

**NOTE: PUBLICATION OF NAMES, ADDRESSES, OCCUPATIONS OR IDENTIFYING PARTICULARS OF COMPLAINANTS PROHIBITED BY S 203 OF THE CRIMINAL PROCEDURE ACT 2011. SEE <http://www.legislation.govt.nz/act/public/2011/0081/latest/DLM3360350.html>**

**IN THE SUPREME COURT OF NEW ZEALAND**

**I TE KŌTI MANA NUI O AOTEAROA**

**SC 32/2024  
[2024] NZSC 70**

BETWEEN BENJAMIN NILESH GOUNDAR  
Applicant  
AND THE KING  
Respondent

Court: Glazebrook, Ellen France and Miller JJ  
Counsel: K Lakshman for Applicant  
P D Marshall and Z Zhang for Respondent  
Judgment: 20 June 2024

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

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**REASONS**

[1] Mr Goundar seeks leave to appeal his conviction on one representative charge of assault covering the period between 13 October 2017 and 5 January 2018, when he and the complainant shared a prison cell.<sup>1</sup>

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<sup>1</sup> See *R v Goundar* [2023] NZHC 923 (Isac J).

## Background

[2] Mr Goundar was acquitted on eight other charges, comprising five charges of sexual violation by unlawful sexual connection, two charges of threatening to kill and one charge of assault.

[3] The conviction and acquittals were entered at separate trials. Mr Goundar was tried four times in all. We are not concerned with the first two trials. (The first resulted in a retrial,<sup>2</sup> and the second was abandoned for COVID-19 reasons.<sup>3</sup>) At the third trial, the jury found Mr Goundar guilty on the representative charge of assault but the jury could not agree on the remaining eight charges. At the fourth trial, the jury found Mr Goundar not guilty of those charges.

[4] Mr Goundar argues that the verdicts at the third and fourth trials cannot be reconciled, because it was an all-or-nothing case. He contends that the Crown case was that the assault charges preceded a sexual assault. The Court of Appeal rejected this argument, finding (as the trial Judge had done) that the assaults were not always a precursor to sexual assault.<sup>4</sup>

## Our assessment

[5] Mr Goundar contends that there has been a miscarriage of justice.<sup>5</sup> He says the jury at the fourth trial must have been satisfied that he did not assault the complainant at all.

[6] We accept the Crown's contention that the verdicts are reconcilable. It is apparent from the addresses of Crown counsel and the summing up at the third trial that the Crown did not run an all-or-nothing case. Rather, it contended that Mr Goundar would assault the complainant to force him to submit to Mr Goundar's sexual advances, or just because Mr Goundar was angry about something, such as the

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<sup>2</sup> *Goundar v R* [2021] NZCA 544.

<sup>3</sup> *R v Goundar* HC Wellington CRI-2019-096-3345, 17 June 2022 at [38].

<sup>4</sup> *Goundar v R* [2024] NZCA 54 (Collins, Woolford and Mander JJ) [CA judgment] at [18]–[21].

<sup>5</sup> This Court in *B (SC12/2013) v R* [2013] NZSC 151, [2014] 1 NZLR 261 explained the principles relevant to inconsistent verdict cases. That was in the context of one trial. See at [24]–[29] per Elias CJ and [67]–[74] per McGrath, Glazebrook and Arnold JJ. See also CA judgment, above n 4, at [11]–[16] and the cases cited there. Mr Goundar does not advance his application on the basis that these principles may differ where there are separate trials, though.

cleanliness of the cell. That being so, we are not persuaded that there is a risk of a miscarriage of justice.<sup>6</sup>

## **Result**

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

Solicitors:

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

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<sup>6</sup> Senior Courts Act 2016, s 74(2)(b).