**THE KING**

**V.**

**BAILEY**

IN THE COURT OF CRIMINAL APPEAL

1924 MARCH 24

**LEX (1924) – 22 K.B. 300**

**OTHER CITATIONS**

3PLR/1924/4 (CCA-E)

[1924] 2 K.B. 300

**BEFORE THEIR LORDSHIPS:**

LORD GORDON HEWART C.J.

HORACE EDMUND AVORY, J.,

JOHN SANKEY, J.

**ORIGINATING COURT(S)**

MONMOUTH ASSIZES BEFORE ROWLATT J

**REPRESENTATION**

*S. R. C. Bosanquet* for the Appellant.

*Hon. Sir Reginald Coventry K.C.* and *J. H. Thorpe* for the Crown.

**ISSUES FROM THE CAUSE(S) OF ACTION**

CRIMINAL LAW AND PROCEDURE: - Indecent Assault - Indictment containing many Counts - Each Count charging separate Assault on separate Person - Corroboration - Whether Evidence on one Count is corroboration of other Counts - General Verdict.

CHILDREN AND WOMEN LAW:- Children and Education – Children and Sexual Offences - Little boys in school– Principal accused of multiple indecent assault on his young charges – Proof - Standard of corroboration required to sustain charge – How treated

EDUCATION LAW:- Security of young persons at educational centers – Teacher as sexual abuser - Allegation of multiple gross indecent assaults on over 16 boys by principal of school – Age of boys between ten to thirteen years – Level of corroboration required to sustain charge – Relevant considerations - Attitude of Court thereto

**CASE SUMMARY**

The appellant was tried at the Monmouth Assizes before Rowlatt J. upon an indictment which charged him in three counts with committing acts of gross indecency with three boys, and in sixteen other counts with indecently assaulting sixteen boys.

The appellant, who had hitherto borne an irreproachable character, was the headmaster of a school, at which school the boys whom he was alleged to have indecently assaulted were pupils. The ages of the sixteen boys ranged from ten to thirteen years.

The defence set up at the trial was a total denial of the charges alleged. It was also suggested that the appellant was unpopular with the boys and their parents, and that there was a conspiracy among the boys to make the alleged charges.

The judge in the course of his summing up to the jury said:

"... You cannot as a rule convict people on charges of indecency with young people - male or female - as a rule you cannot convict them safely without some sort of corroboration, because otherwise a person cannot defend himself. A girl or boy comes and says that 'A man did that to me,' and the man says 'I did not.' He cannot defend himself as a rule, and therefore unless there is something to turn the balance against him by way of corroboration, in practice a man in those circumstances gets off. In this case, taken one by one, it is a fair argument to say that these boys are not corroborated, except perhaps by each other, if that is corroboration. In one or two cases the boys said that they were both there, and so on. But speaking generally, taking the cases one by one, there is not much corroboration here, and also there is this to be said ... there is a great deal of want of cohesion about the evidence in respect of persons present on these occasions … many of these boys say that so-and-so was present, and when the other boys come it does not appear that they say they were there ....

"What you have to do is, making allowance for all that, to ask yourselves: Well, now, when we have made allowance for all that, one by one, if the boys' stories stood alone, would we or would we not condemn any man on that? It is true that they have got mixed up about who were present, and it is true that they did not make complaints at the time, but you have got to take the whole case together and ask yourselves, Does it appear to us that there is nothing in this, or does it appear to us that it is borne in upon us that there is truth in it although there may be in parts exaggeration due to talk? ...

"Throughout the story there is perhaps this to be borne in mind. It cuts both ways. Mr. Vachell [for the prisoner] says here you have got sixteen witnesses not telling the same story, which would be a formidable case, but sixteen different witnesses telling different stories. It is true that they are not all testifying about the same event, and therefore they are not sixteen witnesses to prove one fact but sixteen witnesses to prove sixteen facts. But on the other side it may be fairly said, as Sir Reginald Coventry indicated in his opening, that when you find the story varying in its nature and in its detail though not in its main feature, varying in its language, it is sometimes in some cases very much grosser than it is in other cases, it may be argued, and it is fair to argue at any rate, that it looks as if it was spontaneous and genuine and not invented.

