**THE KING**

**v.**

**LOVEGROVE.**

COURT OF CRIMINAL APPEAL

1920 JULY 30

**LEX (1920) – CCA 3 K.B 643**

**CITATIONS**

[1920] 3 K.B. 643

**BEFORE THEIR LORDSHIPS:**

EARL OF READING, C.J.SALTER, and ACTON JJ.

**ORIGINATING COURT**

SUSSEX ASSIZES

**REPRESENTATION**

J. G. HURST K.C. (J. FLOWERS with him) - for the prosecution.

DOUGHTY (GENTLE with him) - for the appellant.

Solicitors for appellant: *C. R. SAWYER AND WITHALL, for J. C. BUCKWELL, Brighton.*

Solicitors for the Crown: *J. K. Nye AND Donne, BRIGHTON.*

**ISSUES FROM THE CAUSE(S) OF ACTION**

CRIMINAL LAW:– Unlawful killing - Using Instruments with intent to procure Abortion - Evidence of similar user on another Woman - Admissibility.

CHILDREN AND WOMEN LAW:- Women and Healthcare – Women and abortion - Abortion procured by husband of deceased woman to terminate pregnancy arising from her adultery – unlawful and felonious killing arising therefrom – Relevant considerations

HEALTHCARE LAW:- Care of pregnant women – abortion – using certain instruments to procure the miscarriage of a certain woman - relevant considerations

**PRACTICE AND PROCEDURE ISSUES**

EVIDENCE:- Admissibility – Objection to the admission of evidence – when sustainable

**CASE SUMMARY**

ORIGINATING FACTS/CLAIMS

The appellant was indicted for unlawfully killing, and for feloniously using certain instruments to procure the miscarriage of, a certain woman. At the trial, evidence was given for the prosecution by the husband of the woman that, having obtained the appellant's name and address from another woman, he went to the appellant's house and arranged with her for his wife to go there in order that the appellant might perform an operation on her which would procure a miscarriage, and that his wife subsequently went to the appellant's house and afterwards had a miscarriage and died of septic abortion. The evidence of the other woman was tendered by the prosecution to show that the appellant had performed a similar operation on her some months previously. The evidence was objected to on the ground that the defence was a denial of the husband's evidence and that the appellant had never seen the deceased woman. The evidence was admitted, and the appellant was convicted:-

DECISION APPEALED AGAINST

The appellant was found guilty and was sentenced to eighteen months' imprisonment with hard labour.

ISSUE FOR DETERMINATION OF APPEAL

1. Whether the prosecutor established that the appellant had ever performed any operation on the deceased person;

2. Whether evidence to show that an accused person has performed other illegal operations is only admissible where the prosecution seeks to prove a system or course of conduct, or to rebut a suggestion of accident or mistake, or to prove knowledge by the prisoner of some fact;

3. Whether the evidence of Purcell against the accused was not that of an accomplice, deserving of corroboration.

JUDGMENT OF THE COURT OF CRIMIANL APPEAL

*Held,* that the evidence was rightly admitted, as it tended to corroborate the husband's evidence and was, therefore, relevant to an issue before the jury, and that the conviction must be upheld.

**MAIN JUDGMENT**

The judgment of the Court (Earl of Reading C.J., Salter and Acton JJ.) was delivered by:-

**EARL OF READING C.J.** who, after stating the facts, said:

The defence set up at the trial was that the appellant had not performed any operation, either lawful or unlawful, upon Mrs. Purcell, and that after her interview with Mr. Purcell on the morning of June 18 she never saw him again, and that she had never seen Mrs. Purcell on any occasion. The appellant gave a definite denial of the statements made by Purcell in his evidence as to what took place at the first interview, and therefore the truth or untruth of Purcell's account of that interview was put in issue. If Purcell's evidence was believed there could be no doubt as to the appellant's guilt, and indeed that was not disputed. It was therefore very important to ascertain what in fact took place at the first interview. Evidence is admissible if it tends to prove that the prisoner has committed the act charged. One step in proof of the act charged against the appellant was that Purcell went to her house one morning to arrange with her for her performance of an illegal operation on Purcell's wife, and that he went there in consequence of information which he had received from Mrs. Type. The evidence of Mrs. Type established that she had given the appellant's name and address to Purcell, and that a similar operation had been performed on her by the appellant in 1919. It is contended by counsel for the appellant that Mrs. Type's evidence was inadmissible on the principle laid down in *Makin's Case* (1), *Rex v. Bond* (2) and other cases. In the present case we are not intending to deal with the broad general principle that has been laid down in those cases, and nothing that is said in this judgment is intended to extend that principle. In *Makin's Case* (3) the Lord Chancellor said: "The mere fact that the evidence adduced tends to show the commission of other crimes does not render it inadmissible if it be relevant to an issue before the jury." This Court has said, notably in *Rex v. Shellaker* (4) where the principle as stated by Channell J. in *Reg. v. Ollis* (1) was quoted, that the question in each case is whether on the facts the evidence is admissible according to the established principles of law. There may be cases where, as was said in *Rex v. Shellaker* (2), "though in strictness the evidence is admissible, the judge may be of opinion that it is of so little real value, and yet indirectly so prejudicial to the prisoner, or that it is so remote, that it ought not to be given. That, however, does not affect the general principle." We do not desire either to extend or to restrict the principle laid down in *Makin's Case* (3) and in other similar cases. But the present case does not depend on the principle there laid down. The evidence of Mrs. Type was admissible if it was relevant to an issue before the jury, and it was none the less admissible though it might prove that the appellant had committed a similar crime on a previous occasion. In our opinion Mrs. Type's evidence tended to prove that Purcell's account of what took place at the first interview was true, and that the appellant's version of the interview was untrue; it also tended to prove that Purcell did take his wife to the appellant's house in the evening of the same day for the purpose of having an illegal operation performed by the appellant.

The evidence was, therefore, rightly admitted, and this ground of appeal fails.

[The Lord Chief Justice then dealt with the question whether there was any corroboration of Purcell's evidence, and came to the conclusion that there was corroboration.]

*Appeal dismissed.*

**REFERENCE OF CASES CITED – [**SEQUENTIALLY ]

(1) [1906] 2 K. B. 389, 414.

(2) [1894] A. C. 57.

(3) [1911] A. C. 47.

(4) [1914] 3 K. B. 339.

(5) [1914] 1 K. B. 414.

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(1) [1894] A. C. 57.

(2) [1906] 2 K. B. 389, 414.

(3) [1894] A. C. 65.

(4) [1914] 1 K. B. 414.