

The rape charge filed by the complainant

Law



CANADIAN CASE STUDY

R. v. W.(D.), [1991] 1 SCR 742

The case at bar concerns the rape charge filed by the complainant who is sixteen years old and the niece of the accused, who is 42 years old. The complainant said she was assaulted at least two times over a period of three days while the niece was staying at her uncle's house for a temporary period as she is a school dropout, a runaway and had been thrown out of her friends' homes several times already. She did not file a complaint the first time it happened and she even went back to her uncle's house, ostensibly to retrieve back her purse which she had left behind. It is the onus of the Crown to prove a guilt that erases reasonable doubt to overcome the presumption of innocence that should exceed the evidentiary threshold (Fisher, 2011, p. 811). It was only after the second assault that she filed the rape complaint maybe out of spite of her uncle or it might be that she finally mustered enough courage to come out in the open to file the charge. A number of aspects in the case R. v. W. (1991) stand out, of which three are unusual. Firstly, the case is essentially that of which side to believe because of the lack of usual corroborating testimonies from other witnesses and this case becomes a case of his word pitted against hers. In other words, this case hinges on credibility as to which side seems to be the more truthful, the complainant or the defendant. For the jury, as sole judges, it all boils down to exercising their best judgment based on common sense and any prior everyday experiences as it relates to this particular case. In this regard, it is not quite unusual for rape victims not to file any charges immediately after an incident for various reasons, such as fear of retribution or shame. It is therefore quite understandable why she decided to file a complaint only after <https://assignbuster.com/the-rape-charge-filed-by-the-complainant/>

a second assault took place. Some victims even take weeks or months before finally deciding to file a complaint, a considerable lapse of time when essential forensic evidence of a crime may have disappeared.

Secondly, it is quite unusual for the trial judge to warn the jury not to start deliberating yet as there might be some corrections pertaining to the first charge filed, when it was agreed by both parties to be essentially correct and fair (error free). What is even more unusual was a short time that elapsed between the main charge and the re-charge, incontrovertible evidence or proof that the judge himself may have entertained some doubts as to the correctness of the first charge and making the re-charge almost as a second thought or an afterthought to rectify something else. This action of the judge put the defendant at a distinct disadvantage as it created doubts on the mind of the jurors as to what constitutes reasonable doubt, on whether to acquit or not. His additional instructions created more confusion instead of clearing things up (Shapiro, 1993, p. 12).

Thirdly and lastly, the exclusion of the third alternative, in which there could possibly be still some reasonable doubt on the evidence presented by the accused in his own defense, had railroaded the case resulting in a guilty verdict by the jury; the way the trial judge made his instructions reduced the case into an either/or proposition. Choosing only between two kinds of options instead of three alternatives had rendered the principle of reasonable doubt useless. An indication of the dilemma is the Supreme Court decision on the appeal was not even a unanimous decision but a divided verdict due to ambiguity (Matthews, 1986, p. 296).

The adage is that it is always better to acquit the guilty than convict the innocent and so this legal principle should be applied in this case because

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credibility was the core issue and there was reasonable doubt on the guilt of the accused. It is the essence of justice that it be rendered as to leave no reasonable doubt to avoid wrongful convictions (Gould, 2008, p. 132). In cases like these, it is required that the bar of justice be set much higher to avoid a miscarriage of justice.

References

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