



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

Judgment of March 8, 2024 | On appeal from the Court of Appeal for British Columbia
Neutral citation: 2024 SCC 7

The Supreme Court confirms credibility and reliability findings by judges in separate criminal trials and restores the convictions of two men guilty of sexual assault.

These appeals dealt with the question of how credibility and reliability assessments by judges in criminal trials should be reviewed on appeal. They also addressed the role of common sense when assessing the evidence of witnesses.

Christopher James Kruk and Edwin Tsang were convicted of sexual assault in British Columbia in separate and unrelated cases. In both cases, the British Columbia Court of Appeal overturned their convictions because of alleged errors in the way the trial judges assessed the credibility and reliability of the complainants and the accused. The Court of Appeal found that the trial judges had made assumptions about human behaviour that were not supported by the evidence, which led the trial judges to believe the complainants and reject Mr. Kruk's and Mr. Tsang's testimonies for lack of credibility.

According to the Court of Appeal, the trial judges' assumptions were contrary to a new "rule against ungrounded common-sense assumptions", which would prevent judges from making speculations based on generalizations and common sense that are not grounded in the evidence before them. The Court of Appeal concluded that the trial judges had made errors of law by making assumptions about human behaviour not grounded in the evidence and that these errors had had an impact on finding Mr. Kruk and Mr. Tsang guilty, which justified setting aside their convictions and ordering new trials.

The Crown appealed the decisions to the Supreme Court of Canada. It argued that in both cases, the Court of Appeal should have deferred to the trial judges' conclusions on credibility. It also argued that their conclusions could only be overturned if they had made "palpable and overriding errors" in their assumptions. A "palpable" error is one that is obvious, and in this context could include where the assumption in question is obviously untrue, or where it is untrue or inapplicable in light of the other accepted evidence or findings of fact in the case. If such an error has been identified, the appeal court must also conclude that the trial judge's reliance on the assumption was "overriding", meaning it affected the result or went to the core of the outcome of the case. In the Crown's opinion, the Court of Appeal incorrectly relied on the rule against ungrounded common-sense assumptions, as opposed to looking for palpable and overriding errors in the assumptions made by the trial judges to justify overturning their credibility findings.

In response, Mr. Kruk and Mr. Tsang said the trial judges were wrong to rely on ungrounded common-sense assumptions to find them less credible. In their view, the Court of Appeal correctly used the rule against ungrounded common-sense assumptions to overturn the trial judges' credibility findings and set aside their convictions.

The Supreme Court has allowed the appeals.

The rule against ungrounded common-sense assumptions should not be recognized as a new basis for appellate courts to review credibility and reliability findings by trial judges.

Writing for a majority, Justice Martin said that adopting a rule against ungrounded common-sense assumptions would represent a radical departure from how appellate courts have typically approached credibility and reliability assessments, especially in the context of sexual assault. She said the faulty use of common-sense assumptions in criminal trials should continue to be controlled by existing standards of review and rules of evidence. In some cases, a trial judge's use of common sense will be vulnerable to appellate review because it discloses recognized errors of law. Otherwise, like with other factual findings, she said credibility and reliability assessments – and any reliance on the common-sense assumptions inherent within them – will be reviewable only for palpable and overriding error.

In the instance cases, Justice Martin assessed the trial judges' credibility and reliability findings using the standard of palpable and overriding error and concluded that no such errors were made. For these reasons, she allowed the appeals and restored Mr. Kruk's and Mr. Tsang's convictions.

Breakdown of the decision: *Majority:* Justice [Martin](#) allowed the appeals, set aside the orders of the British Columbia Court of Appeal, and restored the convictions (Chief Justice [Wagner](#) and Justices [Côté](#), [Kasirer](#), [Jamal](#) and [O'Bonsawin](#) agreed) | *Concurring:* Justice [Rowe](#) agreed with the majority that the appeals should be allowed and the convictions restored, but came to these conclusions by a different framework of analysis.

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

Lower court rulings: [Decision \(Mr. Kruk\)](#) (Supreme Court of British Columbia) | [Appeal \(Mr. Kruk\)](#) (Court of Appeal for British Columbia) | [Decision \(Mr. Tsang\)](#) (Provincial Court of British Columbia – unreported) | [Appeal \(Mr. Tsang\)](#) (Court of Appeal for British Columbia)

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