"What you have to do is this. You have to look at the case as a whole, and bear in mind that it is for the prosecution to satisfy you. Bearing that in mind you have to look at the case as a whole and ask yourselves whether it is borne in upon you that this is made out, or whether you think really and honestly that the prosecution have failed to make it out. ...."

The jury acquitted the appellant on the charges of gross indecency, but returned a general verdict of guilty on all the counts charging the appellant with indecent assaults, and the appellant was sentenced to fifteen months' imprisonment with hard labour. The appellant appealed.

ISSUES FOR DETERMINATION

1. Whether the judge should have directed the jury to return a separate verdict upon each count since each count charged a separate and distinct offence regarding a different person.

2. Whether the judge did not direct the jury sufficiently as to the necessity for corroboration.

3. Whether the jury treated all the cases in the mass instead of dealing with each count separately.

DECISION OF THE PRIVY COUNCIL

Where an indictment for indecent assault contains a number of counts, each count charging a separate assault on a different person, the jury should be directed not to return a general verdict but to return a verdict on each count, and they should also be warned to draw a careful distinction between the evidence on each count and the evidence on every other count and not to supplement the evidence on any particular count by looking at the evidence as a whole.

**MAIN JUDGMENT**

The judgment of the Court (LORD HEWART C.J., AVORY and SANKEY JJ. ) was delivered by LORD HEWART C.J.

The appellant was convicted at the Monmouth Assizes of indecent assaults on certain boys, and was sentenced to fifteen months' imprisonment with hard labour. He now appeals by leave against that conviction.

The indictment contained nineteen counts. Sixteen counts had to do with indecent assaults on sixteen boys, whose ages ranged from ten to thirteen years. The remaining three counts were for acts of gross indecency with three of those boys, but upon those counts the jury acquitted the appellant.

The grounds upon which Mr. Bosanquet has based the appeal against this conviction are four: First, that in such a case as this it was essential to direct the jury that each count should be separately considered upon its own merits; secondly, that upon the question of corroboration there was misdirection, or such a failure of direction as to amount to misdirection; thirdly, that the jury ought to have been directed that in at least the greater number of the cases there was an absence of corroboration; and fourthly, that the general verdict, taken in the circumstances in which it was taken, cannot be upheld.

It is not necessary that I should review in any detail the circumstances of this most odious and repulsive case, which must have greatly shocked everyone concerned in the course of the investigation at the Monmouth Assizes. I do not wonder that both judge and jury should have been willing, if they could, to find a concise way of dealing with this mass of filth. But the question for this Court is whether the verdict can stand.

The general rule where there are many charges against a person is adequately and accurately stated in Archbold's Criminal Pleading, Evidence and Practice, 26th ed., p. 59: "Though not illegal, it is hardly fair to put a man upon his trial on an indictment containing forty counts, involving several distinct charges of false pretences; for it would be almost impossible that he should not be grievously prejudiced as regards each one of the charges by the evidence which is being given upon the others." The risk, the danger, the logical fallacy is indeed quite manifest to those who are in the habit of thinking about such matters. It is so easy to derive from a series of unsatisfactory accusations, if there are enough of them, an accusation which at least appears satisfactory. It is so easy to collect from a mass of ingredients, not one of which is sufficient, a totality which will appear to contain what is missing. That of course is only another way of saying that when a person is dealing with a considerable mass of facts, in particular if those facts are of such a nature as to invite reprobation, nothing is easier than confusion of mind; and, therefore, if such charges are to be brought in a mass, it becomes essential that the method upon which guilt is to be ascertained should be stated with punctilious exactness.

