

R. v. Braich, [2002] 1 S.C.R. 903, 2002 SCC 27

Her Majesty The Queen

Appellant

v.

Ajmer Braich and Sukhminder Braich

Respondents

Indexed as: R. v. Braich

Neutral citation: 2002 SCC 27.

File No.: 27843.

2001: June 21; 2002: March 21.

Present: Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour and LeBel JJ.

on appeal from the court of appeal for british columbia

Criminal law — Trial — Judgments — Duty of trial judge to give reasons in criminal cases — Appellate review — Proposed approach — Functional test.

Criminal law — Trial — Judgments — Reasons for judgment — Court of Appeal setting aside accused's convictions for manslaughter and aggravated assault and ordering new trial because frailties of identification evidence had not been subjected to sufficient analysis in reasons for judgment — Sufficiency of trial judge's reasons — Whether trial judge's reasons met functional test.

A group of friends was swept with low trajectory gun fire from a passing van. One victim died and three others were wounded. A van owned by one of the respondent brothers later was found in a parking lot thoroughly cleaned. At trial, the respondents were convicted of manslaughter and aggravated assault primarily, if not exclusively, on the basis of eyewitness identification by the two main Crown witnesses who were members of the victim group. The first witness identified one of the respondents as the driver, and the second identified both respondents respectively as the driver and shooter. The trial judge noted the possibility of collusion and some omissions and variation from their prior statements to police but nonetheless accepted their identification evidence as both credible and reliable. The trial judge rejected the identification evidence of a third eyewitness as unreliable. On appeal, a majority of the Court of Appeal considered the convictions to be unsafe, because the frailties and inconsistencies of the identification evidence had not been subjected to sufficient analysis in the reasons for judgment. The convictions were quashed and a new trial ordered.

Held: The appeal should be allowed and the convictions restored.

The principles set out in *Sheppard* in relation to appellate intervention in a criminal case based on insufficiency of reasons were satisfied by the 17 pages of reasons given by the trial judge in this case. Identification was the only live issue at trial. The respondents were not left in doubt why the convictions were entered. The trial judge summarized the defence in terms to which no objection was taken and his reasons show that he came to grips with the principal issues defined by the defence. He accepted some of the identification evidence as credible and reliable and, showing himself alive to the major difficulties with the identification evidence, resolved those difficulties against the respondents.

The effort to establish the inadequacy of reasons as a freestanding ground of appeal in the context of a criminal case should be rejected. A more functional approach requires an appellant to show not only a deficiency in the reasons, but that such deficiency caused prejudice to the exercise of his right to an appeal. The test is whether the reasons performed their function of allowing an appeal court to review the correctness of the trial decision. Here, the functional test has been met. The identification evidence was somewhat confusing and contradictory, but the basis of the trial judge's acceptance of the evidence of the two main Crown witnesses is not in doubt. The majority of the Court of Appeal considered the conviction "unsafe", but that conclusion was driven more by the peculiarities of the facts than the alleged inadequacies of the trial reasons. A lurking doubt about an "unsafe" verdict is not sufficient to justify appellate intervention.

Cases Cited

Followed: *R. v. Sheppard*, [2002] 1 S.C.R. 869, 2002 SCC 26; **referred to:** *R. v. R. (D.)*, [1996] 2 S.C.R. 291; *R. v. Burke*, [1996] 1 S.C.R. 474; *R. v. Feeney*, [1997] 2 S.C.R. 13; *R. v. Biniaris*, [2000] 1 S.C.R. 381, 2000 SCC 15.

Statutes and Regulations Cited

Criminal Code, R.S.C. 1985, c. C-46, ss. 686(1)(a)(i) [am. 1991, c. 43, s. 9 (Sch., item 8)], (iii) [*idem*].

APPEAL from a judgment of the British Columbia Court of Appeal (2000), 143 C.C.C. (3d) 467, 136 B.C.A.C. 76, 222 W.A.C. 76, [2000] B.C.J. No. 552 (QL), 2000 BCCA 184, supplementary reasons to dissenting reasons (2000), 145 C.C.C. (3d) 446, 140 B.C.A.C. 27, 229 W.A.C. 27, [2000] B.C.J. No. 1135 (QL), 2000 BCCA

361, setting aside convictions for manslaughter and aggravated assault and ordering a new trial. Appeal allowed.

