

CANADA / JUDGMENT

R. v. Jacob

2025 BCCA 424

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 424 R. v. Jacob

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

R. v. Jacob,

2025 BCCA 424

Date: 20251124

Docket: CA50577

Between:

Rex

Respondent

And

Ajesh Jacob

Appellant

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Before:

The Honourable Justice Griffin

(In Chambers)

On appeal from: Orders of the Supreme Court of British Columbia, dated December 13, 2024 (conviction) and March 24, 2025 (sentence) (R. v. Jacob, 2024 BCSC 2359 and 2025 BCSC 688, Victoria Docket 182069).

Oral Reasons for Judgment

The Appellant, appearing in person
(via videoconference):

A. Jacob

G. Raman (Interpreter)

Counsel for the Respondent:

L.A. Chu

Place and Date of Hearing:

Vancouver, British Columbia

November 24, 2025

Place and Date of Judgment:

Vancouver, British Columbia

November 24, 2025

Summary:

The applicant was convicted of five counts of sexual assault arising in the course of his work providing massage services. He seeks the appointment of counsel to assist him in his conviction appeal and sentence appeal. He is currently incarcerated. The Crown concedes he has insufficient means to retain counsel. The Crown does not oppose appointing counsel for the conviction appeal, and takes no issue with respect to the appointment of counsel for the sentence appeal. Held: Application granted. Although the applicant was convicted of five counts, he was acquitted of four due to concerns about possible tainting of four complainants' evidence who read about incidents on social media. Due to several factors, there was a long delay between the bringing of the charges and the trial. The applicant alleges two Charter breaches: breach of his right to an interpreter, and breach of his right to a speedy trial. He submits that the custodial sentence did not properly take into account collateral immigration consequences that might be diminished with a conditional sentence order. Given the complexity of the trial and the issues, the applicant meets the requirements of s. 684 of the Criminal Code. It is in the interests of justice to appoint counsel for both aspects of the appeal, conviction and sentence.

GRIFFIN J.A.:

Nature of the Application

- [1] The applicant-appellant, Mr. Ajesh Jacob, seeks an order appointing counsel on his behalf pursuant to s. 684 of the Criminal Code to assist him in bringing his appeals from his sexual assault convictions and sentence. I grant him leave to appeal from sentence.
- [2] Mr. Jacob was tried on nine counts of sexual assault, related to nine different complainants. All complainants alleged he had sexually touched them without their permission during his work as a masseuse. Mr. Jacob denied any sexual touching.
- [3] On December 13, 2024, Mr. Jacob was convicted of five counts of sexual assault, with reasons indexed as 2024 BCSC 2359 ("Trial Reasons"). On March 24, 2025, he was sentenced to imprisonment of two years less a day, followed by three years' probation, with reasons indexed as 2025 BCSC 688 ("Reasons for Sentence").
- [4] Mr. Jacob was represented by counsel at trial. He is currently unrepresented and incarcerated. His application for legal aid counsel on appeal was declined, for other than financial reasons.

Background

- [5] Mr. Jacob is originally from India, and his first language is Malayalam. He came to Canada as a student in 2018.
- [6] On May 12, 2021, Mr. Jacob was charged with one count of sexual assault. There was an ongoing police investigation, which later resulted in additional complaints against him. There were 11 counts on the Indictment, but two counts were stayed by Crown counsel prior to trial. Mr. Jacob was ultimately charged with nine counts of sexual assault occurring between May 2019 and March 2021, all arising while he was working as a massage practitioner at a business known as "Big Feet" in Victoria.
- [7] There were delays in Mr. Jacob's trial, which was originally scheduled for January 9, 2023. Some of the incidents that contributed to the delay are summarized as follows:
 - 1) Mr. Jacob had difficulty securing legal aid funding for counsel. Legal Aid BC denied his application for funding, which he appealed.
 - 2) Once he retained counsel, the trial had to be adjourned to May 2023 due to the unavailability of defence counsel and the Crown's witnesses.
 - 3) Mr. Jacob requested a Malayalam interpreter for his trial, which was a challenge due to the rarity of the Malayalam language in British Columbia. The Court Services Branch ("CSB") eventually appointed Mr. Puthussery, a conditionally accredited interpreter from Ontario.
 - 4) The trial began in May 2023, but due to unforeseen circumstances the trial judge had to recuse herself and declare a mistrial on June 8, 2023.

