

DPP v Lo (Ruling No 3) [2018] VSC 149 (29 March 2018) – Victorian Supreme Court

‘Evidence’ – ‘Evidence issues’ – ‘People from culturally and linguistically diverse backgrounds’ – ‘Physical violence and harm’ – ‘Relationship, context, tendency and coincidence evidence’

Charges: Murder.

Case type: Ruling on relevancy of evidence.

Facts: The female accused Lo was charged with murder and perjury. It is alleged that AB shot the deceased and that the accused Lo assisted, encouraged and directed AB in those actions. The accused was a Chinese national living with the deceased prior to the murder.

The central issue of this trial was whether the evidence provided by a marriage celebrant was relevant. The marriage celebrant provided evidence that he visited the deceased’s home in relation to proposed plans for him and the accused to marry. The Defence submitted that this confused the jury, and that it was counter-intuitive to the Crown’s case. It was also submitted that if the evidence was put before the jury, there would be a risk that the jury would be misled into thinking that the deceased wanted to marry the accused because he loved and cared for her. This would require the Defence to adduce evidence to show an alternative scenario that the deceased had been actively seeking to marry a young Asian woman and had told others of his willingness to facilitate such a person getting an Australian visa through such an arrangement ([3]-[6]). The Defence submitted that consideration of this issue would be time-consuming and distracting for the jury, and the evidence of the marriage celebrant was not sufficiently relevant to allegations of the accused’s complicity in the murder ([7]).

Issues: The Court was required to determine whether the evidence of the marriage celebrant was relevant.

Decision and reasoning: Under the *Evidence Act 2008* (Vic), evidence is prima facie admissible if it is relevant. In order to exclude the evidence, the defendant bears the onus of showing that the danger of unfair prejudice outweighs the probative value. Dixon J held that the marriage celebrant's evidence was relevant and admissible as context and relationship evidence ([22]), and that the Defence should be entitled to adduce evidence supporting a counter-narrative that the deceased had been interested in marriages with other women prior to the murder ([27]). Her Honour was of the view that evidence as to the events in the house the night before the murder, and evidence of the complex nature of the accused's and deceased's relationship was relevant. Any unfair prejudice arising from the jury learning about a planned marriage of convenience between the accused and deceased did not outweigh the probative value of the evidence ([25]). The marriage celebrant's evidence was found to have significant relevance to the issues in the trial ([27]), and to be admissible relationship evidence.