W. J. Scott Bell, for the appellant.

Richard C. C. Peck, Q.C., and *Nikos Harris*, for the respondent Ajmer Braich.

William B. Smart, Q.C., for the respondent Sukhminder Braich.

The judgment of the Court was delivered by

1 BINNIE J. – In this case, a majority judgment of the British Columbia Court of Appeal reversed the conviction of the two respondents for manslaughter in the death of a bystander in a “drive-by shooting” and for aggravated assault on three other victims. The killing occurred during some Indo-Canadian games at Royal Kwantlen Park in Surrey, British Columbia. The trial was heard by a judge without a jury. While the appeal court acknowledged that there was evidence that supported the conviction, McEachern C.J.B.C. considered the conviction to be “unsafe” because the “frailties” of the identification evidence had not been subjected in the reasons for judgment to sufficient “judicial investigation or analysis”. This deficiency he found to be an error in law. The conviction was therefore quashed, Southin J.A. dissenting, and a new trial ordered.

2 This appeal thus raises the issue of the sufficiency of the trial judge’s reasons as a stand-alone ground of appeal, and provides a useful point of comparison with another appeal raising a similar issue, *R. v. Sheppard*, [2002] 1 S.C.R. 869, 2002

SCC 26, released concurrently. In my view, with respect, there was no demonstrated error of law in this case and the Crown's appeal should be allowed.

I. Facts

3 The late Basant Singh Dhaliwal arrived from India to live in Canada with his parents about a month before he was shot and killed. He had been watching a volleyball tournament with a collection of new friends. After the games a group of about 15 individuals were standing around socializing.

4 A van, allegedly owned and driven by the respondent, Sukhminder Braich, approached the group shortly after 5 p.m. with its side door open. When it drew abreast, a burst of gun fire, variously estimated at between "a few" to 12 seconds in duration swept the victim group, shooting on a low trajectory into the ground. Basant Singh Dhaliwal, who happened to be kneeling, was killed instantly. Three companions, Ajaib Biln, Amarjit Tatla and Jarnail Dhaliwal, were wounded in the legs. Tatla's thumb was also hit. It was alleged that the respondent Ajmer Braich was the shooter. The van then sped away. Sukhminder Braich's van was found in a Safeway parking lot, freshly cleaned inside and out, a few days later. It had not been reported stolen. The two respondents are brothers.

5 The only alleged motive for the shooting was a scuffle a week previously between the alleged shooter, Ajmer Braich, and his circle of friends with Jarnail Dhaliwal, one of the victims, and his circle of friends in the Rotary Stadium area in Mission, B.C. Witnesses testified that Jarnail Dhaliwal had slapped Ajmer Braich with an open hand. The trial judge commented that "[t]he scuffle resulted in some torn shirts, hurt feelings, no apparent injuries." The participants on each occasion were

largely acquainted with each other, and there was no evidence of previous bad blood. The motive for the respondents to kill members of the victim group was, accordingly, rather weak.

A. The Identification Evidence

6 The respondents were convicted primarily, if not exclusively, on the basis of eyewitness identification.

7 In oral reasons for judgment, the trial judge accepted the evidence of Jarnail Dhaliwal (who, as stated, had delivered the slap) that Sukhminder Braich was the driver of the van. He had known Sukhminder Braich for about 10 to 12 years and was looking directly at the slow-moving van when he was shot. The trial judge also accepted the evidence of Sher Braich, who was described as a “leader of the victim group”, that Sukhminder Braich was the driver and Ajmer Braich was the shooter. With respect to the evidence of Jarnail Dhaliwal and Sher Braich, the trial judge found:

Both of these men had an absolutely clear view on a clear day and, even in a brief span of time with a van moving very slowly past them, they were both very familiar with both of these defendants and I have no doubt, therefore, that their identification is the truth.

