

More on coercion

In the November edition of *Balance* an article *Coercion and the Criminal Code* appeared. It concluded with a request that readers bring to the attention instances where the defence provided by s.41 has been applied in the courts.

The request met with an immediate response to me as, with Beth Wild, one of the original writers. This came from Justice Mildren of the Supreme Court. He had presided over the murder trial of *Nundhirribala* (SCC No 28 of 1994) which took place in October 1994. In the course of his aide memoire to the jury, the learned trial judge included the following directions in respect of coercion:

1. If you are satisfied as to each of the elements 1.1, 1.2 and 1.3 in Section B [we interpose to note that these elements are the basic ingredients for murder in accordance with s.162(1)(a) of the Code] above, you must next consider whether the Crown has also proven beyond reasonable doubt that the killing was not the result of Coercion.

2. The Crown must therefore also prove EITHER of the following:

2.1 That the stabbing of Natalie Daniels by the accused was not caused by coercion. Coercion means physical or mental pressure forcing the accused to stab Natalie Daniels which he would not otherwise have done.

2.2 That the coercion was not of such a nature that it would have caused a reasonable person similarly circumstanced to the accused to have acted in the same or a similar way as the accused did.

3. If the Crown has proven each of the elements 1.1, 1.2 and 1.3 in Section B above, and at least one of the elements 2.1 or 2.2 in this section, your verdict must be GUILTY OF MURDER and you need not consider this matter further.

4. If the Crown has proven each of the elements 1.1, 1.2 and 1.3 in Section B above, but has failed to prove beyond reasonable doubt also one of the elements 2.1 or 2.2 in this section, your verdict must be NOT GUILTY OF MUR-

In a follow up to the article titled *Coercion and the Criminal Code* in the November 1999 issue, Rex Wild QC has provided *Balance* with this supplementary contribution.

DER, BUT GUILTY OF MANSLAUGHTER and you need not consider this matter any further.

Nundhirribala was found not guilty of murder by the jury but a verdict of manslaughter was brought in. It was then necessary, for the purposes of sentencing, for the judge to find the facts. He did so in terms of the following paragraphs.

The accused had killed his tribal wife at Ngukurr in November 1993. The two of them had been out separately that evening and had some kind of argument. They then went their separate ways. The deceased was afraid of the prisoner and had gone away from him that evening expecting to be punished. The most probable reason for this was that the deceased believed she was not being a dutiful wife and she knew that he would be angry at her for not being at home with him. He eventually found her. He was armed with a large kitchen knife. He advanced upon her and stabbed at her in round arm fashion. He stabbed her at least twice using moderate to heavy force. A wound to the chest penetrated the deceased's heart and she died almost immediately. He later gave himself up. The attack was objectively a determined one. His Honour continued:

The prisoner was later interviewed by the police. He told the police that two Aboriginal men had given him the knife and had put a curse on him and told him to stab the deceased, and that he didn't want to do that. That raised the possible defence of coercion, which I left to the jury and it is possible that the jury's verdict of manslaughter is explicable on the basis that some or all of the members of the jury were satisfied that he intended to kill or cause grievous harm to the deceased, but they were not satisfied that the Crown had proven that he had not acted under coercion.

The judge went on to say:

As to the excuse of coercion, I find that the story which the prisoner gave to the police about being cursed most unconvincing and I do not accept it even though it seems that some of the prisoner's people do accept it. But I find that the reason for the attack was solely because the prisoner was angry for his wife for not being in bed with him where he expected her to be.

Ultimately, His Honour took the view that the more probable explanation of the jury verdict was that this was a case of involuntary manslaughter and he sentenced *Nundhirribala* accordingly.

This trial was, of course, an interesting example of how coercion might be used as a defence where issues of customary law may be involved.

Workshop

Darwin

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Partnerships Against Domestic Violence is a Commonwealth government initiative to prevent domestic violence across Australia.

An important national *Partnerships* project is the development of nationally endorsed standards for professionals who come into contact with those affected by domestic violence — victims, perpetrators, and children who witness this violence.

Part of the standards development includes an initial round of some 30 workshops across Australia which will assist in identifying the skills and knowledge required to enable workers to respond appropriately to people affected by domestic violence.

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