COURT OF APPEAL FOR ONTARIO

CITATION: R. v. S.K., 2025 ONCA 166 [1]
DATE: 20250303
DOCKET: COA-23-CR-0541

Simmons, George and Pomerance JJ.A.

BETWEEN

His Majesty the King

Respondent

and

S.K.

Appellant

Emmett Brownscombe and Jeffrey Couse, for the appellant

Charmaine M. Wong, for the respondent

Heard: February 25, 2025

On appeal from the conviction entered on August 25, 2022 by Justice Suranganie Kumaranayake of the Superior court of Justice, sitting with a jury.

REASONS FOR DECISION

[1] A jury convicted the appellant of sexual assault and assault. He appeals both convictions.

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[1] This appeal is subject to a publication ban pursuant to s. 486.4 of the Criminal Code, R.S.C. 1985, c. C-46.

[2] The appellant and the complainant had an arranged marriage in India in February 2017. In February 2018, the complainant immigrated to Canada. The appellant, a Canadian citizen, was her sponsor. The couple lived together with the appellant's family (his parents, two sisters, one brother, and grandmother) until the complainant made the allegations on July 19, 2018.

[3] The complainant alleged three incidents of sexual assault and four incidents of assault between February and July 2018. She testified that the appellant exhibited controlling, threatening, and domineering behaviour. The appellant did not testify at trial. He took the position that the complainant married him to gain immigration status to Canada and fabricated her allegations to escape their relationship.

[4] The appellant raises two issues:

1. That the trial judge erred in failing to give the jury a limiting instruction on the use to be made of the complainant’s evidence that the appellant was controlling and abusive throughout the marriage; and
2. That the trial judge erred in failing to explicitly caution the jury against cross-count reasoning.

[5] First, the complainant’s testimony about the dynamic in the marriage was clearly relevant to the allegations before the court. The nature of the relationship between the appellant and complainant was at the heart of this case. At trial, the complainant testified that she acquiesced to sexual activity precisely because of the appellant’s controlling, threatening, and assaultive behaviour. This evidence

was admissible to rebut the defence position that the sexual activity was consensual.

[6] Trial counsel did not request the instruction that appellate counsel now urges on us. This signals that trial counsel did not perceive it as necessary in the circumstances of this case. The position of the defence was that the complainant had fabricated the whole of her evidence, and was motivated to do so because she wished to separate from the appellant. It is unlikely in these circumstances – where the two counts involve a single complainant and a series of acts over the course of a five-month relationship - that the jury would have misused the contextual evidence.

[7] Second, the trial judge did not explicitly caution the jury against cross-count reasoning, but that instruction was not required and may well have confused the jury: *R. v. Sandhu*, 2009 ONCA 102, 242 C.C.C. (3d) 262, at paras. 16-17.

[8] Not only was a single complainant before the court, but the physical and sexual assaults were inextricably linked. As alleged, the appellant engaged in physical assaults to secure sexual access to the complainant. When the complainant denied sexual access, the appellant resorted to physical assaults.

[9] In any event, there is every reason to believe that the jury treated the counts separately. In posing a question about an included offence (assault as an included

offence to sexual assault), the jury actually wrote on the decision tree: “there are two counts. We are deliberating separately”.

[10] For all of these reasons, the appeal is dismissed.

“Janet Simmons J.A.”
“J. George J.A.”
“R. Pomerance J.A.”