8 A third eyewitness, Samshir Uppal, also purported to identify the shooter, but his evidence was rejected because of prior inconsistent statements to a newspaper that “we never even seen those people”. The trial judge found some of the other evidence from members of the victim group to be similarly unreliable.

9 Neither respondent testified at trial.

10 The next-door neighbour of Sukhminder Braich observed him driving his van, a two-tone GMC minivan, licence FHX-769, between 1:30 p.m. and 2 p.m. the day of the shooting. Witnesses variously described the last three digits of the shooting van as 769, 789 or 679.

11 With respect to the identification evidence accepted by the trial judge, McEachern C.J.B.C. said that

I have carefully examined the evidence, and I have re-weighed it to some extent. In view of the very positive identifications made by the two key Crown witnesses, it cannot be said that there is not some evidence that supports the judge's verdict. I cannot say that upon a proper consideration of all of the evidence, no properly instructed jury, acting reasonably, could convict.

((2000), 143 C.C.C. (3d) 467, 2000 BCCA 184, at para. 52)

12 The trial judge, noting the low trajectory of the line of fire, concluded that the respondents lacked the *mens rea* for murder. They were accordingly convicted of manslaughter. They were also convicted of aggravated assault in relation to the other victims rather than attempted murder. They were each sentenced to nine years in jail on the manslaughter count, with lesser sentences on the convictions for the non-fatal shootings to run concurrently.

B. Appellate Misgivings About the Identification Evidence

13 The majority judgment of the Court of Appeal reversed the trial judge because while the latter had "*mentioned* some of the troublesome matters, he did not

seem to consider them to be of much, or any, significance” (para. 50 (emphasis in original)). The troublesome matters included:

1. The possibility of collusion: The trial judge noted the possibility of collusion within the victim group regarding the eyewitness identification, but in the end, according to McEachern C.J.B.C., this possibility “seems not to have been given any significance”.

2. Frailties in the eyewitness identification: The trial judge mentioned but did not include in his oral reasons a “thorough examination” of some of the frailties in the testimony of the identification witnesses. “Those matters”, said McEachern C.J.B.C., “cried out not just for judicial mention but also for judicial examination and adjudication” (para. 54). Other frailties, not specifically mentioned by the trial judge, included the fact that Sher Braich had wrongly implicated another brother of the accused, Major Braich, in the shooting party; and that Jarnail Dhaliwal, having been unable to identify the shooter to the police, attempted at trial a “dubious identification of Ajmer Braich” as the shooter. In this connection, the trial judge commented, “[t]he opportunity to include Ajmer Braich as the shooter after a possible discussion with Sher Braich cannot be overlooked”. The trial judge noted that successive statements of the two main Crown witnesses to the police had exhibited some omissions and variations but he nonetheless accepted the credibility of their identification of the respondents “beyond a reasonable doubt”. McEachern C.J.B.C. also worried that the purported identification evidence by another member of the victim group, Samshir Uppal, had been altogether rejected without apparent impact “on the credibility of other witnesses in his group”.

3. Untruths about alcohol consumption: The trial judge expressed concern that members of the victim group had sought to cover up their alcohol consumption on the day of the shooting, fearing that it would undermine their credibility. Alcoholic consumption had been admitted by some of the witnesses in the victim group in prior statements to the police.

4. Lack of consistency: The trial judge found that Sher Braich had been “consistent” in his evidence, but McEachern C.J.B.C. said he “was not consistent except with respect to his positive identification of the two [respondents]” (para. 34).

14 Of these four areas of concern, the most significant was the possibility of collusion. The trial judge acknowledged that that possibility existed, and that there was both the opportunity and some contemporaneous evidence (e.g., the evolving police statements) to support the allegation.

C. Other Appellate Misgivings

15 McEachern C.J.B.C. supported his view that the trial decision was “unsafe” by other items of evidence. The call to 911 following the shooting was recorded at 5:30 p.m. Wazir Gill (a relative of the respondents) testified that Sukhminder Braich was at home around 3:30 p.m. that day, and was seen later that night driving a different vehicle. However, assuming this to be true, this still left enough time for Sukhminder Braich and his van to get to Royal Kwantlen Park by 5 p.m.

