

Case Name:

R. v. Sinnadural

**Between
Her Majesty the Queen, and
Dassendran Sinnadural**

[2015] O.J. No. 1404

120 W.C.B. (2d) 270

2015 CarswellOnt 3913

Ontario Court of Justice
Toronto, Ontario

E.N. Libman J.

Heard: February 24, 2015.

Oral judgment: February 24, 2015.

(20 paras.)

Counsel:

J. MacPherson, Prosecutor.

V. Manoukian, Paralegal for Dassendran Sinnadural.

REASONS FOR JUDGMENT

1 E.N. LIBMAN J. (orally):-- The courts are very much assisted on an appeal where there is a very full and thoughtful presentation of each side's position as I have been here through the very helpful submissions of Mr. Manoukian on behalf of this defendant, and that of Ms. MacPherson on behalf of the prosecutor.

2 The case that was presented before the Justice of the peace was that of a woman who the Crown alleges to be the wife of the accused was driving an uninsured car. The Crown tendered into evidence the plate portion of the motor vehicle, as well as a statement that was uncautioned taken from the defendant where in the course of the investigation the defendant did not provide insurance for this motor vehicle.

3 While I am satisfied through the careful argument of Crown counsel that it may well have been available for the justice to reach the conclusion that the operator of the uninsured car was in fact the wife of the registered owner. What did remain a live issue to have resolved was whether the defendant was proven guilty of the strict liability offence of committing the offence of permitting a vehicle to be operated? That is to say, there are different elements of the offence when one is charged as the operator or permitting the other to be the operator.

4 In the reasons for judgment, which are given at page 11 and through 12, nowhere is this issue addressed in the Reasons for Judgment. The Justice of the Peace accepted the evidence that there was no proof of insurance. The fact of the vehicle being driven by the defendant's wife does not necessarily lead to the conclusion, although an inference may well be drawn, that the operator of the motor vehicle was doing so while being permitted by the defendant.

5 Accordingly, I am satisfied that upon a full and fair reading of the Reasons for Judgment at pages 11 and 12, as other members of this court have noted such as Justice Ray, where the element of permitting the vehicle to be driven is alleged that element must in fact be proven to the satisfaction of the court. Here the issue of driving an uninsured car and permitting it to be driven was simply conflated. It may well have been that had the justice gone on to consider at this ex-parte trial that discrete element of the offence, the justice may well have been satisfied of it, however it was not addressed.

6 In these circumstances the conviction cannot stand. Having regard then to the remedy, it was certainly open, as I have noted, for the justice to have arrived at the conclusion that they have had. Mr. Manoukian has equally forcefully argued that such a conclusion was not open to the justice. That factual issue in dispute is very much the proper subject of resolution at a trial.

7 For that reason, the order of the court would be to allow the appeal, set aside the conviction, and order a new trial.

8 MR. MANOUKIAN: Thank you, Your Honour.

9 THE COURT: Thank you both, Ms. MacPherson. I gather we have to send this back to Markham Road, on a Wednesday perhaps in early April?

10 MS. MACPHERSON: Yes, Your Honour, a moment's indulgents? Perhaps something around the 22nd of April, either at nine o'clock in the morning or 1:30, if my friend has a preference? Or I can suggest the following week if that works better for Mr. Manoukian.

11 MR. MANOUKIAN: The 27th at half past one would be agreeable, Your Honour.

12 MS. MACPHERSON: April 22nd, E-4 is the courtroom at 1530 Markham Road, 1:30 in the afternoon, marked to set a new date.

13 THE COURT: Mr. Manoukian, do you want a reminder for your client?

14 MR. MANOUKIAN: I think, Your Honour, in this circumstance if I can have a reminder, thank you.

15 THE COURT: Let's just give our clerk a moment. Thank you again, Mr. Manoukian and Ms. MacPherson

16 MS. MACPHERSON: Thank you, Your Honour.

17 THE COURT: We'll give you a reminder.

18 MR. MANOUKIAN: Thank you, Mr. Clerk.

19 THE COURT: Thank you again.

20 MR. MANOUKIAN: Thank you.