

Citation: *R. v. Gill*, 2009 YKTC 15

Date: 20090130
Docket: 08-00189
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON

Before: His Honour Judge Overend

REGINA

v.

GURPREET SINGH GILL

Appearances:
Jennifer Grandy
André Roothman

Counsel for Crown
Counsel for Defence

REASONS FOR JUDGMENT

[1] OVEREND T.C.J. (Oral): The accused, Gurpreet Gill, is charged with the offences of common assault and knowingly uttering a threat to cause bodily harm. The alleged offences are in relation to his wife, Harjinder Dhillon.

[2] The main evidence led at the trial is as follows.

[3] Ms. Dhillon, who is in her early 40s, and the accused, who is approximately 11 years her junior, are married but have been separated since the events which resulted in the charges before the Court. The marriage was arranged, the ceremony having taken place in India on the 25th of December 1998.

[4] At the time of the marriage, the complainant had lived in Canada for approximately 12 years. It was her second marriage. She came to this marriage with one child. The defendant lived in India. Due to immigration problems, the defendant did not join the complainant in Canada until 2001.

[5] Ms. Dhillon is a businesswoman in Whitehorse, operating Quizno's sandwich shop with her brother.

[6] Between the time of the arrival of Mr. Gill in Canada and January of last year, there were some problems in the marriage, the most significant of which led to the defendant leaving the family home. In 2003 he left to go to Yellowknife, where he remained for three weeks until persuaded to come home by the complainant, due to her pregnancy. A second son was born to the complainant after the return of Mr. Gill.

[7] On a second occasion, in 2006, he left for Vancouver, where he remained for approximately six months.

[8] In January of 2008, the family was comprised of the defendant, the complainant and the two children. The two children have remained with her since the separation.

[9] On January 21, 2008, a confrontation occurred in the bedroom, following which the defendant left the residence and did not return until the early hours of the next morning.

[10] Ms. Dhillon gave evidence that she came home from work at 6:10 p.m. She went to the bedroom to watch television with her younger son. The defendant came

into the bedroom, was lying on the same bed where the complainant and the child were seated.

[11] According to her, he asked her to leave the bedroom, and when she indicated she wanted a few more minutes to finish the program on television, he got mad and kicked her, knocking her from the bed. He then took a hanger and commenced to beat her with it. In her words, "He kept beating me with a hanger." He then punched her on the mouth with his fist, causing her lip to bleed. She had also folded her arms over her chest, with the inside of her arms against her body, at the time the defendant was striking her with the hanger. Her evidence continued that he then left the bedroom to the kitchen, where he broke a phone and dishes, and spread ketchup on the walls, following which he left the home.

[12] Ms. Dhillon then went to her business premises and spoke to her brother, a partner in the business. She then called the police, who attended shortly thereafter at Quizno's. She and her brother both became upset when Constable Drover, the attending officer, indicated that charges would be laid. She said she only wanted a file opened by the police so that they could respond should there be further problems. She said that she was concerned about her marriage, as, in her culture, she would be blamed for a second divorce.

[13] Mr. Gill had a totally different version of events. In his evidence, the complainant came home around 7:15 on the 21st of January. He was there with the younger child, who was watching cartoons. He said she asked why supper was not ready. He said he was not feeling good; in fact, he was so sick he could not stand up. He was lying on the

bed. She came into the bedroom swearing and tore the blanket off of him. He then started to pack his belongings, including some clothes he removed from a hanger. He took the car keys and left the home, returning the following morning around 1:00 a.m., when Ms. Dhillon was asleep. He terminated the relationship the next day.

[14] He says he never punched or struck the complainant, and never saw an injured lip. Mr. Gill says that the complainant called the police office the next morning, but that he did not tell her to phone, nor did he threaten her.

[15] Constable Drover gave evidence that she attended at Quizno's after receiving the complaint around 10:30 p.m. on the 21st of January. Ms. Dhillon had a cut on her bottom lip, and long, skinny lash lines and red marks on the inside of her forearm, and was told it was caused by being hit with a stick. The complainant was upset and crying. Constable Drover did not inquire how the injury to the lip occurred as the complainant did not want to talk about the cause. She just wanted advice and wanted a file opened in case anything happened to her. She was angry that the police were wanting to lay charges. She also told Constable Drover that she was divorced, and that a second divorce was bad in her culture, that people would think badly of her.

[16] Ms. Chemana, the aunt of the defendant, paid his way to Yellowknife in 2003, when he left the family home for three weeks. During that time there were calls every day, according to Ms. Chemana, from the complainant, to have the defendant return. He eventually returned after three weeks, the fare being paid by the complainant. She, Ms. Chemana, became aware in early 2008, that the defendant had left the home again. In fact, she was informed by the complainant, who made several calls a day thereafter,

wanting the defendant to return. The complainant did not mention the assault by Mr. Gill until three months later, according to Ms. Chemana. She had not seen the defendant between May of 2003 and January of this year.

