

GEORGE P. DEMENOFF APPELLANT;

AND

HER MAJESTY THE QUEEN RESPONDENT.

1963
 *Dec. 2
 Dec. 16

ON APPEAL FROM THE COURT OF APPEAL FOR
 BRITISH COLUMBIA

Criminal law—Appeals—Jurisdiction of Supreme Court of Canada—Right to appeal limited to questions of law on which there was a dissent in the Court of Appeal—Confession—Whether voluntary—Dissent as to admissibility—Whether dissent on a question of law—Criminal Code, 1953-54 (Can.), c. 51, ss. 79(1)(a), 597(1)(a).

The appellant, a Sons of Freedom Doukhobor, was convicted on a charge of having placed an explosive substance with intent to cause an explosion that was likely to cause serious damage to property, contrary to s. 79(1)(a) of the *Criminal Code*. A confession was put in evidence at the trial. His appeal was dismissed by a majority judgment of the Court of Appeal, the dissent being as to the admissibility of the confession. The appellant appealed to this Court.

Held: The appeal should be dismissed.

Under s. 597(1)(a) of the *Criminal Code*, this Court is incompetent to entertain an appeal if the ground of appeal raises only a question of mixed law and fact. The ground of appeal must raise a question of law in the strict sense and in respect to which there is a disagreement, expressed or implied, between the minority and the majority in the Court of Appeal. In the case at bar, the difference of opinion was attributable to different inferences drawn by the dissenting judge and by those of the majority from the accepted evidence relevant to the voluntariness of the confession. Consequently, the ground of appeal did not raise a question of law in the strict sense and this Court had no jurisdiction.

APPEAL from a judgment of the Court of Appeal for British Columbia¹, affirming the appellant's conviction for an offence under s. 79(1)(a) of the *Criminal Code*. Appeal dismissed.

Sydney B. Simons, for the appellant.

W. G. Burke-Robertson, Q.C., for the respondent.

The judgment of the Court was delivered by

FAUTEUX J.:—This is an appeal from a majority judgment of the Court of Appeal for the Province of British Columbia¹ dismissing the appeal of the appellant from his

*PRESENT: Fauteux, Abbott, Martland, Ritchie and Spence JJ.

¹ (1963), 43 W.W.R. 610.

1963
DEMENOFF conviction for the offence described under s. 79(1)(a) of
the *Criminal Code*.

v.
THE QUEEN The appeal is taken under s. 597(1)(a) of the *Criminal*
Fauteux J. *Code* which provides that:

597. (1) A person who is convicted of an indictable offence other than an offence punishable by death and whose conviction is affirmed by the court of appeal may appeal to the Supreme Court of Canada

(a) on any question of law on which a judge of the court of appeal dissents, or

.....
.....

Under these provisions, this Court is incompetent to entertain an appeal if the ground alleged in support thereof raises only a question of mixed law and fact. It is indeed well settled by the decisions of this Court that the ground of appeal must raise "a question of law in the strict sense", *The King v. Décarry*¹, and that this question of law, involved in the *ratio decidendi*, must be one in respect to which there is a disagreement expressed or implied between the minority and the majority in the Court of Appeal. *Rozon v. The King*².

In the case at bar, the majority and the minority disagreed with respect to the admissibility, as a voluntary statement, of a confession of guilt made by the appellant. It does not appear from the reasons of Davey J.A., dissenting, and from those of his colleagues Bird and Wilson J.J.A., of the majority, that this disagreement is based on a conflicting view of the law governing the admissibility of confessions; a careful consideration of the reasons for judgment reasonably indicates that the difference of opinion is attributable to different inferences being drawn by the dissenting Judge and by those of the majority from the accepted evidence relevant to the voluntariness of the confession. On this view of the matter, the ground of appeal alleged by the appellant does not raise a question of law in the strict sense. *The Queen v. Fitton*³.

1 [1942] S.C.R. 80, 77 C.C.C. 191, 2 D.L.R. 401.
2 [1951] S.C.R. 248 at 256, 11 C.R. 255, 99 C.C.C. 167, 2 D.L.R. 594.
3 [1956] S.C.R. 958, 24 C.R. 371, 116 C.C.C. 1, 6 D.L.R. (2d) 529.

Hence, this Court has no jurisdiction and the appeal should be dismissed.

1963
DEMENOFF
v.
THE QUEEN
Fauteux J.
—

Appeal dismissed.

*Solicitors for the appellant: Rankin, Dean & Munro,
Vancouver.*

*Solicitors for the respondent: Ewart, Kelley, Burke-
Robertson, Urie & Butler, Ottawa.*
