

***R v Runjanjic and Kontinnen* (1991) 53 A Crim R 362; (1992) 56 SASR 114; [1991] SASC 2951 (28 June 1991)
– Supreme Court of South Australia (Full Court)**

‘Battered woman syndrome’ – ‘Expert evidence - psychologist’ – ‘False imprisonment’ – ‘Grievous bodily harm’

Charge/s: False imprisonment, grievous bodily harm.

Appeal Type: Appeal against conviction.

Facts: The two female appellants were in a relationship with a man named Hill. There was a consistent pattern of domineering and violent conduct by Hill towards both appellants. The appellants were part of a plan to help Hill forcibly confine the complainant and cause her injury. At trial, they sought to admit expert evidence of ‘battered woman syndrome’ to support a claim of duress. The trial judge ruled that the evidence was inadmissible on the ground that the test for duress was objective and expert evidence of the state of mind of the appellants was therefore irrelevant.

Issue/s: Whether the expert evidence of battered woman syndrome ought to have been admissible to support a claim of duress.

Decision and Reasoning: King CJ (with whom Bollen and Legoe JJ agreed) held that the evidence ought to have been admissible and a re-trial was ordered. In reaching this decision, King CJ first held that the trial judge’s reason did not provide a sound basis for excluding the evidence. It ignored the subjective aspect of the test for duress and it also misunderstood the main thrust of the proffered evidence. While the expert might have been in a position to comment on the state of mind of the appellants, the primary thrust of such evidence was to establish a pattern of responses commonly exhibited by battered women. At [23]:

‘The proffered evidence is concerned not so much with the particular responses of these appellants as with what would be expected of women generally, that is to say women of reasonable firmness, who should find themselves in a domestic situation such as that in which the appellants were. It is designed to assist the court in assessing whether women of reasonable firmness would succumb to the pressure to participate in the offences. It also serves to explain why even a woman of reasonable firmness would not escape the situation rather than participate in criminal activity. As such it is relevant’.

Second, King CJ considered whether expert evidence of battered woman syndrome met the essential pre-requisite that it had been accepted by experts in the field of psychology or psychiatry as a scientifically accepted facet of psychology. Following significant consideration of scientific literature, at [24] and [26], King CJ held that the evidence was admissible:

'It is not sufficient, in order to justify the admission of expert evidence of the battered woman syndrome, as was argued by counsel for the appellant, that the ordinary juror would have no experience of the situation of a battered woman. Jurors are constantly expected to judge of situations, and of the behaviour of people in situations, which are outside their experience. Much conduct which occupies the attention of the criminal courts occurs in the criminal underworld, or in sordid conditions and situations, of which jurors would generally have no experience. It is not considered to be beyond the capacity of juries, or of the Court if it is the trier of the facts, to judge of the reactions and behaviour of people in those situations. Expert evidence of how life in criminal or sordid conditions might affect a person's responses to situations, would not be admitted.

'This is an area in which the courts must move with great caution. The admission of expert evidence of patterns of behaviour of normal human beings, even in abnormal situations or relations, is fraught with danger for the integrity of the trial process. The risk that, by degrees, trials, especially criminal trials, will become battle grounds for experts and that the capacity of juries and courts to discharge their fact-finding functions will be thereby impaired is to be taken seriously. I have considered anxiously whether the situation of the habitually battered woman is so special and so outside ordinary experience that the knowledge of experts should be made available to courts and juries called upon to judge behaviour in such situations. In the end, I have been impressed by what I have read of the insights which have been gained by special study of the subject, insights which I am sure would not be shared or shared fully by ordinary jurors. It seems to me that a just judgment of the actions of women in those situations requires that the court or jury have the benefit of the insights which have been gained'.