[17] Todd Greek, a co-worker of Mr. Gill, gave evidence that he has been employed with Mr. Gill for three or four years. He was aware of the marriage breakup in January of last year, and that the defendant had left the family home. He was present and overheard calls from the complainant to the defendant, especially in January of 2008, wanting the defendant to come home. He overheard the following remarks made by the complainant: "If you don't come home, I will make life miserable." "Come home and take care of me and the kids." "If you don't come home, you won't see your son again." He also said that he delivers product, as part of his employment, to Ms. Dhillon's business. He heard her say she would get the defendant deported to India.

[18] From that evidence, I find the following facts. Generally, the background of the parties is not in dispute, including their marriage, her prior marriage, his coming to Canada, his absences from the home in 2003 and 2006.

[19] With respect to the specific subject matter of these charges, I make the following findings of fact. The parties were at the family home on the evening of January 21, 2008. A dispute arose in the bedroom of the house. The defendant struck the complainant in the mouth with his hand or fist, resulting in a cut to the complainant's lip. He left the home shortly thereafter. The complainant went to her business premise and, after speaking with her brother, called the police.

[20] Constable Drover attended Quizno's, the complainant's business, where she, Constable Drover, found the complainant uncooperative as soon as she realized that the police officer wanted to lay charges. The complainant did not want charges preferred, but only wished the police office to open a file so that they could respond should there be further family problems. Constable Drover observed a cut lip and red lash lines on the inside of the complainant's arms. She took no photos because the complainant did not want charges. The complainant returned home to bed and to sleep. The defendant returned home in the early morning hours of the 22nd of January.

[21] Later that morning, the complainant placed a phone call to the RCMP to ensure charges were dropped. She then attended at the police station, at the request of the police officer, followed by the defendant. She spoke to the police officer outside the presence of the defendant. The phone call in the morning had been demanded of her by the defendant. At the police station she mentioned no threats.

[22] I am satisfied beyond a reasonable doubt that the injury to the lip was caused by the defendant striking the complainant, as that is the only reasonable conclusion to be drawn from the evidence.

[23] I cannot be satisfied beyond a reasonable doubt concerning her evidence regarding the striking with a hanger. Although the defendant admitted possession of a hanger, she told the police officer she was struck with a stick on the outside of the arms. Her evidence regarding the use of the work stick, that is "I didn't know," or "I couldn't think of the English word for hanger," and the injuries to her arms in an area not shown

to Constable Drover might well have satisfied me on a lower standard of proof but does not meet the standard in a criminal trial.

[24] Regarding the cut lip, I do not believe the denial of the defendant, as it is inconsistent with his immediate leaving of the home after the assault and his demand the following morning that she drop charges. Nor do I believe his evidence that he only went to the police station to give his side of the story as, having been denied that opportunity at the time of his arrival, there is no evidence that he made any further attempt that day or later on to return to the police station or to speak to the police.

[25] On all of the evidence there is no doubt in my mind that the punch to the face occurred.

[26] With respect to the allegation of threats, I am satisfied that, while they probably occurred, there is a reasonable doubt, as no mention was made to the police officer of such threats until five months later, when the events of January 21st and 22nd were again brought to the attention of the police.

[27] About that time the defendant had filed for a divorce. The complainant recognized that her reputation in her community would be damaged by a second divorce, her pleas to have the defendant return home were not going to be successful, that she had threatened that she would not allow the defendant to see her son again, and she had threatened to have the defendant deported.

[28] Perhaps most significant is her failure to mention the threats to the police at the time of her attendance the morning of the 22nd of January, as these threats were said

to have been made after she had requested a file be opened in case there was further difficulty. The further difficulty happened almost immediately. I do not discount her evidence of fear, but the cumulative effect of all the evidence cannot but leave a reasonable doubt.

[29] With respect to the evidence in general, I have not overlooked the fact that the complainant, in giving her evidence, was often emotional, excitable and occasionally bordered on argumentative. Frequently, she was not responsive to questions put to her in cross-examination but was more intent on telling her side of the story, without reference to questions being asked. I attribute much of that to the stress she was under, given her beliefs concerning her potential standing in her community. Her frequent calls to have her husband return to home was in part a wish to save the marriage, but in greater part to save her reputation. In her own mind she carried a heavy burden, facing as she did a second divorce. This type of behaviour, both preceding and more particularly following the assault, does not detract from her evidence regarding the assault itself.

[30] I find the accused guilty of Count 1 and not guilty of Count 2.

OVEREND T.C.J.