But what happened here? The appellant was the headmaster of a certain school, as to whom the evidence is that he had made himself in various ways unpopular - undeservedly so - not only with the boys, but also with some parents. The evidence for the prosecution was that this appellant, fifty-three years of age, a certificated teacher since about 1892, who had always borne, apart from this matter, an excellent character, had made a series of assaults upon schoolboys - indecent assaults and acts of gross indecency, and in the presence of other boys. On three of those counts - namely, the charges of gross indecency - the appellant was acquitted. But upon the rest of the counts, taken in bulk, he was convicted; and when one looks at the summing up, repulsive as no doubt it was to deal with a mass of material of this particular kind, not only were the jury not directed to consider each charge by itself, but there are undoubtedly passages in the summing up where it seems to have been conveyed to the jury that they might judge the part from the whole, and that they might reinforce the weakness of any particular part by looking at what appears at any rate to be the combined strength of the whole. It is said that no objection was taken to the trying of the appellant upon all the counts taken together. That may be so, and it may well be that, if objection had been taken by counsel for the appellant, the prosecution in such a case as this would have been put to their election, and they would have been asked to proceed on certain charges, omitting for the moment the rest of the charges. No such course as that was taken. The evidence was offered with reference to the indictment as a whole, and it was with reference to the indictment as a whole that at the conclusion of the trial the learned judge had the task of directing the jury. It was not merely a difficult, it was a profoundly repulsive task, and one can well imagine the kind of reason for which this case came to be dealt with in the particular way in which it was dealt with. If in the arguments which have been adduced before us counsel for the Crown had said that while this summing up was difficult to support in all respects, nevertheless it was apparent upon a close examination of the evidence that there were particular counts upon which, given an unexceptionable summing up, the jury must inevitably have come to the same conclusion, that argument must have given rise to serious consideration. No such argument has been addressed to this Court. On the contrary, it has been expressly urged more than once that no distinction is to be drawn between one count and another, and that it is right and proper that in weighing the merits, or, it may be, the demerits, of the evidence, with reference to any particular charge, the jury should bring into the scale by way, if need be, of make weight, whatever was to be collected from the evidence upon any other charge.

Now that is a proposition which, in the opinion of this Court, cannot be sustained. So far is that from being the true conception of the law, that in such a case as this not only was it right that a careful distinction should be drawn between each count and every other count, but also, in view of the source from which the evidence came, it was right that a particular warning should be addressed to the members of the jury. Reference has been made to *Rex v. Cratchley.* [(1)](wc2p:\\C:\cases\Casesk\REXVBAILEY.htm#footnote_1) In that case Lord Reading C.J. said: "In our view, there ought in such cases to be a warning by the judge, and it ought to be brought home to the minds of the jury that they must act on evidence of this character with extreme care. In such cases it is generally desirable, apart from any rule of law, and whether the witnesses are accomplices or not, that a warning should be given to the jury as to acting on the evidence of boys of this age - twelve and under ten - who are concerned in such an offence." In the present case that course was not taken, nor were the jury directed to weigh with care the evidence with reference to each particular charge, being careful not to fall into the error of supplementing the evidence on any one charge by what might improperly be conceived to be helpful evidence upon some other charge.

It is said, on the part of the Crown, that, after all, this was evidence proceeding from boys at the same school, and that the unity of the school provided a nexus which made the evidence upon any count available upon any other count. It is a little difficult to follow that reasoning. One would have thought, on the contrary, that the very fact that this evidence did come from boys at the same school, especially if the master of that school was unpopular alike with boys and with parents, might have provided ground for additional caution and a stronger warning.

This Court has to deal with the evidence as it is, in the course which was actually followed at the trial, and, to leave out the other matters upon which Mr. Bosanquet has addressed us on behalf of the appellant, it appears sufficient to say that upon his last ground, namely, that this general verdict, taken in these circumstances and upon this direction, cannot be supported, the appellant is entitled to succeed. The consequence is that this appeal is allowed and this conviction is quashed.

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R. F. S.

[1924] 2 K.B. 300

**CITATION OF CASES REFERRED TO - SEQUENTIALLY**

(1) (1864) 5 B. & S. 635, 643.

(2) [1915] 1 K. B. 341.

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(1) [1922] 2 K. B. 555.

(2) [1894] A. C. 57.

(3) [1896] 2 Q. B. 167.

(4) [1905] 1 K. B. 551.

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(1) (1913) 9 Cr. App. R. 232, 235.