

CANADA / JUDGMENT

R. v. Jacob

2025 BCSC 747

COURT

Supreme Court of British Columbia

DECIDED

23 April 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 747 R. v. Jacob

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

R. v. Jacob,

2025 BCSC 747

Date: 20250423

Docket: 182069

Registry: Victoria

Rex

v.

Ajesh Jacob

A publication ban has been imposed under s. 486 of the Criminal Code restricting the publication, broadcasting or transmission in any way of information that could identify the complainants' referred to in this judgment by their initials. This publication ban applies indefinitely, subject to further order.

Before: The Honourable Madam Justice Murray

Reasons for Judgment re:

Voir Dire# 1: Competency of Interpreters

Counsel for the Crown:

L. Phipps

C. Ussery

Counsel for the Accused:

J. Watt

Place and Date of Hearing:

Victoria, B.C.

October 1-4, 2024

Place and Date of Judgment:

Victoria, B.C.

April 23, 2025

INTRODUCTION

- [1] Mr. Jacob is charged with 11 counts of sexual assault. He has requested a Malayalam interpreter.
- [2] Malayalam is a rare language; so rare, in fact, that according to the Court Services Branch (CSB), the agency tasked with providing interpretation services for court proceedings, there are only 1,225 Malayalam (Mul-A-alum) speakers in British Columbia. Consequently, again, according to the CSB, the availability of Malayalam interpreters with court experience is limited. In a search for Malayalam interpreters across Canada and the western United States, the CSB found there to be only three Malayalam interpreters - two in Ontario and one in Alberta. CSB's policy is to schedule a "Level 1" or "Level 2" interpreter for a trial. When the CSB is unable to find a Level 1 or Level 2 interpreter, it will schedule a Level 3 interpreter. All three of the Malayalam interpreters that were located by the CSB are Level 3 interpreters.
- [3] The path to the start of this trial, which is Mr. Jacob's second, has been bumpy. His first trial began on May 29, 2023 (the First Trial). In his First Trial, Mr. Jacob received interpretation services from one of the two available Ontario interpreters, a man named Mr. Puthuserry. The First Trial ended in a mistrial on June 8, 2023, when the First Trial judge had to recuse herself due to a conflict which could not have been foreseen.
- [4] This current trial, being Mr. Jacob's second trial (the Second Trial), began before a new trial judge, Justice Donegan, as she then was, on June 14, 2023. Again, Mr. Puthessary was retained by the CSB to provide interpreter services for Mr. Jacob. The first voir dire was a challenge to Mr. Puthessary's competency to act as the interpreter for Mr. Jacob's Second Trial. Defence counsel also raised issues regarding Mr. Puthessary's ability to be impartial and objective. The application came to an early halt when counsel reached an agreement that Mr. Puthessary could not continue as interpreter as he had sent communications to Crown counsel during the course of the voir dire that reflected a lack of impartiality, or at the very least, a perception of such. He was disqualified. There followed a lengthy delay in continuing the trial due primarily to Defence counsel's schedule. In late December 2023,

Crown brought an application for an earlier trial date as Defence counsel was unavailable until October 2024. During that application, which consumed two full court days, a new interpreter named Mr. Punnoose provided interpreter services. Mr. Punnoose also provided interpretation for Donegan J.'s delivery of reasons for judgement in June 2024. The interpretation over those three days was performed by Mr. Punnoose remotely. The Crown's application for an earlier trial date was dismissed. That brings us to this proceeding.

