



THE SUPREME COURT

DETERMINATION

**THE PEOPLE AT THE SUIT OF THE
DIRECTOR OF PUBLIC PROSECUTIONS**

-v-

C S

APPLICANT

Neutral Citation: [2021] IESCDT 34

Supreme Court record no: S:AP:IE:2021:000008

Court of Appeal record no: 2016 No. 324

Circuit Criminal Court record no: Bill No. DUDP0388/2015

Date of Determination: Friday, 26th March 2021

Composition of Court: Clarke C.J., O'Malley J., Baker J.

Status: Approved

**APPLICATION FOR LEAVE TO APPEAL TO WHICH ARTICLE 34.5.3° OF THE
CONSTITUTION APPLIES**

RESULT: The Court does not grant leave to the Applicant to appeal to this Court
from the Court of Appeal

REASONS GIVEN:

ORDER SOUGHT TO BE APPEALED

COURT: Court of Appeal
DATE OF JUDGMENT OR RULING: 17 th November, 2020
DATE OF ORDER: 17 th November, 2020

DATE OF PERFECTION OF ORDER: 12 th January, 2021
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THE APPLICATION FOR LEAVE TO APPEAL WAS MADE ON 25 th January, 2021 AND WAS IN TIME.

General Considerations

1. The general principles applied by this Court in determining whether to grant or refuse leave to appeal having regard to the criteria incorporated into the Constitution as a result of the Thirty-third Amendment have now been considered in a large number of determinations and are fully addressed in both a determination issued by a panel consisting of all of the members of this Court in *B. S. v. Director of Public Prosecutions* [2017] IESCDET 134 and in a unanimous judgment of a full Court delivered by O'Donnell J. in *Quinn Insurance Ltd. v. PricewaterhouseCoopers* [2017] IESC 73, [2017] 3 IR 812. It follows that it is unnecessary to revisit the new constitutional architecture for the purposes of this determination.
2. Furthermore, the application for leave filed and the respondent's notice are published along with this determination (subject only to any redaction required by law) and it is therefore unnecessary to set out the position of the parties.
3. Any ruling in a determination concerns whether the facts and legal issues meet the constitutional criteria identified above, is particular to that application, and is final and conclusive only to that extent and as between the parties.

The Application

4. CS ("the applicant") was convicted of fifteen counts of sexual assault and four counts of indecent assault in Dublin Circuit Criminal Court and was sentenced to seven years' imprisonment on 9 December 2016. He had been charged with 39 counts on the indictment in relation to two complainant sisters AB and LB. He was found guilty in respect of the counts relating to AB only.

5. The applicant appealed his conviction to the Court of Appeal (Birmingham P., Edwards and Kennedy JJ.), which dismissed the appeal on 17 November 2020 for the reasons set out in its written judgment ([2020] IECA 312).
6. The applicant raises a number of matters said to amount to matters of general public importance, including an issue arising from an alleged impropriety in the procedure of taking statements from the complainants, and an argument that there was a real risk of collusion or innocent cross-contamination of the evidence between the two complainants.
7. The trial did not proceed on the basis of system evidence and no application was made to sever the trial. The matter of general public importance is said to relate to the manner by which the trial judge directed the jury, and his refusal to give a corroboration warning. The trial judge did warn the jury that the evidence of each of the complainants was to be assessed separately, but that the evidence of one could add to the weight or credibility of the other complainant.
8. The DPP opposes the application.

Discussion and Conclusion

9. The four numbered grounds of appeal are stated in generic terms which the Court finds difficult to correlate with the matters of general public importance or the interests of justice for which the applicant contends.
10. With regard to grounds 1 and 4 (there being no grounds numbered 2 and 3), both grounds state in general terms that the trial judge erred in refusing to stay the trial at the conclusion of the prosecution case, and/or in not ruling on the admissibility of the evidence at the outset. It is not understood how these two grounds relate to the matters of general public importance or interests of justice for which the applicant contends, but insofar as it is asserted that an appeal should be allowed it is not

understood that the applicant contends that the jurisprudence, and in particular the judgment of this Court in *DPP v. POC* 3 IR 238, is incorrect. It seems rather that these grounds of appeal relate to the application of those principles by the trial judge, which of its nature is not a matter of general public importance.

11. With regard to grounds 5 and 6, these grounds relate to the charge of the trial judge to the jury. This Court is not a court for the correction of errors and the grounds described as grounds 5 and 6 are allegations of errors of law and fact, stated again in a generic form that, at their height, seek that this Court would assess the correctness of the charge in the light of the specific facts, and do not meet the constitutional threshold of general public importance. The Court does not accept that any basis has been shown for the generalised assertion in ground 6 that the charge was not adequate in regard to credibility.
12. Further, it seems to the Court that the fact that the jury disagreed on all charges relating to one of the two complainants offers support for the argument that the jury well understood the correct legal approach to the evidence of each complainant, and were competent to, and did in fact, assess the evidence of each separately. The interests of justice do not in those circumstances justify an appeal to this Court.
13. The application for leave to appeal is refused.

And it is hereby so ordered accordingly.