16 McEachern C.J.B.C. also thought the trial judge may have been improperly influenced by the subsequent discovery of the freshly cleaned van. Although the trial judge made no specific finding on this point, McEachern C.J.B.C. clearly felt the

“disposition” could not be taken as consciousness of guilt because there was no evidence linking either respondent to what was done. “There was no evidence implicating either [respondent] on that issue” (para. 26). Southin J.A., dissenting, did not share this worry (at para. 72): “who has ever heard of a thief cleaning the vehicle he stole, as this vehicle was cleaned?”

D. The Alleged Error of Law

17 While acknowledging that this was not a case of “unreasonable verdict” within the meaning of s. 686(1)(a)(i) of the *Criminal Code*, R.S.C. 1985, c. C-46, McEachern C.J.B.C. was sceptical and worried about the identification evidence. He concluded (at para. 23) that the trial judge had passed too lightly over the difficulties presented by the case:

Moreover, at no time did the trial judge discuss the usual principles relating to identification evidence or to the importance the law places upon frailties in such evidence in order to avoid the well-understood risks of injustice caused by an accidentally or deliberately incorrect identification. These principles are so well known that I do not propose to describe them. It is, however, disturbing to note that in the circumstances of this case the trial judge did not at least identify the principal frailties, particularly those found in the evidence of Sher Braich and Jarnail Dhaliwal upon whose evidence the trial judge relied so heavily.

18 Southin J.A., dissenting, was not troubled by the content of the trial reasons and considered that “[i]f the Court were empowered to find a verdict ‘unsafe’, which the Court is not, I would also say that this verdict is safe” (para. 73).

II. Analysis

19 In the companion case of *Sheppard, supra*, I suggested that a review of the case law in this Court yielded a number of propositions in relation to appellate intervention in a criminal case based on insufficiency of reasons. It is convenient to repeat those propositions here and to apply them to the present appeal.

1. *The delivery of reasoned decisions is inherent in the judge's role. It is part of his or her accountability for the discharge of the responsibilities of the office. In its most general sense, the obligation to provide reasons for a decision is owed to the public at large.*

20 The trial commenced on November 16, 1998. There were eight days of evidence followed by closing submissions on November 30, 1998. The trial judge delivered oral reasons that cover 17 pages of transcript. There was no doubt that the death of one victim and the bodily injuries of other members of the “victim group” were unlawful. The only live issue in the case was identification. Apart from a few introductory and concluding remarks, that was the focus of the trial judge’s reasons. It cannot be seriously suggested that there was no reasoned decision in this case. There is no doubt what the trial judge decided and how he reached his decision, as hereinafter discussed.

2. *An accused person should not be left in doubt about why a conviction has been entered. Reasons for judgment may be important to clarify the basis for the conviction but, on the other hand, the basis may be clear from the record. The question is whether, in all the circumstances, the functional need to know has been met.*

21 The respondents here do not suggest they did not know why the conviction was entered. Their position is that the trial judge ought not to have accepted the evidence of Sher Braich and Jarnail Dhaliwal on the identification issues because of the frailties and inconsistencies mentioned above. Their posture is not one of feigned ignorance but of informed disagreement with the trial judge.

3. *The lawyers for the parties may require reasons to assist them in considering and advising with respect to a potential appeal. On the other hand, they may know all that is required to be known for that purpose on the basis of the rest of the record.*

22 Counsel for the accused respondents did not suggest that they encountered difficulties in formulating grounds of appeal attributable to the trial judge's reasons for judgment. Their complaint is that the trial judge did not demonstrate in his reasons sufficient sensitivity to all the factors which the respondents consider to be important.

23 Non-existent or inadequate reasons with respect to credibility may justify appellate intervention: *R. v. R. (D.)*, [1996] 2 S.C.R. 291, and *R. v. Burke*, [1996] 1 S.C.R. 474. The allegation here is that the trial judge's finding of credibility in favour of the two principal Crown identification witnesses was wrong and the inadequacy of his reasons camouflaged the error.