- [5] The CSB has now retained two other Malayalam interpreters for Mr. Jacob's Second Trial - the above-mentioned Mr. Punnoose, from Ontario, and Mr. Bhatt, from Alberta. According to the CSB, these two individuals are the only Malayalam interpreters they could find (apart from Mr. Puthessary) who are listed in the entirety of Canada or the western United States. Like Mr. Puthessary, Mr. Punnoose and Mr. Bhatt are Level 3 interpreters. Neither is certified to provide interpreter services in British Columbia. Mr. Punnoose is conditionally certified in Ontario. I am told that in Alberta, where Mr. Bhatt has been performing interpretation services for 16 years, there is no certification process.
- [6] Defence counsel challenges the competency of both Mr. Punnoose and Mr. Bhatt as interpreters. After a hearing which consumed over four court days, and in which the accused and the two interpreters testified, I disagreed. On October 9, 2024, I delivered my decision finding both Mr. Punnoose and Mr. Bhatt to be competent and able to provide interpretation services at Mr. Jacob's trial, and set out the procedure that we were to adhere to at trial as follows (taken from the transcript of proceedings):

Mr. Punnoose will be the primary or lead interpreter. Mr. Bhatt will be the secondary interpreter. That means that Mr. Punnoose will provide interpretation to Mr. Jacob. Mr. Bhatt will listen to ensure accuracy and completeness of Mr. Punnoose's interpretation and to provide assistance to Mr. Punnoose. If Mr. Punnoose needs a break, we will revisit the roles.

We will follow the rules I am about to spell out throughout this trial in order to support the quality of the interpretation:

- 1) We will take breaks as frequently as needed to manage interpreter fatigue. To that end, I ask you, Mr. Punnoose, and you, Mr. Bhatt to let me know if you need more breaks than we take in a usual court day.
- 2) We will all make our best efforts to slow the normal rate of speech. And again, to that end, Mr. Punnoose, I ask you to raise your hand and bring to my attention if any of us-- witnesses too-- are speaking too fast.
- 3) We will speak in short segments and pause to allow the interpreter to interpret. And again, Mr. Punnoose, if the segments are not short enough, I need you to raise your hand and bring that to my attention.

- 4) We will do our best to simplify all terms, including legal terms. Again, Mr. Punnoose, if you need help breaking down a word in order to make it clear to Mr. Jacob, I ask you to raise your hand and let me know. To counsel, if you refer to case names, I ask that you make the fact that it is a case clear.
- 5) We will avoid asking more than one question at a time.
- 6) If the passive interpreter Mr. Bhatt, or Mr. Jacob have an issue with the interpretation, that is if it is unclear or they do not understand it for any reason, they shall immediately raise their hand and advise me of it.

I want to stress what I have stated throughout the voir dire. It is not the job of the interpreters to explain legal terms or legal words or cases. That is the job of counsel. The only task of the interpreters is to interpret the words spoken in this courtroom. It is not unusual for a word to have more than one meaning. If the interpreter or Mr. Jacob is unclear on which meaning is intended for that word, they should raise their hand and indicate the confusion.

I think I have already said this, but I will say it again out of an abundance of caution. If the active interpreter needs clarification of the words spoken, he should raise his hand and seek clarification.

- [7] Below are my reasons for finding both interpreters competent.
- [8] Before I continue, I will outline the process that we followed in the voir dire. By agreement of counsel, both interpreters were sworn/affirmed in at the outset of the application. Throughout the hearing, there was an active interpreter and a passive interpreter. The active interpreter was interpreting English into Malayalam for Mr. Jacob, and of course, the converse for everyone else. The interpretation was done loudly enough that the other interpreter (and everyone in the courtroom) could hear it. The passive interpreter was listening to catch any errors or omissions. While one interpreter testified in English, the other interpreted his evidence into Malayalam for Mr. Jacob, again loudly enough that everyone in the courtroom could hear. I instructed Mr. Jacob several times to raise his hand if he did not understand something so we could deal with it immediately.
- [9] Mr. Jacob elected to testify on the voir dire. He, through counsel, indicated that he was most comfortable with Mr. Punnoose as his interpreter, so Mr. Punnoose interpreted Mr. Jacob's evidence for him while Mr. Bhatt listened intently for errors.

THE EVIDENCE

- [10] Mr. Jacob is 38 years old. He is from the Kerala province of India. Malayalam is the official language of Kerala. English is widely used; in fact, the majority of street signs are in English and Malayalam.

