

CANADA / JUDGMENT

R. v. G.G.

2026 SCC 12

COURT

Supreme Court of Canada

DECIDED

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R. v. G.G. Collection Supreme Court Judgments Date 2026-04-24 Neutral citation 2026 SCC 12 Case number 41963 Judges Wagner, Richard; Karakatsanis, Andromache; Côté, Suzanne; Rowe, Malcolm; Martin, Sheilah; Kasirer, Nicholas; Jamal, Mahmud; O'Bonsawin, Michelle; Moreau, Mary On appeal from Ontario Subjects Criminal law Notes Case in Brief SCC Case Information Decision Content SUPREME COURT OF CANADA Citation: R. v. G.G., 2026 SCC 12 Appeal Heard and Judgment Rendered: March 20, 2026 Reasons for Judgment: April 24, 2026 Docket: 41963 Between: G.G. Appellant and His Majesty The King Respondent Coram: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ. Reasons for Judgment: (paras. 1 to 14) The Court Note: This document is subject to editorial revision before its reproduction in final form in the Canada Supreme Court Reports. G.G. Appellant v. His Majesty The King Respondent Indexed as: R. v. G.G. 2026 SCC 12 File No.: 41963. Hearing and judgment: March 20, 2026. Reasons delivered: April 24, 2026. Present: Wagner C.J. and Karakatsanis, Côté, Rowe, Martin, Kasirer, Jamal, O'Bonsawin and Moreau JJ. on appeal from the court of appeal for ontario Criminal law — Sexual assault — Time of offence — Accused charged with sexual assault — Accused presenting alibi evidence rebutting complainant's assertion as to time of alleged sexual assault — Whether Crown required to prove that sexual assault occurred at time asserted by complainant. The accused was charged with sexually assaulting the complainant, who was his spouse, on or about April 7, 2021. The accused and the complainant agreed that sexual intercourse occurred on April 7, after which they slept in the marital home for the last time together; however, their evidence diverged on consent and timing. The accused claimed that sexual intercourse occurred early in the morning at approximately 1:00 a.m., whereas, on cross-examination, the complainant stated the assault occurred later that night at approximately 10:00 or 11:00 p.m. The accused advanced an alibi, asserting that he had left the marital home around 9:00 p.m. on April 7, before the time the complainant alleged the sexual assault occurred. The trial judge found that the accused did sexually assault the complainant, but acquitted him. He reasoned that because the accused presented alibi evidence to rebut the complainant's assertion as to the time of the assault, the Crown needed to prove that the assault occurred at that time, which it failed to do. The Court of Appeal allowed the Crown's appeal, set aside the acquittal and substituted a conviction, concluding that the Crown did not have to prove the timing of the offence to that level of specificity. Held: The appeal should be dismissed. An information or indictment will typically allege that an offence was committed "on or about" a

particular date or range of dates. Within that time period, the Crown is generally not required to establish the exact timing of the offence, except where it is an essential element of the offence or crucial to the defence. Where the accused raises an alibi for the time period alleged by the Crown, the date or time of the offence becomes crucial to the defence, and it would be unfair for the Crown to undermine that alibi by shifting to a different time frame. Whether the Crown has shifted the alleged time frame in a manner that undermines trial fairness must be assessed holistically and contextually, rather than by focussing narrowly on when a witness said they think the offence may have taken place. This is especially important in sexual assault cases, where it is not uncommon for complainants to be uncertain or honestly mistaken about the specific date or time the alleged offence took place. In the instant case, the Crown did not shift the alleged time frame by maintaining that it was not required to prove that the sexual assault occurred around 10:00 or 11:00 p.m. The Crown never claimed that it did occur at that time: the time period alleged by the Crown concerned the last sexual encounter between the accused and the complainant on or about April 7. The complainant's estimate in cross-examination of when the sexual assault occurred did not narrow the Crown's case to that specific period. The Court of Appeal's decision to substitute a conviction was the appropriate remedy, as the trial judge made an explicit finding that the accused sexually assaulted the complainant, and, read as a whole, his reasons were sufficient to support that finding. Cases Cited Referred to: *R. v. W. (D.)*, [1991] 1 S.C.R. 742; *R. v. Côté*, [1978] 1 S.C.R. 8; *R. v. B. (G.)*, [1990] 2 S.C.R. 30; *R. v. P. (M.B.)*, [1994] 1 S.C.R. 555; *R. v. Tarnovsky* (1995), 98 C.C.C. (3d) 168; *R. v. Katigbak*, 2011 SCC 48, [2011] 3 S.C.R. 326; *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3; *R. v. Vuradin*, 2013 SCC 38, [2013] 2 S.C.R. 639. Statutes and Regulations Cited Criminal Code, R.S.C. 1985, c. C-46, s. 686(4)(b)(ii). APPEAL from a judgment of the Ontario Court of Appeal (Fairburn A.C.J.O. and MacPherson and Gillese JJ.A.), 2025 ONCA 574, 177 O.R. (3d) 721, 5 C.R. (8th) 127, 452 C.C.C. (3d) 68, [2025] O.J. No. 3460 (Lexis), 2025 CarswellOnt 12358 (WL), setting aside the acquittal of the accused, entering a conviction for sexual assault and remitting the matter for sentencing. Appeal dismissed. Myles Anevich and Herman Gill, for the appellant. Raoof Zamanifar, for the respondent. The following are the reasons for judgment delivered by The Court —

