R. v IKRAM AND PARVEEN

Court of Appeal (President of the Queen's Bench Division (Sir Igor Judge), Mr Justice Gross and Mr Justice Blair): March 13; 19, 2008

[2008] EWCA Crim 586; [2008] 2 Cr. App. R. 24

Abuse of process; Causing death of children or vulnerable adults; Murder; No case to answer; Recalling witnesses; Summing up; Withdrawal

H1 CHILD, CAUSING OR ALLOWING THE DEATH OF

Defendants jointly charged

Defendants charged jointly with murder and separately with causing or allowing the death of a child—At close of evidence trial judge accepting prosecution's decision not to proceed with murder/manslaughter charge against first defendant—Judge rejecting application to recall second defendant to give evidence contradicting earlier evidence—Whether judicial discretion exercised properly—Domestic Violence, Crime and Victims Act 2004 (c.28) ss.5 and 6(4)

H2 The son of the first defendant died aged 16 months from an injury inflicted when he was living with his father and the second defendant, the only other adult sharing the home. At their trial on joint charges of murder and separate charges of causing or allowing the death of the child, contrary to s.5 of the Act of 2004, the particulars were identical. The cause of death was a pulmonary fat embolism resulting from a recent fracture to the left femur. There was compelling evidence that the multiple injuries suffered by the child were the result of deliberate and repeated violence. It was conclusively established that the first defendant was shopping during at least part of the period when the fatal injury occurred whereas the second defendant was in the house throughout that period. Until after the close of evidence both maintained that they knew nothing about how it happened. At the end of the defence case and after reviewing all the evidence the Crown decided to proceed no further on the count of murder against the first defendant. The judge accepted that decision and rejected the argument that it amounted to an abuse of process against the second defendant. The second defendant then provided her legal advisers with a new account of her relationship with the first defendant and the circumstances of the leg fractures, and her counsel applied to recall her. The judge rejected that application. At the end of the trial she was acquitted of murder and manslaughter but both defendants were convicted of causing or allowing the death. They appealed against their convictions on the grounds, *inter alia*, on behalf of the second defendant that the fact that the Crown, in informing the court that the allegation of murder against the first defendant was to be withdrawn, acted in anticipation of the submission of no case to answer, which was an abuse of process; also that the

interests of justice required that once the second defendant had fully appreciated the implications of the first defendant's evidence she had been moved to tell the truth and should have been allowed to do so.

H3 **Held,** dismissing the appeals, (1) that s.6(4) of the 2004 Act did not prohibit a submission of no case to answer where this was appropriate, but merely postponed it until the close of all the evidence. The object was to improve the prospect of discovering the truth. Once the Crown concluded that a case should be withdrawn against a defendant it was obliged to say so; accordingly, this was not an abuse of process (post, [49]).

H4 (2) In relation to the discretionary power of a judge to allow the recall of a witness or defendant after the conclusion of his evidence and before summing up, a judge would permit a defendant to be recalled only to deal with matters which had arisen since he gave evidence if he could not reasonably have anticipated them and if it appeared to be in the interests of justice that he should be recalled. It would be only in the most exceptional circumstances, in which the interests of justice might require such an unusual course, that a judge would permit a defendant to be recalled so that he might resile from evidence already given and advance a new version of events where that version was available to him when he was first in the witness box. The purpose of the procedural changes introduced by s.6 of the 2004 Act, and in particular subs.(4), was that all the evidence should be completed before the question whether there was a case to answer came to be addressed. If it were possible to envisage any special situation in which the defendant should be allowed to offer two contradictory defences in the same trial, one of the least likely would be a trial to which the provisions of s.6(4) applied. To allow it would effectively negative the entire purpose of this particular and specific legislation. Although it was impossible to be sure that a situation in which the interests of justice might require such an unusual course could never arise, it certainly had not arisen in the present case. At the trial of these defendants the jury had been accurately directed in law about the ingredients necessary to be proved by the prosecution before either could be convicted and the evidence and respective defences were fully summarised. The issue was left fairly and squarely to the jury. There was no basis for interfering with the verdicts or for questioning their safety. (post, [52]–[56],[64]).

H5 *R. v Lane and Lane* (1986) 82 Cr.App.R. 5, CA, and *R. v Hakala* [2002] EWCA Crim 730; [2002] Crim. L.R. 578, CA, considered; *R. v Cook* [2005] EWCA Crim 2011, CA, qualified.

H6 (For s.6 of the Domestic Violence, Crime and Victims Act 2004, see *Archbold* 2008, para.19-118f).

H7 **Additional cases referred to in the judgment of the court:**
R. v Bennett [2004] 1 Cr. App. R. (S.) 65 (p.396), CA
R. v Fletcher [2006] 2 Cr. App. R. (S.) 57 (p.358), CA
R. v Johnson (1990) 12 Cr. App. R. (S.) 271, CA