

Crime and disorder act 1998



**ASSIGN
BUSTER**

The ratio of the case is that within section 28(4) of the Crime and Disorder Act 1998 those who are not an immigrant of the country, in other words those who are not of a British origin, do represent a racial group. Section 28(4) of the Act defines the term " racial group" which includes nationality (including citizenship) and national origins along with race, colour and ethnic origin. The addition of " nationality" in the Race Relations Act 1976 section 1 subsection (1)(b)(ii) established that discrimination against the non-British was no longer allowed and therefore it didn't matter that the offender hadn't referred to the women as " Spaniards", the fact that he mentioned " foreigners" indicate the non-British and demonstrates racially aggravated discrimination under the 1998 Act.

The Court of Appeal addressed the central issue by focusing on the language of section 28 of the Crime and Disorder Act 1998, which includes the two circumstances under which an action would be considered to be racially aggravated, in subsection 1(a), the meanings of certain words in subsection 1(a), the basis of the offence and the meaning of the term " racial group".

The first key step in reaching the conclusion was mentioned by Baroness Hale, that the basic offence has been committed and that the offence is either racially or religiously aggravated under section 28 of the Crime and Disorder Act 1998. The next step towards the reasoning mainly concerns subsection 1(a) which states that before, after or at the time of committing the offence, the offender demonstrates conducts hostility towards the victim which is based on the victim's membership or presumed membership of a particular racial or religious group. This subsection is based on an outward manifestation of hostility towards racial or religious groups and that is what

the House of Lords (HL) interpreted for this case. The HL then accepted that if the offender had referred to the victims as "bloody Spaniards" instead of "bloody foreigners" which were the exact words the offended had used. However according to the 1998 Act the hostility must be shown towards a particular "group" instead of foreigners. Then it has been mentioned that the Act requires to be defined "by what it is rather than what it is not". Thus the term "Spaniards" would be covered in the Act but not the term "foreigners" which refers to all non-British. Then it was established by the HL that the criterion by which the victims are defined, whether it is defined solely by reference to what the group members are not or broadly by reference to what they are, is the same. Finally the last step towards the final decision of the case was to obtain the answer to the question; whether or not non-British people, those who don't come from a British origin, represent a racial group within section 28(4) of the Crime and Disorder Act 1998, to which the answer given was affirmative as it would be had the question been regarding whether foreigners represented a racial group within section 28(4) of the Act.

I find the House of Lords' decision to be convincing because of the following reasons:

- The offender has committed an offence and has demonstrated hostility towards the three Spanish women. The evidence for this lies in the fact "he then pursued them in a kebab shop in an aggressive manner". The word "aggressive" is important in this context as it proves that he has shown hostile behaviour towards the three women.

- According to the facts of the case, after having said " bloody foreigners" and " go back to your own country" " he then pursued them in a kebab shop in an aggressive manner". This indicates that the offender has committed a racially aggravated crime under section 28 , subsection 1(a) of the Crime and Disorder Act 1998 which states that one of the circumstances under which an offence will be considered racially aggravated is if the offender demonstrated hostile behaviour towards the victims any time before, after or at the time of the offence, based on their racial backgrounds. Therefore the use of the word " then" satisfies this subsection of the 1998 Act because it indicates that he demonstrated hostile behaviour after committing the offence.
- It has already been proved that the act was racially aggravated and such acts lead to the denial of respect and dignity towards those who are considered as the " others". They are never looked upon as part of the community and it is more hurtful to the victims as such conduct is likely to make them feel discriminated due to their racial backgrounds.
- Baroness Hale referred to the case of Director of Public Prosecutions v M [2004] 1 WLR 2758, where the Divisional Court held that the use of the terms " bloody foreigners" could portray hostile behaviour towards a racial group, depending on the context. The fact that Baroness Hale referred to this example to back up her opinion makes the final decision more convincing.
- Baroness Hale also mentioned that in Attorney General's Reference (No 4 of 2004) [2005] 1 WLR 2810 the CA (Court of Appeal) held that " someone who is an immigrant to this country and therefore non-British could be a member of a racial group for this purpose". This statement

makes the decision really convincing because it actually states that the three Spanish women, being foreigners and therefore non-British, did constitute a separate racial group and hence the offender's appeal was dismissed.

- Baroness Hale's opinion also includes examples which illustrate a clear distinction between words or phrases which demonstrate hostility towards a racial group and words that only demonstrate hostility towards foreigners only. One such example of this is "Wogs begin at Calais" which demonstrates hostility towards all foreigners and "bloody wogs" which is considered to have specific racial connotations. According to an article from telegraph. co. uk , the word "wog" is a "vulgar name for a foreigner". So in other words the term "bloody wogs" which according to Baroness Hale's opinion has racial associations, can also be translated to "bloody foreigners". Therefore it shows how the expression "bloody foreigners", used by the offender in the case, is a vulgar expression that insulted the three Spanish women. This further makes the House of Lord's decision convincing.