- 5) The trial re-commenced on June 12, 2023 before a new trial judge. However, the trial judge disqualified Mr. Puthussery at defence and Crown counsel's request. Because no other interpreter could be found, the trial had to be adjourned.
- [8] The CSB later retained two new Malayalam interpreters, Mr. Punnoose and Mr. Bhatt, who were the only interpreters the CSB could find aside from Mr. Puthussery.
- [9] The trial ultimately began on October 10, 2024, before Justice Murray. Mr. Jacob challenged the competency of both interpreters. The Crown neither contested the competency of the interpreters nor Mr. Jacob's need for an interpreter, despite his master's degree in English Language and Literature.
- [10] There was a voir dire on October 1-4, 2024 to enable Mr. Jacob to challenge the competency of the interpreters. On October 9, 2024, Murray J. delivered her decision finding both interpreters to be competent and set out the procedure to be adhered to at trial. The judge directed Mr. Punnoose to be the primary interpreter. Mr. Bhatt was the secondary interpreter, whose role was to ensure the accuracy and completeness of Mr. Punnoose's interpretation. The voir dire reasons were delivered subsequently on April 23, 2025, indexed as 2025 BCSC 747.

Trial Reasons: 2024 BCSC 2359

- [11] On December 13, 2024, Mr. Jacob was convicted of five counts of sexual assault but acquitted of four counts. Justice Murray found Mr. Jacob guilty with respect to complainants L.K., N.A., J.B., J.L., and C.H.
- [12] A major issue at trial was the credibility and reliability of the evidence. There was a concern that the complainants' evidence may have been tainted, as all but one of them had come forward after seeing a news article or posts on a social media page called "Survivor Stories", which posted anonymous stories of sexual assault: Trial Reasons at para. 3.
- [13] Another issue at trial was whether the Crown had proved identity beyond a reasonable doubt. Mr. Jacob appeared to suggest that another male who worked at the massage business was an alternate suspect, a man of a different name who was of Korean ancestry.
- [14] Justice Murray accepted Mr. Jacob's evidence that he was known as "Sam" and wore a name tag that said Sam while he worked at Big Feet.
- [15] Justice Murray found that Mr. Jacob's evidence overall was contradictory, inconsistent with other evidence that she accepted, and did not make sense. His evidence that he was never attracted to female clients was contradicted by evidence of private and unprofessional communications with the complainants. His evidence regarding his interaction with one of the complainants changed several times. She observed that Mr. Jacob "says what he thinks will help him": Trial Reasons at para. 23.

- [16] Before addressing evidence on each count, Murray J. addressed two issues that arose in cross-examination. First, she rejected defence counsel's suggestion that if a complainant left a tip when paying for the massage service, that meant the service was good. She accepted the complainants' evidence to the effect that they are conditioned to tip and found that nothing turned on the fact of tipping: Trial Reasons at para. 25. Second, although several complainants were plaintiffs in a civil action against Mr. Jacob and Big Feet seeking compensation for the sexual assaults, Murray J. found no evidence that the complainants had a motive to lie: Trial Reasons at para. 25.
- [17] Justice Murray found that the evidence of the five complainants on whose counts Mr. Jacob was convicted was credible and reliable. She observed that the complainants gave detailed and consistent evidence of their interactions with Mr. Jacob in a forthright manner. Though all five complainants had come forward after seeing social media posts on "Survivor Stories", Murray J. found there was no evidence that their testimony had been tainted or influenced.
- [18] With respect to the acquittals, Murray J. had reasonable doubt with respect to the other four complainants' evidence. There were changes in the complainants' evidence, particularly in relation to the identification of Mr. Jacob. The judge was concerned about the possibility that these complainants' evidence had been influenced, whether consciously or unconsciously, by the social media postings.