- [11] Mr. Jacob's first language is Malayalam. Mr. Jacob received his grade school education in Kerala. School was taught in English. After grade school he attended university in India and earned a Bachelor's degree in English, which was a three-year program that was taught in English. He went on to successfully complete a two-year Master's degree in English Language and Literature, which Mr. Jacob says was taught in Malayalam but for which the documents and books were in English.
- [12] Mr. Jacob completed further post-graduate education after immigrating to Canada in 2018. He successfully completed a two-year diploma in Human Resource Management at Camosun College in Victoria. That diploma program was taught entirely in English and the materials were in English. Since moving to Canada, Mr. Jacob has been communicating orally and in writing in English.
- [13] There is more than one dialect of Malayalam. According to Mr. Jacob, Mr. Punnoose's dialect is closer to his dialect than that of Mr. Bhatt's. Mr. Jacob says that an interpreter that speaks a different dialect might give a word a meaning different to what he gives it.
- [14] As mentioned above, Mr. Punnoose interpreted proceedings for Mr. Jacob at a two-day hearing in this matter in late December 2023, and translated Donegan J.'s reasons for judgment in June 2024. Mr. Jacob testified that during those three days, he did not understand two words that Mr. Punnoose used: Rowbotham and Jordan (both case names). He found the word Jordan confusing because his lawyer's name is Jordan. Mr. Jacob testified that he does not trust Mr. Punnoose's interpretation, explaining: "If I myself figured out two mistakes they would have made at least 15 mistakes. I'm losing faith in these interpreters." By "these interpreters," I conclude that Mr. Jacob is referring to both Mr. Punnoose and Mr. Bhatt. He added that the last interpreter (Mr. Puthessary) "acted against him," which has fuelled his distrust. Mr. Jacob stated that he can only "submit himself to the court fully" if he can understand "completely." He later said that he needs to be able to understand "perfectly."
- [15] Mr. Punnoose also provided interpretation services to Mr. Jacob for the majority of the four full days in this particular voir dire. That interpretation included interpreting while Mr. Bhatt testified, while counsel and I spoke, and while Mr. Jacob testified. When asked if he understood Mr. Punnoose's interpretation, Mr. Jacob complained that Mr. Punnoose uses English words when Malayalam words are available. He has made the same complaint against all three Malayalam interpreters. I will return to this.
- [16] When asked about Mr. Bhatt's abilities as an interpreter, Mr. Jacob testified that Mr. Bhatt does not understand the exact Malayalam words required. Nor does he understand grammar or adverbs, and he is unable to complete a sentence that "fully encapsulates the meaning" of what is being conveyed. Further, according to Mr. Jacob, Mr. Bhatt gives different meanings to words. Mr. Jacob stated that as a result he "does not understand anything" and does not trust Mr. Bhatt. When asked why he did not raise his hand when he did not understand as I directed, Mr. Jacob explained that he did not "bother" to, as he did not "want to waste the court's precious time." In cross-examination, Mr. Jacob acknowledged that on the few

occasions he did raise his hand, that the Court tried to solve the problem but that the issues were not "concluded properly." Mr. Jacob testified that "most times I did not bring it to the attention of the court because I would have raised my hand to everything he said." By "he," Mr. Jacob said he was referring to Mr. Bhatt.

