



Case in Brief: ***R. v. R.V.***

Judgment of July 31, 2019 | On appeal from the Court of Appeal for Ontario  
Neutral citation: 2019 SCC 41

***A defendant should have been allowed to ask limited questions about a complainant's sexual history, but in this case it wouldn't have changed the verdict, the Supreme Court has ruled.***

A fifteen year-old girl was camping with her family one Canada Day weekend. She said her 20 year-old cousin, R.V., sexually assaulted her. She didn't tell anyone at the time, but later found out she was pregnant. Her doctor said she became pregnant around the end of June or early July. The girl ended the pregnancy so there was no DNA evidence available to prove who got her pregnant. R.V. was later charged with sexual assault and sexual interference (touching someone under 16 in a sexual way).

At R.V.'s trial, the Crown (the prosecution) said the girl was a virgin before that weekend. It said she became pregnant around the time she said she was assaulted. It used this evidence to support the charge that R.V. sexually assaulted her. But R.V. denied this. He said someone else must have made her pregnant. He wanted to ask the girl whether she had sex with anyone else.

A person who accuses someone else of a crime (like the girl in this case) is a "complainant." In sexual assault cases, there are rules in the *Criminal Code* about what anyone can say about a complainant's sexual history. Trials are supposed to get to the truth. But some people believe myths and stereotypes about women and their sexual history. These get in the way of the truth. The rules are there to protect the trial process, and help judges and juries get to the truth. Evidence about a complainant's sexual history will only be allowed if it meets very strict conditions.

In this case, the Crown introduced the evidence about the girl's virginity and pregnancy. R.V. wanted to challenge it. He wanted to ask questions about whether someone else could have made her pregnant. He said if he wasn't allowed to challenge what she said, he wouldn't be able to defend himself properly.

R.V. had to ask a judge whether he was allowed to ask these questions, because they were about sexual history. The judge said R.V. was allowed to ask whether the girl was telling the truth about being a virgin at the time, and what she thought "virginity" meant. But he wasn't allowed to ask whether anyone else could have made her pregnant.

The trial judge found R.V. guilty and sentenced him to four years in prison. The Court of Appeal said it was unfair that the Crown could rely on the pregnancy but R.V. wasn't allowed to challenge the suggestion that he caused it. It ordered a new trial.

The majority at the Supreme Court agreed that R.V. should have been allowed to ask the girl whether someone else could have made her pregnant. But it said it wouldn't have made a difference. He still would have been found guilty. It said the guilty verdict should stand.

The majority said that the presumption of innocence is vital to our criminal law. Part of the presumption of innocence is being able to defend yourself. That meant R.V. had to be able to challenge the evidence against him by asking questions. While the pregnancy was evidence that some kind of sexual activity had happened, it wasn't evidence of who caused the pregnancy or when. These questions were important to getting to the truth. But the Court noted that the questions would have been limited, under the *Criminal Code* rules, to protect the girl's dignity and privacy. The majority said that in rare cases like this one, even if R.V. had been allowed to ask his questions differently, it wouldn't have changed the result. During R.V.'s trial, the girl said she was a virgin at the time and there was nothing to suggest she was lying.

The majority said a judge should have decided what could be said about sexual history, and how R.V. could challenge it, even before the Crown introduced the evidence. The majority noted that judges have to make sure any questions that are allowed don't go too far in invading the complainant's privacy. Judges can also change rulings about these kinds of questions if things change during the trial.

The Court recently dealt with a complainant's sexual history in [\*R. v. Goldfinch\*](#) and [\*R. v. Barton\*](#).

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**Breakdown of the decision:** *Majority:* Justice Andromache [Karakatsanis](#) allowed the appeal (Chief Justice [Wagner](#) and Justices [Abella](#), [Moldaver](#), and [Martin](#) agreed) | *Dissenting:* Justices Russell [Brown](#) and Malcolm [Rowe](#) agreed that the application judge didn't apply the rules correctly; they said that because the errors might have changed the outcome, they would have ordered a new trial

**More information (case # 38286):** [Decision](#) | [Case information](#) | [Webcast of hearing](#)

**Lower court rulings:** trial (Ontario Court of Justice, not available online) | [appeal](#) (Court of Appeal for Ontario)

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