- [1] In this as of right appeal, the appellant, G.G., asks this Court to overturn a decision of the Court of Appeal for Ontario that set aside his acquittal for sexual assault and substituted a conviction. At the conclusion of the hearing, we unanimously dismissed the appeal with reasons to follow. These are our reasons.
- [2] The appellant was charged with sexually assaulting the complainant “on or about” April 7, 2021 (A.R., vol. I, at p. 1). The complainant, who was his spouse at the time, testified that the assault occurred at night on April 7 in their bedroom. She explained that, following the assault, she and the appellant slept in the marital home together for the last time before the appellant moved out the following day. In cross-examination, the complainant stated that the assault occurred at approximately “Ten, 11:00 p.m.” (A.R., vol. II, at p. 68). This timing was consistent with earlier statements the complainant had made to the police.

- [3] The appellant acknowledged sexual intercourse with the complainant on April 7, but claimed it was consensual and occurred earlier that day at approximately 1:00 a.m. He also claimed that he left the marital home around 9:00 p.m. on April 7 and went to a different residence, where he stayed the rest of the night. This meant that, on his account, he had left the marital home before the time the complainant said the sexual assault had occurred. The defence called four witnesses in support of this so-called “alibi”, but only gave formal notice of the alibi defence on the first day of trial.
- [4] The appellant and the complainant therefore agreed that there was a final act of sexual intercourse on April 7, after which they slept in the marital home for the last time together. The trial judge was satisfied that both parties were referring to the same encounter. However, their evidence diverged on: (1) whether the sexual activity was consensual; and (2) the timing of the sexual activity.
- [5] On the issue of consent, the trial judge believed the complainant’s testimony and found that “the defendant sexually assaulted the complainant as she described” (A.R., vol. I, at p. 29). On the question of timing, the Crown maintained that the precise timing of the assault did not matter as long as it proved the offence as charged on the information. The trial judge disagreed. He reasoned that because the appellant presented what was described as “alibi” evidence to rebut the complainant’s assertion that he sexually assaulted her around 10:00 or 11:00 p.m. on April 7, the Crown needed to prove beyond a reasonable doubt that the assault occurred at that time. He found that the Crown did not discharge that burden and acquitted the appellant.
- [6] The Court of Appeal allowed the Crown’s appeal on the basis that the trial judge erred by requiring proof of the timing of the offence to that level of specificity. It set aside the acquittal and substituted a conviction based on the trial judge’s finding that the “defendant sexually assaulted the complainant as she described” (2025 ONCA 574, 177 O.R. (3d) 721, at para. 90).
- [7] Before this Court, the appellant argues that because the complainant said the sexual assault occurred around 10:00 or 11:00 p.m. on April 7, and he presented an alibi covering that entire period, the Crown was required to prove that the offence occurred at that time. He further argues that the Court of Appeal erred in substituting a conviction because, contrary to this Court’s direction in *R. v. W. (D.)*, [1991] 1 S.C.R. 742, the trial judge did not independently assess his credibility or consider whether his evidence raised a reasonable doubt. On this basis, the appellant contends that the trial judge’s reasons were inadequate to support a finding of guilt.
- [8] We would not give effect to the appellant’s arguments.
- [9] The Court of Appeal correctly held that the Crown did not have to prove that the sexual assault occurred around 10:00 or 11:00 p.m. on April 7. Typically, an information or indictment will allege that an offence was committed “on or about” a particular date or range of dates. Within that time period, the Crown is generally not required to establish the

