
HIS MAJESTY THE KING

v.

EVELYN DICK

1947

*Feb. 5, 6

*Feb. 11

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Criminal law—Accused convicted of murder—New trial ordered by appellate court—Misdirection—Wrongful admission of statements by accused—Alleged conflict of decisions on latter ground—Accused still entitled to new trial on ground of misdirection—Section 1025, Cr. C.

The respondent, convicted of murder, appealed to the Court of Appeal, which, by an unanimous judgment, granted a new trial on two grounds: misdirection by the trial judge and statements by the respondent, while in custody, wrongly admitted in evidence. On a petition by the Crown for leave to appeal to this Court under section 1925 Cr. C.

Held that the application should be refused.—Even if the Crown had shown that the judgment to be appealed from, on the question of admissibility of the alleged confessions, conflicted with the judgment of any other court of appeal, and this Court came to the conclusion that the Court of Appeal were wrong, the respondent would still be entitled to a new trial on the ground of misdirection by the trial judge, on which point no conflict had been shown. *Ouvrard v. Quebec Paper Box Co. Ltd.* ([1945] S.C.R. 1) approved.

*Present:—Mr. Justice Taschereau in Chambers.

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MOTION by the Crown, before the Honourable Mr. Justice Taschereau in Chambers, for leave to appeal to this Court under section 1025 Cr. C. from the judgment of the Court of Appeal for Ontario granting a new trial to the respondent (1).

W. B. Common K.C. and *C. R. Magone K.C.* for the motion.

J. J. Robinette K.C. contra.

TASCHEREAU J.:—The respondent was convicted of murder and sentenced to hang, at the Assizes at Hamilton on the 16th of October, 1946.

She appealed to the Court of Appeal of Ontario, and a new trial was granted on two grounds, (1) that the learned trial judge made errors of non-direction and misdirection in his charge to the jury and (2) that certain statements alleged to have been made by the respondent to police officers, while in custody, had been wrongly admitted in evidence against her.

The judgment of the Court of Appeal of Ontario having been unanimous (1), the Crown now asks for leave to appeal to the Supreme Court of Canada under section 1025 of the Criminal Code. It is of course necessary, before I grant leave, that I should be satisfied that the judgment of the Court of Appeal conflicts with the judgment of any other court of appeal in a like case. If such a conflict cannot be found, it is not within my jurisdiction to grant such a leave.

Counsel for the appellant have cited many judgments and endeavoured to show that the ruling of the Court of Appeal on the admissibility of the confessions, conflicts with the views adopted by other courts of appeal. No judgments of other courts of appeal have been cited that would conflict with the Court of Appeal of Ontario, on the point that there was non-direction and misdirection by the trial judge, in his charge to the jury.

I am of opinion that this application must be refused.

By the unanimous judgment of the Court of Appeal the respondent has obtained a new trial on two grounds. Even

if a conflict could be found on the question of the admissibility of confessions, and this Court came to the conclusion that the Court of Appeal were wrong, the respondent would still be entitled to a new trial on the ground of misdirection. In any event, the appeal of the Crown is bound to be dismissed, and it is not the function of this Court to give advisory opinions on matters which cannot affect the final outcome of the appeal.

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Taschereau J.

Even if I had any doubts on the matter, they would be cleared by the recent decision of this Court in the case of *Ouvrard v. Quebec Paper Box Co. Ltd.* (1) where, speaking for the Court, my Lord the Chief Justice said:

The appellant, in view of the fact that there has been no dissent and that no conflict is alleged, is unable to ask this Court to reverse the judgment of the court of appeal on this fundamental question, and it means, therefore, that, even assuming there is a conflict on the other points raised in the appeal and even if he should succeed in getting this Court to reverse the judgment of the court of appeal on these other points, the respondent would, nevertheless, remain acquitted. The appeal would be devoid of any possible practical result and the Court would be asked only to pass upon an academic question.

The application is dismissed.

Leave to appeal refused.

(1) [1945] S.C.R. 1, at 9.