- [17] Like Mr. Jacob, Mr. Punnoose was born and raised in Kerala, India. Malayalam is his mother tongue. Mr. Punnoose testified that in Kerala, grade school starts at four years of age and that all levels of grade school - elementary school, middle school, and high school - are taught in English. After grade school, Mr. Punnoose continued on with post-secondary education, ultimately earning a Master's in Business Technology, which was taught in English. Since moving to Canada when he was 13 years of age, Mr. Punnoose has communicated primarily in English but speaks to family and some friends in Malayalam. He is fluent in both English and Malayalam. For the last nine years, Mr. Punnoose has worked for MCIS Language Solutions (MCIS) as an interpreter. MCIS is a non-profit social enterprise that provides a full suite of language services, including interpretation services, in over 300 languages. Mr. Punnoose has interpreted in short criminal law matters and appearances, civil and family law applications, and examinations for discovery, but has never provided interpreter services for a trial. He has also translated legal documents.
- [18] Earlier this year, Mr. Punnoose applied for certification as an interpreter in Ontario. He completed a preparatory course for the certification test which he took in June 2024. He received the following scores: oral recall: 50.30; consecutive dialog: 74.38; shadowing: 59.88; and sight consecutive: 63.13. Based on his scores, Mr. Punnoose was conditionally accredited.
- [19] Mr. Bhatt grew up in Kerala, and like Mr. Jacob and Mr. Punnoose, did his schooling there. He moved to Canada in 2006. He has provided interpreter services in many languages including Malayalam for 16 years in both the Court of Kings Bench and the Provincial Court in Alberta. He has acted as an interpreter in trials, including in criminal trials. About five years ago, he completed the 1-day interpreter course offered by the court in Alberta. As touched on above, according to Mr. Bhatt, there is no official certification program for interpreters in Alberta.

THE LAW

- [20] Section 14 of the Charter of Rights and Freedoms guarantees any party to a court proceeding who does not understand or speak the language in which the proceedings are conducted the right to the assistance of an interpreter. This constitutional standard ensures that "the person with language difficulties [will] have the same opportunity to understand and be understood as if they were conversant in the language being employed in the proceedings. These criteria include but are not necessarily limited to, continuity, precision, impartiality, competency and contemporaneousness": *R. v. Tran*, [1994] 2 S.C.R. 951 at para. 55. This right is also engaged when the accused speaks and understands the language but has some difficulty because of an accent, syntax, limited communication skills or some other similar

reason, in making themselves understood by the court.: R. v. Mitroi, 2018 BCCA 236 at paras. 34, 42-44.

- [21] Whether Mr. Jacob actually needs an interpreter was not raised as an issue before me. At the outset of this voir dire, Crown conceded that Mr. Jacob needs an interpreter for trial after Defence counsel conceded that Mr. Jacob speaks and understands English to a degree. The degree to which Mr. Jacob speaks and understands English was not specified, however, it was canvassed in evidence. I am satisfied that Mr. Jacob has a high level of competency in English. More specifically, I am satisfied that he can converse and read in English. That he was able to obtain a university degree and a college diploma in programs taught entirely in English, with course material entirely in English, is a good indicator of his proficiency. Nonetheless, the Crown concedes that he requires an interpreter for this trial.
- [22] The constitutionally-guaranteed standard of interpretation is one of continuity, precision, impartiality, competency and contemporaneity: Tran at para. 66. The standard is high, but not one of perfection: Tran at para. 55. These standards are aimed at helping ensure that persons needing interpreter assistance have the same opportunity to understand and be understood as if they were conversant in the language used by the court: Tran at para. 42.
- [23] Continuity ensures that the accused has access to interpretation services at every stage of the proceedings, without breaks or interruptions in interpretation: Tran at para. 58. There is no issue that this requirement is met in this case.
- [24] Precision means the interpretation must be, as close as can be, word-for-word and idea-for-idea. The interpreter must not "clean up" the evidence by giving it a form, a grammar or syntax that it does not have: Tran at para. 59. An interpreter should make no commentary on the evidence. However, it is important to remember that "interpretation is an inherently human endeavour which often takes place in less than ideal circumstances": Tran at para. 60.
- [25] Perfection is not realistic or sensible to expect. In Tran, the Supreme Court of Canada said that it would be helpful to bear in mind the difference between "interpretation" and "translation": at para. 60. Interpretation is primarily concerned with the spoken word, and translation is primarily concerned with the written word. Given that interpretation involves a "process of mediation between two people" which occurs on the spot with little chance for reflection, the standard for interpretation will necessarily tend to be lower than it might be for translation, where there is time for reflection on the written word, therefore allowing for conceptual differences between languages to be more fully accounted for and accommodated: Tran at para. 60.
- [26] Impartiality requires an unbiased and objective approach: Tran at para. 61.
- [27] Competency requires interpretation of a high enough quality to ensure that justice is done and seen to be done: Tran at para. 62.