Reasons for Sentence: 2025 BCSC 688

- [19] On March 24, 2025, Justice Murray sentenced Mr. Jacob to two years' imprisonment less one day, followed by three years of probation.
- [20] In her reasons for sentence, Murray J. identified the following aggravating factors:
- 1) Mr. Jacob was in a position of trust with the complainants;
 - 2) He exploited the complainants, who were in a vulnerable position;
 - 3) He deterred the complainants from telling the receptionist what had happened by standing at the reception desk while they paid;
 - 4) He committed five sexual assaults over almost three years;
 - 5) The assaults were planned and deliberate; and
 - 6) The assaults had a significant impact on each and every complainant, who felt embarrassed, disgusted, and ashamed by no fault of their own.
- [21] Justice Murray identified the following mitigating factors: (1) Mr. Jacob's youth, as he was 38 years old at the time of sentencing; (2) his education and continuous employment; (3) his compliance with bail conditions; and (4) evidence of strong support in the community.

- [22] While Murray J. recognized the risk of Mr. Jacob's deportation to India if sentenced to six months' incarceration or longer, she declined to consider deportation as a mitigating factor in sentencing. Mr. Jacob's counsel also conceded that deportation consequences would be inapplicable because a sentence of less than six months was not within the appropriate range.
- [23] Justice Murray also declined to impose a conditional sentence order due to Mr. Jacob's high moral culpability, with no findings of diminished blameworthiness.

Legal Framework

- [24] Section 684 of the Criminal Code empowers a Court of Appeal judge to appoint counsel to act on behalf of an accused:

Legal assistance for appellant

684 (1) A court of appeal or a judge of that court may, at any time, assign counsel to act on behalf of an accused who is a party to an appeal or to proceedings preliminary or incidental to an appeal where, in the opinion of the court or judge, it appears desirable in the interests of justice that the accused should have legal assistance and where it appears that the accused has not sufficient means to obtain that assistance.

- [25] The purpose of s. 684 is to ensure the applicant has the opportunity to put their position on the appeal before the court: *R. v. Barton*, 2001 BCCA 477 at para. 7.
- [26] The applicant bears the burden of showing that the test for the appointment of counsel under s. 684 has been met: *R. v. Dickens*, 2025 BCCA 242 at para. 17 (Chambers).
- [27] Section 684 has two requirements for the appointment of counsel. First, the appointment must be in the interests of justice. Second, the accused must have insufficient means to obtain legal assistance.
- [28] The onus is on the applicant to demonstrate insufficient means: *R. v. Schiel*, 2012 BCCA 1 at para. 9 (Chambers).
- [29] As summarized in *R. v. Silcoff*, 2012 BCCA 463 at para. 23 (Chambers) [Silcoff], factors relevant to the assessment of the interests of justice include:
- the points to be argued on appeal;
 - the complexity of the case;
 - any point of general importance in the appeal;
 - the applicant's competency to present the appeal;
 - the need for counsel to find facts, research law, or make argument;
 - the nature and extent of the penalty imposed; and

g) the merits of the appeal.

[30] It is generally understood that the interests of justice will not favour an appointment where an appeal has no realistic prospect of success: *R. v. Dancho*, 2024 BCCA 393 at para. 15 (Chambers). The merits threshold is met if the applicant has an arguable appeal: Silcoff at para. 24. This is considered with reference to the applicable standard of review: Silcoff at para. 25.

Positions of the Parties

Mr. Jacob (Appellant)

[31] Mr. Jacob now appeals from his conviction and sentence. With respect to the conviction, his submission suggests that his key arguments are that: (1) the judge erred in qualifying both interpreters; (2) the judge erred in her assessment of the complainants' credibility and reliability; (3) the verdict was unreasonable and not supported by the evidence; and (4) there was unreasonable delay.