exact timing of the offence. The accused need only receive enough information to be “reasonably informed of the transaction alleged against him” (*R. v. Côté*, [1978] 1 S.C.R. 8, at p. 13). However, the general rule that proof of timing is not required has two exceptions: (1) where the date or time is “an essential element of the offence”; and (2) where the date or time is “crucial to the defence” (*R. v. B. (G.)*, [1990] 2 S.C.R. 30, at pp. 49-53).

- [10] The date or time of the offence becomes “crucial” to the defence if the accused raises an alibi for the time period alleged by the Crown (*B. (G.)*, at pp. 51-52). In such cases, it would be unfair for the Crown to undermine the alibi by shifting to a different time frame and claiming that the offence was committed at a different time (see *R. v. P. (M.B.)*, [1994] 1 S.C.R. 555; *R. v. Tarnovsky* (1995), 98 C.C.C. (3d) 168 (Ont. C.A.)). Whether the Crown has shifted the alleged time frame in a manner that undermines trial fairness must be assessed holistically and contextually, rather than by focussing narrowly on when a witness said they think the offence may have taken place. This is especially important in sexual assault cases, where it is not uncommon for complainants to be uncertain or honestly mistaken about the specific date or time the alleged offence took place.
- [11] We agree with the Court of Appeal that, in this case, the time period alleged by the Crown concerned the last sexual encounter between the appellant and the complainant on or about April 7, which they agreed happened on the last night they slept in the marital home together. This period was defined by the language of the charging document, the substance of the complainant’s evidence, the evidence elicited by the Crown, and the Crown’s position at trial, taken together. In these circumstances, the complainant’s estimate of when the sexual assault occurred, elicited by the defence in cross-examination, did not narrow the Crown’s case to that specific period. As a result, the Crown did not shift the alleged time frame or deny the appellant the right to make full answer and defence by maintaining that it was not required to prove that the sexual assault occurred around 10:00 or 11:00 p.m. on April 7. Put simply, the Crown never claimed that it did occur at that time.
- [12] Finally, we agree that substituting a conviction was the appropriate remedy. Under s. 686(4)(b)(ii) of the Criminal Code, R.S.C. 1985, c. C-46, an appellate court can set aside an acquittal and enter a conviction where “the trial judge’s findings of fact, viewed in light of the applicable law, supported a conviction beyond a reasonable doubt” (*R. v. Katigbak*, 2011 SCC 48, [2011] 3 S.C.R. 326, at para. 50). That standard was met in this case.
- [13] But for his legal error on timing, the trial judge would have convicted the appellant on the sexual assault charge. As stated, he made an explicit finding that the appellant sexually assaulted the complainant as she described. Read as a whole, his reasons were sufficient to support that finding. They adverted to the burden of proof and the principles from *W. (D.)*, and showed that the trial judge rejected the appellant’s evidence because he accepted the complainant’s contrary account beyond a reasonable doubt. He explained why he believed the complainant, emphasizing the temperance, detail, and consistency of her testimony. He also rejected defence arguments aimed at undermining the complainant’s credibility, concluding that he was “completely satisfied that she is not lying about the sexual assault or

when it occurred” (A.R., vol. I, at p. 28). In the circumstances, no further explanation was required for rejecting the appellant’s evidence (see *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 S.C.R. 3, at para. 66; *R. v. Vuradin*, 2013 SCC 38, [2013] 2 S.C.R. 639, at paras. 13-19 and 26-28).

[14] Accordingly, the appeal is dismissed and the conviction is upheld. Appeal dismissed.
Solicitors for the appellant: Brauti Thorning, Toronto; Gill & Dhillon Law, Brampton.
Solicitor for the respondent: Attorney General of Ontario, Crown Law Office — Criminal, Toronto.

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