preferable that trial judges direct the jury on the burden and standard of proof in accordance with the full *Wanhalla* direction. Nevertheless, we are satisfied that the Judge's directions in this case sufficiently conveyed that the standard of proof is a very high standard, and that the jury must be sure of the appellant's guilt before returning a verdict of guilty.

Our assessment

[7] The applicant relies on a remark in the concurring reasons in *Wanhalla* to the effect that the direction that probable or very probable guilt will not suffice is "a vital part" of the model formulation.⁹ But the majority said:¹⁰

... [W]e are not to be taken as asserting that the formula just stated is mandatory. It is not. Further, we wish to discourage too close a focus on the precise nuances of judicial directions. It is sufficient to make it clear that the concept involves a high standard of proof which is discharged only if the jury is sure or feels sure of guilt.

⁷ *R v Wanhalla*, above n 1, at [49] per William Young P, Chambers and Robertson JJ.

⁸ CA judgment, above n 2.

⁹ *R v Wanhalla*, above n 1, at [121] per Glazebrook J.

¹⁰ At [52] per William Young P, Chambers and Robertson JJ.

[8] In a number of subsequent cases, the Court of Appeal has confirmed that while all three limbs of the *Wanhalla* direction should be given—the *presumption of innocence*, the *burden* of proof on the Crown, and the *standard* of proof the Crown must meet—exact replication of the model direction is not mandatory.¹¹ This Court has made the same point in declining leave to appeal, including in a recent case where we observed that “slavish adherence to the form of the recommended direction is not required”, provided the essential elements are adequately communicated to the jury.¹²

[9] We therefore consider the question of law the proposed appeal raises is settled. The proposed appeal would turn on its own particular facts and accordingly raises no matter of general or public importance.¹³

[10] Nor do we consider there is a substantial risk of a miscarriage of justice if leave is not granted.¹⁴ The summing up did not omit any of the three essential elements. The trial Judge clearly communicated to the jury that the starting point was the presumption of innocence and that the burden of proof rested on the Crown.¹⁵ He emphasised repeatedly that the standard of proof was a very high one and that the jury could convict only if sure of guilt. They were unlikely to have been materially assisted in this case by a contrast being drawn between “very likely” and “sure”. The departure here appears more modest than in *Do v R* (where we declined leave).¹⁶

[11] We are not therefore satisfied it is necessary in the interests of justice for this Court to hear and determine the proposed appeal.¹⁷

¹¹ *Wilson v R* [2019] NZCA 485 at [1] and [3]; and see *Peato v R* [2009] NZCA 333, [2010] 1 NZLR 788 at [55]; *Hutchins v R* [2016] NZCA 173 at [41]–[43]; and *Omar v R* [2021] NZCA 596 at [61]–[62].

¹² *Do v R* [2024] NZSC 80 at [6]. This Court will also be slow to grant leave for a second appeal where the Court of Appeal has already closely reviewed a direction for consistency with the salient points of the *Wanhalla* direction: *Hutchins v R* [2016] NZSC 117 at [5].

¹³ Senior Courts Act 2016, s 74(2)(a).

¹⁴ Senior Courts Act, s 74(2)(b)—either as to the trial being unfair or a real risk of a different outcome: Criminal Procedure Act 2011, ss 232(4)(a) and (b), and 240(2).

¹⁵ DC summing up, above n 6, at [4]–[5].

¹⁶ *Do v R*, above n 12.

¹⁷ Senior Courts Act, s 74(1).

Result

[12] The application for leave to appeal is dismissed.

Solicitors:

Te Tari Ture o te Karauna | Crown Law Office, Wellington for Respondent