[32] Mr. Jacob's submissions appear to raise breaches of two Charter rights: s. 11, the right to be tried within a reasonable time; and s. 14, the right of a person who does not understand or speak the language in which the proceedings are conducted to the assistance of an interpreter.

[33] With respect to the sentence, Mr. Jacob argues that the judge erred in finding that the sexual assaults were planned and deliberate, in finding that he instilled fear in the complainants, and in imposing a period of conventional incarceration instead of a conditional sentence order.

[34] Mr. Jacob provided affidavit evidence of his insufficient financial means. He deposes that his annual income was \$12,000 and that he has student loan debt of \$20,000. He applied for legal aid funding for his appeals, which was refused for non-financial reasons.

The Crown (Respondent)

[35] The Crown's position is that it appears to be in the interests of justice to appoint counsel on Mr. Jacob's behalf for his conviction appeal. The Crown accepts that he has insufficient means to obtain legal assistance. The Crown takes no position on this application with respect to Mr. Jacob's sentence appeal.

Analysis

[36] Mr. Jacob has demonstrated insufficient means to obtain legal assistance.

[37] Mr. Jacob also satisfies the first requirement under s. 684. It is in the interests of justice to appoint counsel on his behalf for the conviction appeal as well as for the sentence appeal.

- [38] This is an appeal from a complex trial. The trial involved multiple counts, the testimony of nine complainants, and a voir dire addressing the competency of the interpreters. On appeal, Mr. Jacob alleges Charter violations, errors in the judge's ruling on the competency of the interpreters, and grounds for reasonable doubt for the evidence of the five complainants on whose counts he was convicted. His proposed grounds regarding challenging the interpreters may give rise to a need to listen to audio recording of the trial, and an application to adduce fresh evidence.
- [39] Given the complex nature of the issues, Mr. Jacob's documented difficulties with navigating the legal system, and his current incarceration, he will likely find it challenging to prepare a factum and present his own appeal.
- [40] Based on the limited record before me, I cannot conclude that Mr. Jacob's appeal has no reasonable prospect of success. I do see serious challenges he will need to overcome. For example:
- a) In alleging errors in the judge's assessment of credibility and reliability, Mr. Jacob seems critical of the fact that the judge convicted him without corroborative evidence, however such evidence is not required: s. 274, Criminal Code. The judge carefully reviewed the evidence and explained why she had reasonable doubt on some counts but not on others.
 - b) As for alleged interpretation errors, in the voir dire reasons, at para. 20, the judge instructed herself on the law and relevant factors pursuant to *R. v. Tran*, [1994] 2 S.C.R. 951 at para. 55. Perfection is not required. The judge found that the two interpreters were competent. However, without evidence of the alleged interpretation errors and their impact on Mr. Jacob's ability to understand the proceedings, I cannot conclude that his s. 14 Charter violation argument is meritless.
 - c) Further, the length of time this case took to get to trial does raise arguments regarding the violation of his s. 11 Charter right to a trial within a reasonable time, in light of *R. v. Jordan*, 2016 SCC 27. The reasons for the delay, and Mr. Jacob's failure to make this argument at trial, will need to be considered on appeal.
- [41] For these reasons, I am satisfied Mr. Jacob meets the test under s. 684 for the appointment of counsel to assist him on his conviction appeal.
- [42] As for the proposed sentence appeal, Mr. Jacob will also have challenges to overcome. I do not see any obvious error in the judge's imposition of a custodial sentence of greater than six months, which had immigration consequences. Nevertheless, Mr. Jacob submits that the judge overlooked several mitigating circumstances that he raised in his submissions and failed to consider whether a conditional sentence order would be appropriate to avoid the immigration consequences. It cannot be said that his sentence appeal is bound to fail. Given all of the factors, and taking into account that counsel is already being appointed to assist him in the conviction appeal, I consider it would be in the interests of justice to appoint counsel for this aspect of his appeal as well.

Disposition

[43] For these reasons, I grant the order that counsel be appointed for Mr. Jacob pursuant to s. 684 of the Criminal Code to assist him in his conviction and sentence appeals.

"The Honourable Justice Griffin"

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