

CANADA / JUDGMENT

R. v. Jacob

2024 BCSC 2682

COURT

Supreme Court of British Columbia

DECIDED

12 November 2024

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2024 BCSC 2682 R. v. Jacob IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R. v. Jacob, 2024 BCSC 2682 Date: 20241112 Docket: 182069-3 Registry: Victoria Rex v. Ajesh Jacob
Restriction on publication: A publication ban has been imposed under s. 486.4 of the Criminal Code restricting the publication, broadcasting, or transmission in any way of evidence that could identify the complainants referred to in this judgment by their initials. This publication ban applies indefinitely unless otherwise ordered. Before: The Honourable Madam Justice Murray
Oral Ruling on Similar Fact Application Counsel for the Crown: L. Phipps C. Ussery Counsel for the Accused: J. Watt Place and Date of Trial/Hearing: Victoria, B.C. November 12, 2024 Place and Date of Judgment: Victoria, B.C. November 12, 2024

- [1] THE COURT: The issue of tainting or, put another way, the possibility of same, is a live issue in this case as all of the complainants except K.L-J. came forward after seeing a post or posts on Survivor Stories or in the case of C.A., an article regarding an investigation of Mr. Jacob in the news. This is a significant consideration in determining the admissibility of similar fact evidence as the probative value of the similar fact evidence often turns on the unlikelihood that multiple complainants would independently bring allegations that are similar or share unifying features by mere coincidence. It is therefore important to assess whether the allegations are truly independent from one another or, rather, are the product of collusion, whether conscious or unconscious, between similar fact witnesses: Handy at para. 104; R. v. Shearing, 2002 SCC 58 at para. 40.
- [2] Where there is an air of reality to the issue of collusion, the burden shifts to the Crown to establish on a balance of probabilities that the similarities in the evidence are not the product of collusion, Handy at para. 112; Shearing at para. 41. If the Crown cannot meet that burden, then similar fact evidence will not be admitted, and cannot be considered across counts in the indictment. Even where the Crown meets its burden of proving that the similarities in the evidence are not the product of collusion, the trier of fact must still consider the possibility of collusion in the weighing of the evidence.
- [3] In this case, the Crown properly concedes that there is an air of reality to the issue of collusion for all complainants, save K.L-J.

- [4] The question becomes whether the Crown has established on a balance of probabilities that the similarities are not the product of collusion. I find that they have not. I do not think it necessary to go into a count-by-count analysis despite the urging of the Crown. That is because that even if I was satisfied that the Crown had met that burden, I am still convinced on the facts of this case where all of the complainants, save one, came forward after reading posts on Survivor Stories or news stories- the possibility of collusion or tainting exists and weighs against the admission of similar fact evidence.
- [5] Put another way, I am satisfied that the prejudicial effect of similar fact evidence is significant as the evidence is potentially tainted by the transfer of information from others, or unconscious collusion through Survivor Stories, or news articles, or talking to lawyers that are conducting the civil suit, or people associated to the Survivor Stories site or the authors of posts on Survivor Stories. I am further satisfied that the prejudicial effect outweighs any probative value.
- [6] Accordingly, I conclude that the safest way to proceed is to consider the allegations of each complainant separately.
- [7] The Crown's application for the admission of similar fact evidence is dismissed. "The Honourable Madam Justice Murray"

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