

COURT OF APPEAL FOR ONTARIO

CITATION: R. v. Poorsarwar, 2012 ONCA 799

DATE: 20121119

DOCKET: C54888

Goudge, Sharpe and Gillese JJ.A.

BETWEEN

Her Majesty the Queen

Respondent

and

Rohin Poorsarwar

Appellant

Philip B. Norton, for the appellant

Grace Choi, for the respondent

Heard: November 16, 2012

On appeal from the conviction entered on December 14, 2011 and the sentence imposed on January 5, 2012 by Justice J. Elliot Allen of the Ontario Court of Justice, sitting without a jury.

APPEAL BOOK ENDORSEMENT

[1] The appellant argues that the trial judge erred in failing to give adequate reasons for rejecting the evidence of the appellant and his sister and accepting the complainant's evidence as proof of the offences beyond a reasonable doubt.

[2] We do not agree. The trial judge gave a detailed explanation of why he rejected the appellant's evidence and why he found the complainant's evidence

to be compelling. The trial judge's conclusion about the complainant's evidence was based on much more than his rhetorical question concerning the unlikelihood of any fabrication in light of the appellant's sister's likely support of her brother. The trial judge was perfectly entitled to reject the sister's evidence in light of the strength of the complainant's evidence.

[3] The Crown concedes that the fresh evidence ought to result in a conviction for assault *simpliciter* on count six, rather than one for assault causing bodily harm. In the result, the conviction appeal is dismissed with the substitution on count six of a conviction for assault *simpliciter*.

[4] Turning to the sentence appeal, the trial judge imposed a sentence of two years less a day, significantly above the 90 days proposed by the Crown. He did so without giving counsel the opportunity to make submissions. This court has indicated that this should not be done, see *R. v. Hagen* 2011 ONCA 749. Taken together with the substitution of a conviction for assault *simpliciter* on count six in this case, this makes it appropriate for this court to revisit the matter of sentence.

[5] There is no doubt there are many aggravating factors in this case. However, given the substitution of a conviction for the lesser offence of assault *simpliciter* on count six, we would impose a global sentence of 18 months together with the same conditions attached by the trial judge.

[6] The sentence appeal is allowed and this sentence substituted.