|  |  |  |  |
| --- | --- | --- | --- |
| cid:image001.jpg@01D72252.19B69DE0  **SUPREME COURT OF CANADA** | | | |
| **Citation:** R. *v.* Gul, 2021 SCC 14, [2021] 1 S.C.R. 525 |  | **Appeal Heard:** April 19, 2021  **Judgment Rendered:** April 19, 2021  **Docket:** 39414 |
| **Between:**  **Rafi Mohammad Gul**  Appellant  and  **Her Majesty The Queen**  Respondent  **Official English Translation** | | | |

|  |  |  |
| --- | --- | --- |
| **Coram:** Wagner C.J. and Moldaver, Brown, Rowe and Kasirer JJ. | | |
| **Judgment Read By:**  (paras. 1 to 2) | Wagner C.J. |
| **Dissent Read By:**  (paras. 3 to 4) | Rowe J. |
| **Majority:** | Wagner C.J. and Moldaver and Kasirer JJ. |
| **Dissent:** | Brown and Rowe JJ. |
|  | | |

|  |  |  |
| --- | --- | --- |
|  |  |  |

Rafi Mohammad Gul Appellant

v.

Her Majesty The Queen Respondent

**Indexed as: R. *v.* Gul**

2021 SCC 14

File No.: 39414.

2021: April 19.

Present: Wagner C.J. and Moldaver, Brown, Rowe and Kasirer JJ.

on appeal from the court of appeal for quebec

*Criminal law — Appeals — Application of curative proviso — Accused convicted of sexual assault and breaking and entering with intent to commit indictable offence — Court of Appeal holding that trial judge erred in characterizing prior event as similar fact evidence — Majority of Court of Appeal applying curative proviso — Convictions upheld — Criminal Code, R.S.C. 1985, c. C‑46, s. 686(1)(b)(iii).*

**Cases Cited**

By Rowe J. (dissenting)

*R. v. Trochym*, 2007 SCC 6, [2007] 1 S.C.R. 239.

**Statutes and Regulations Cited**

*Criminal Code*, R.S.C. 1985, c. C‑46, s. 686(1)(b)(iii).

APPEAL from a judgment of the Quebec Court of Appeal (Savard C.J. and Schrager and Ruel JJ.A.), 2020 QCCA 1557, 405 C.C.C. (3d) 143, 460 D.L.R. (4th) 195, [2020] AZ‑51724181, [2020] Q.J. No. 11528 (QL), 2020 CarswellQue 12281 (WL Can.), affirming the convictions of the accused for sexual assault and breaking and entering with intent to commit an indictable offence entered by Bélisle J.C.Q., 2018 QCCQ 7257, [2018] AZ‑51535284, [2018] J.Q. no 9504 (QL), 2018 CarswellQue 9145 (WL Can.). Appeal dismissed, Brown and Rowe JJ. dissenting.

*Jordan Trevick* and *Clara Daviault*, for the appellant.

*Frédérique Le Colletter*, for the respondent.

English version of the judgment of Wagner C.J. and Moldaver and Kasirer JJ. delivered orally by

[1] The Chief Justice — The appellant appeals as of right from a decision in which a majority of the Quebec Court of Appeal upheld a verdict of guilty entered by the trial judge.

[2] A majority of judges of this Court would, for the reasons of Savard C.J.Q. and Schrager J.A., and in particular for the reasons set out at para. 44 of the Court of Appeal’s decision, dismiss the appeal.

English version of the reasons of Brown and Rowe JJ. delivered orally by

[3] Rowe J. (dissenting) — The Crown acknowledges, and we agree with the Quebec Court of Appeal, that the trial judge erred in characterizing a prior event as [translation] “probative evidence of past misconduct” (2018 QCCQ 7257, at para. 21 (CanLII)). However, unlike our colleagues, we are of the view that the curative proviso set out in s. 686(1)(b)(iii) of the *Criminal Code*, R.S.C. 1985, c. C‑46, cannot apply. At para. 21 of his reasons, the trial judge explained that the evidence in question was probative to [translation] “demonstrate similarity of conduct, determine the credibility of the accused, establish the identity of the offender and enhance the credibility of the complainant, because her version is contradicted by that of the accused”. In our view, because the assessment of the credibility of the accused and of the complainant was central to the case, this is not a situation in which the Crown’s evidence was overwhelming and conviction was inevitable. As this Court held in *R. v. Trochym*, 2007 SCC 6, [2007] 1 S.C.R. 239, at para. 82, whether the evidence against an accused is overwhelming is a higher standard than the requirement that the Crown prove its case beyond a reasonable doubt.

[4] For these reasons, we would therefore have allowed the appeal and ordered a new trial on the same charges.

*Judgment accordingly.*

*Solicitors for the appellant: Jordan Trevick, Montréal; Yves Ménard Avocats inc., Montréal.*

*Solicitor for the respondent: Director of Criminal and Penal Prosecutions, Longueuil.*