24 The respondents had no difficulty in formulating an arguable (albeit, in my view, ultimately unpersuasive) ground of appeal on the facts of the case. Any alleged deficiencies in the reasons were no impediment at that stage of the proceedings.

4. *The statutory right of appeal, being directed to a conviction (or, in the case of the Crown, to a judgment or verdict of acquittal) rather than to the reasons for that result, not every failure or deficiency in the reasons provides a ground of appeal.*

25 The trial judge summarized the respondents' defence with admirable brevity in terms to which they take no objection:

It is the theory of both the defendants that the eye-witness identification is seriously flawed. One, the identification is based on assumption. "It must have been the Braich brothers, who else?"

Inconsistencies between the statements given to the police shortly thereafter and subsequent changes in buttressing and additions to their evidence should lead to an inference that the witnesses, by discussion with each other, have tainted and colluded to implicate the persons they believe were involved in the crime. And last but not least, it is the theory of the defendants that the eye-witnesses are untruthful and should not be believed.

Enough was said in the trial judge's reasons to show that he came to grips with the issues thus defined by the defence. His decision ought not to be reversed simply because he did not advert to all of the secondary or collateral circumstances that the respondents say had a bearing on the main issue.

26 There is no doubt about the basis of his decision. He considered Sher Braich to have been clear and consistent throughout his statements to the police and his trial evidence in identifying Sukhminder Braich as the driver and Ajmer Braich as the shooter. He had known both of them for 10 to 15 years. The trial judge accepted his identification as both credible and reliable. The trial judge was alive to the possibility of collusion but in the end simply rejected it.

27 MacEachern C.J.B.C. said that Sher Braich "was not consistent except with respect to his positive identification of the two [respondents]" (para. 34) but, with respect, that was *the* critical issue on which the trial judge did accept his testimony.

28 Jarnail Dhaliwal had known both respondents for at least 10 years. He identified Sukhminder Braich as the driver of the van and Ajmer Braich as the person doing the shooting. The trial judge noted that in a previous statement, Jarnail Dhaliwal had told the police he did not know who was in the back of the van (i.e., the shooter). That prior inconsistency and the fact that he discussed the shooting with others prior to talking to the police led the trial judge to reject his identification of Ajmer Braich

as the person who did the shooting. On the other hand, with respect to Jarnail Dhaliwal's identification of the driver as Sukhminder Braich, the trial judge found him to be consistent and credible.

29 The trial reasons flag the difficulties with the identification evidence, albeit the discussion is succinct. In the end, the trial judge resolved the difficulties against the respondents beyond, as he said, any reasonable doubt. If the finding on identification is to be reversed in these circumstances, it must be shown that the 17-page discussion precludes proper appellate review of the correctness of the trial judge's decision.

5. Reasons perform an important function in the appellate process. Where the functional needs are not satisfied, the appellate court may conclude that it is a case of unreasonable verdict, an error of law, or a miscarriage of justice within the scope of s. 686(1)(a) of the Criminal Code, depending on the circumstances of the case and the nature and importance of the trial decision being rendered.

30 McEachern C.J.B.C. concluded that this was not a case of "unreasonable verdict" within the scope of s. 686(1)(a)(i). I agree with that conclusion. Nor is it alleged that the respondents suffered a miscarriage of justice within the meaning of the cases under s. 686(1)(a)(iii). The issue is whether the alleged insufficiency in the trial judge's reasons amounted to an error of law.

