

Trustees of the Barry Congregation of Jehovah's Witnesses v BXB

Supreme Court: 26 April 2023

[2023] UKSC 15

Congregation elder – rape of congregant – vicarious liability

Mr and Mrs B began attending services at the Barry Congregation of Jehovah's Witnesses in 1984. They made lots of friends in the congregation, among whom were Mark Sewell, his wife and their children. Sewell was an elder; however, he began drinking heavily, became depressed and started behaving inappropriately towards female members of the congregation, for example by kissing them on the lips when he greeted them. His father, also an elder, had asked Mr and Mrs B to give him emotional support. In 1990, Sewell raped Mrs B after they had been out evangelising together and in 2014 he was convicted of raping her and indecently assaulting two others. In 2017, Mrs B brought a claim for damages against the Jehovah's Witnesses' worldwide governing body, the Watchtower and Bible Tract Society of Pennsylvania, and the Trustees of the Barry Congregation, claiming that they were vicariously liable for the rape because of the nature of their relationship with Sewell and because of the connection between that relationship and the commission of the rape. Both the High Court and the Court of Appeal found for Mrs B.

There is a two-stage test for vicarious liability: (1) whether the relationship between the primary wrongdoer and the organisation that is being sued is sufficiently close as to make the organisation liable, and (2) whether there is a sufficiently close connection between the wrongdoing and the employment, so that it will be fair and just to hold the employer vicariously liable.

The Supreme Court held that the Barry Congregation Trustees and the Watchtower and Bible Tract Society were *not* liable, for the following reasons among others:

- i. the rape was committed in Sewell's own home, and he was not carrying out any activities as an elder on behalf of the Jehovah's Witnesses at the time;
- ii. unlike the position in child sexual abuse cases, Sewell was not exercising 'control' over Mrs B because of his position as an elder—she was there because of her close friendship with him and because she was seeking to provide emotional support to him;
- iii. Mark Sewell was not wearing his 'metaphorical uniform as an elder' at the time the tort was committed;
- iv. although Sewell's role as an elder was a 'but for' cause of Mrs B's continued friendship with him and of her being with him in the back room where she was raped, 'but for' causation was insufficient to satisfy the close connection test;

- v. the rape was not equivalent to the gradual grooming of a child for sexual gratification by a person in authority over that child: it was rather 'a shocking one-off attack. In any event, the prior events owed more to their close friendship than to his role as an elder'; and
- vi. there was no relevance except as background, in, for example, the fact that inappropriate kissing on the lips when welcoming female members of the congregation was not condemned.
- vii. In short: 'The rape was not so closely connected with acts that Mark Sewell was authorised to do that it can fairly and properly be regarded as committed by him while acting in the course of his quasi-employment as an elder', so on that basis, the 'close connection test' was not satisfied and the appeal was allowed.

Comment: What effect this judgment will have on future cases against religious groups for the sexual misdemeanours of their clergy and employees is impossible to guess; however, it may be that it has somewhat narrowed the scope of vicarious liability. [Frank Cranmer]

doi:10.1017/S0956618X23000443