- [28] Accreditation is not determinative of competency: R. v. Ryback, 2008 ONCA 354 at para. 84. Competency must be assessed on a case by case basis. Like the requirement of precision, the quality of interpretation must be sufficient to level the playing field between a language deficient person and a language proficient person to ensure that the accused is given the same opportunity to understand and to be understood at their trial: Ryback at paras. 99-100.
- [29] Contemporaneous means that the interpretation be contemporaneous with that which is being interpreted. Consecutive interpretation, although it doubles the length of the proceedings, is preferred over simultaneous interpretation: Tran at para. 64.

ANALYSIS

- [30] Mr. Jacob has complained that all three of the interpreters provided use English words. He further complained that when the English word has several meanings, the interpreter does not tell him which meaning it has. Mr. Jacob agreed with Mr. Punnoose and Mr. Bhatt that Malayalam has borrowed words from English. It is therefore to be expected that the interpreters would use English words. Mr. Jacob's issue is that he says the interpreters use English words when there are equivalent Malayalam words.
- [31] Regarding the use of English words, while it is true that many words have different meanings, it is not for the interpreter to tell Mr. Jacob what was meant. That is a question for Mr. Jacob's counsel, Mr. Watt. Further, although Crown has conceded that Mr. Jacob needs an interpreter for this trial, I am satisfied that he has a high working level of English. Again, for him to have been able to successfully complete a university degree and a college diploma that were taught entirely in English, Mr. Jacob must be able to comprehend, speak, and read English at a level higher than many native English-speaking people are capable of. Plus, Mr. Jacob has been communicating in English since he moved to Victoria approximately six years ago.
- [32] Mr. Watt advised the Court that he is able to communicate with Mr. Jacob but that Mr. Jacob needs assistance with complex legal terms and concepts, such as similar fact evidence. That is consistent with Mr. Jacob's criticism of Mr. Punnoose. The words he could not understand when Mr. Punnoose was interpreting for him - Rowbotham and Jordan - are case names. It is not for the interpreter to explain legal terms or case names to accused persons. That is counsel's job.
- [33] I watched Mr. Jacob and the interpreters very closely over four full days. I am satisfied that both interpreters are competent. Both are committed to providing as accurate interpretation as is possible. They have been listening intently throughout. They have been working together. On a couple of occasions when Mr. Punnoose was unable to find the Malayalam word, Mr. Bhatt assisted. Both interpreters used their cell phones to look words up when they were stuck.

- [34] I have no difficulty concluding that Mr. Jacob was comfortable with Mr. Punnoose's interpretation and that he understood the proceedings. He made no indication that he misunderstood anything. The fact that his evidence in both direct examination and cross-examination was responsive and detailed indicates that he understood the questions and the proceedings.
- [35] Mr. Jacob did not seem as comfortable with Mr. Bhatt. I do not, however, take that as a sign of Mr. Bhatt's incompetence. Mr. Bhatt's style of interpretation differs from Mr. Punnoose's. From my careful observations, it is clear that Mr. Jacob is merely more comfortable with Mr. Punnoose's style.

CONCLUSION

- [36] I find both Mr. Punnoose and Mr. Bhatt competent to provide interpretation in this trial from the Malayalam language to the English language and from the English language to the Malayalam language.

"The Honourable Madam Justice Murray"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/07/2025BCSC0747.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/r-v-jacob-2025-bcsc-747>

Prepared on 29 October 2026 · Esheria