31 The general principle affirmed in *Sheppard* is that "the effort to establish the absence or inadequacy of reasons as a freestanding ground of appeal should be rejected. A more contextual approach is required. The appellant must show not only that there is a deficiency in the reasons, but that this deficiency has occasioned prejudice to the exercise of his or her legal right to an appeal in a criminal case" (para. 33). The test, in other words, is whether the reasons adequately perform *the*

function for which they are required, namely to allow the appeal court to review the correctness of the trial decision. The *Sheppard* decision goes on to say at para. 46:

These cases make it clear, I think, that the duty to give reasons, where it exists, arises out of the circumstances of a particular case. Where it is plain from the record why an accused has been convicted or acquitted, and the absence or inadequacy of reasons provides no significant impediment to the exercise of the right of appeal, the appeal court will not on that account intervene. On the other hand, where the path taken by the trial judge through confused or conflicting evidence is not at all apparent, or there are difficult issues of law that need to be confronted but which the trial judge has circumnavigated without explanation, or where (as here) there are conflicting theories for why the trial judge might have decided as he or she did, at least some of which would clearly constitute reversible error, the appeal court may in some cases consider itself unable to give effect to the statutory right of appeal. In such a case, one or other of the parties may question the correctness of the result, but will wrongly have been deprived by the absence or inadequacy of reasons of the opportunity to have the trial verdict *properly* scrutinized on appeal. In such a case, even if the record discloses evidence that on one view could support a reasonable verdict, the deficiencies in the reasons may amount to an error of law and justify appellate intervention. It will be for the appeal court to determine whether, in a particular case, the deficiency in the reasons precludes it from properly carrying out its appellate function. [Emphasis in original.]

32 I proceed then, to look at the circumstances here to determine whether the functional test has been met.

6. *Reasons acquire particular importance when a trial judge is called upon to address troublesome principles of unsettled law, or to resolve confused and contradictory evidence on a key issue, unless the basis of the trial judge's conclusion is apparent from the record, even without being articulated.*

33 McEachern C.J.B.C. himself observed in the course of his reasons that the principles relating to identification evidence and “the importance the law places upon frailties in such evidence in order to avoid the well-understood risks of injustice caused by an accidentally or deliberately incorrect identification ... are so well known that I do not propose to describe them” (para. 23). As the Court of Appeal thought it

superfluous to discuss the applicable law, it was prepared to extend the same dispensation to the trial judge. McEachern C.J.B.C.'s point was not that the trial reasons disclosed error, or that the trial judge's silence on some points necessarily concealed error. His point was that the trial judge's reasons did not, on their face, positively demonstrate the absence of error.

34 In my view, with respect, none of the troublesome evidence precluded a positive finding of eyewitness identification. The two alleged sightings of Sukhminder Braich by Wazir Gill, for example, did not exclude the presence of Sukhminder Braich being at the scene of the shooting in his brown, two-tone GMC van between 5 and 5:30 p.m. The fact Sher Braich and Jarnail Dhaliwal made allegations respecting the presence of other passengers in the van (particularly Major Braich), which the trial judge did not accept, and the potential for collusion with respect to the identification evidence which he did accept, was not fatal. Several eyewitnesses had the opportunity for a clear, unobstructed view of the driver and shooter in a van whose description corresponded to that of Sukhminder Braich, and in the end the trial judge was entitled to accept their identification evidence and he did so.

35 In summary, the identification evidence was somewhat confusing and contradictory, but the basis of the trial judge's acceptance of the evidence of Sher Braich and Jarnail Dhaliwal is not in doubt. They knew the respondents. They had a clear and unobstructed view of the shooting. Having reminded himself of some potential difficulties (collusion, evolution of statements to the police, etc.), the judge was nevertheless satisfied "beyond a reasonable doubt" on the specific point at issue, namely identification of the respondents.

7. *Regard will be had to the time constraints and general press of business in the criminal courts. The trial judge is not held to some abstract standard of perfection. It is neither expected nor required that the trial judge's reasons provide the equivalent of a jury instruction.*

36 It cannot be said that the “press of business” in the Supreme Court of British Columbia was a factor in this case.

37 McEachern C.J.B.C., with respect, sought to hold the trial judge to an unjustifiably high standard of perfection. He wrote (at para. 55):

I cannot say whether any additional judicial investigation or analysis or further Reasons for Judgment would have overcome these difficulties, but they may have. Considering the reasons for judgment, however, I have concluded that it was indeed a wrong decision of law to enter convictions against these appellants without demonstrating that the frailties and other difficulties I have described were properly weighed in the assessment of the identification evidence. It is only after such a weighing process that a Court could properly conclude that the Crown's case had been proved beyond a reasonable doubt. [Emphasis added.]

