



26 June 2013

PRESS SUMMARY

R v Brown (Appellant) (Northern Ireland) [2013] UKSC 43
On appeal from: [2011] NICA 47

JUSTICES: Lord Neuberger (President), Lady Hale, Lord Kerr, Lord Wilson, Lord Reed

BACKGROUND TO THE APPEALS

The question in this appeal is whether there is a requirement for the prosecution to prove a defendant had an absence of belief that the person they were having sexual intercourse with was over the age of 13, before they can be convicted of an offence of unlawful carnal knowledge of a girl under the age of 14.

The appellant, who was 17 years old at the time, had sexual intercourse with a 13 year old girl. Initially the girl informed her mother of this fact but told her the intercourse had not been consensual. The appellant was arrested. Subsequently however, the girl withdrew the allegation and admitted the sex had been consensual. As a result, the appellant was charged with the offence of having unlawful carnal knowledge of a girl under the age of 14 contrary to section 4 of the Criminal Law Amendment Acts (Northern Ireland 1885-1923) (the 1885 Act) - a serious offence that carries a maximum of life imprisonment.

The appellant was represented and pleaded guilty to the charge at Belfast Crown Court in 2004. He was sentenced to 3 years detention in a Young Offenders Centre, suspended for 2 years. He had pleaded guilty on the understanding that it was no defence to a charge under section 4 for the defendant to show he believed the girl was over the age of 13. Following his conviction the appellant received advice from different solicitors and launched an appeal, arguing that the Crown *was* indeed required to prove that the appellant did not believe the girl was over 13 years old.

The appellant argued before the Northern Ireland Court of Appeal that section 4 was silent as to such a defence but in view of the legislative history and its seriousness, it must be presumed that there is a mental element to the offence. The appellant relied on the general presumption that criminal offences require the prosecution to prove *mens rea* i.e. some intent on the part of the accused, unless explicitly excluded by the language of the statute or necessarily inferred from the language of the offence. Such a presumption is hard to displace, especially in relation to serious offences.

The Court of Appeal rejected the appellant's arguments and held that no defence of reasonable or honest belief existed. All that was necessary was for the prosecution to prove the accused had had sex with a girl who was actually under the age of 14. The appellant thus appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Kerr gives the judgment of the court.

REASONS FOR THE JUDGMENT

A clearly discernible historical trend of increasing the age at which liability for more serious offences is incurred, while reducing the sentence imposed, can be detected [3]. Section 4 as originally enacted referred to unlawful carnal knowledge of a girl under 13 years old. This was amended to 14 years by the Children and Young Persons (Northern Ireland) Act 1950 (the 1950 Act). Section 5 of the 1885 Act created the same offence in relation to a girl between the ages of 13-15. Section 5 and section 6 (permitting defilement on premises) contained provisos that it would be a defence to show that the accused reasonably believed the girl was of or above the age of 16 years. Such defences were abolished by section 2 of the Criminal Law (Northern Ireland) Amendment Act 1923, as amended by section 140 of the 1950 Act. Section 5 thus referred to any girl under 17 years old, with an express prohibition of any defence of reasonable belief that she was 17 or older. No such type of defence has ever been explicitly provided in any version of section 4 [7-13].

The constitutional principle that mens rea is presumed to be required in order to establish criminal liability is a strong one. It is not to be displaced in the absence of clear statutory language or unmistakably necessary implication. Where the statutory offence is grave and carries a heavy penalty or a substantial social stigma, the case is enhanced against implying that mens rea of any ingredient of the offence is not needed [26].

One must at least begin with an examination of what the legislative intention was before considering whether modification of that intention is justified by later amendments or contemporary social contexts [31]. There can really be no doubt that the section in its original form was intended to impose criminal liability for carnal knowledge of a female under the age of 14 without proof that the perpetrator knew or had reason to believe that she was below that age. The decision in *R v Prince* (1875) LR 2 CCR 154 10 years prior to the 1885 Act confirmed that proof of knowledge or lack of reasonable belief in the age of the victim was not required under section 51 of the Offences Against the Person Act 1861. This formed the crucial backdrop to the 1885 Act. The juxtaposition of sections 5 and 6 of the 1885 Act, which originally contained a defence of reasonable belief, with section 4 make it clear that no such defence was to be provided for under the latter section [32].

It would be anomalous if the subsequent removal of the defence from sections 5 and 6 meant that it should be implied into section 4 to which it had not previously applied [34]. While the amended legislation is to be construed in its revised form, it does not follow that its antecedent history has to be entirely left out of account. To suggest that the removal of the defence under sections 5 and 6 would have the effect of introducing it under section 4 by implication takes contrivance too far [36].

The policy approach of protecting younger females by ensuring that a defence of reasonable belief should not be available has been unswerving. Further, there is nothing in the contemporary social context which militates against the denial of the defence of belief as to age for section 4 offences [37-38].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html