38 The insistence on a “demonstration” of a competent weighing of the frailties elevates the alleged insufficiency of reasons to a stand-alone ground of appeal divorced from the functional test, a broad proposition rejected in *Sheppard*. The factual issues in this case do not approach the difficulty that led to appellate intervention in *R. (D.)*, *supra*, nor is there the “uncritical reliance on the unorthodox identification evidence” cited in *Burke*, *supra*, at para. 53, or the internal contradictions in the trial reasons noted in *R. v. Feeney*, [1997] 2 S.C.R. 13. I do not suggest at all that the decision presented to the trial judge was straightforward or easy, but there is no doubt what he decided and why he decided it.

8. *The trial judge's duty is satisfied by reasons which are sufficient to serve the purpose for which the duty is imposed, i.e., a decision which, having regard to the*

particular circumstances of the case, is reasonably intelligible to the parties and provides the basis for meaningful appellate review of the correctness of the trial judge's decision.

39 McEachern C.J.B.C. considered that the “frailties” of the identification evidence should not only be mentioned but analysed. I agree, but I conclude, with respect, that the analysis here was sufficient to satisfy the functional requirements of the parties and for appellate review. The issue of identification turned on the credibility of eyewitnesses who knew the suspects. The trial judge had to weigh those factors against the possibility that their evidence may have been tainted. The trial judge does not have to exhibit the novelist’s touch for character delineation and motivation. The respondents launched a massive attack on the credibility of their accusers. The trial judge acknowledged the attack and, giving reasons, rejected it. The appellate court was not precluded by inadequate reasons from discharging its review function. The majority judgment simply took the view that if the trial judge had thought harder about the problems and written a more extensive analysis, he might have reached a different conclusion. In a word, McEachern C.J.B.C. considered the conviction “unsafe” but, with respect, his conclusion was driven more by the peculiarities of the facts than the alleged inadequacies of the trial reasons. A lurking doubt about an “unsafe” verdict is not sufficient to justify appellate intervention: *R. v. Biniaris*, [2000] 1 S.C.R. 381, 2000 SCC 15, at paras. 36-38.

9. *While it is presumed that judges know the law with which they work day in and day out and deal competently with the issues of fact, the presumption is of limited relevance. Even learned judges can err in particular cases, and it is the correctness of the decision in a particular case that the parties are entitled to have reviewed by the appellate court.*

40 The respondents were entitled to a set of reasons that permitted meaningful appellate review of the correctness of the trial judge’s reasons and that is what they got.

41 This is not a case of boilerplate reasons or a generic “one size fits all” judicial disposition as was found in *Sheppard, supra*, released concurrently. The trial judge’s decision was perfectly intelligible to the respondents, even though they considered it to be erroneous. It was also clear to the British Columbia Court of Appeal. “Inadequate reasons” is not an all-purpose ground of appeal that can serve to mask what is in fact a disagreement between the trial judge and a majority of members of the appeal court on an issue which the law allocates to the trial court for decision.

10. *Where the trial decision is deficient in explaining the result to the parties, but the appeal court considers itself able to do so, the appeal court's explanation in its own reasons is sufficient. There is no need in such a case for a new trial. The error of law, if it is so found, would be cured under the s. 686(1)(b)(iii) proviso.*

42 The trial judge provided an intelligible pathway through his reasons to his conclusion. The appeal Court was not called upon to provide its own explanation of the conviction. The trial reasons did not fail the functional test. In my view, with respect, no error of law was committed.

III. Conclusion

43 I would allow the appeal and restore the convictions.

Appeal allowed.

*Solicitor for the appellant: The Ministry of the Attorney General,
Vancouver.*

*Solicitors for the respondent Ajmer Braich: Peck and Company,
Vancouver.*

*Solicitors for the respondent Sukhminder Braich: Smart and Williams,
Vancouver.*