

[HIGH COURT OF AUSTRALIA.]

GRIFFITH APPLICANT ;

AND

THE KING RESPONDENT.

ON APPEAL FROM THE COURT OF CRIMINAL APPEAL OF
VICTORIA.

Criminal Law—Evidence—Admissibility—System—Identity of accused—Method of identification. H. C. OF A.
1937.

The accused was convicted on two counts for rape. The defence taken was that of mistaken identity. The Crown led evidence for the purpose of showing that the accused had a system or plan, the object of which was to entice women to lonely places, the means adopted being the insertion of bogus advertisements in the press offering domestic employment or sending bogus answers to bona fide advertisements of that type. Letters were proved to have been written by the accused in different names, which were false ; and interviews took place as to suggested, but fictitious, domestic employment. A number of letters from women applicants for employment was found in the possession of the accused when he was arrested and at his home. In some cases the accused called at a house, in some cases the meeting took place at a railway station, and in some cases no attempt was made to interfere with the women interviewed. Some of the facts relied upon took place after the commission of the second offence charged. The accused sought to explain his actions in relation to the advertisements, the correspondence and the interviews by saying that he was acting for some other person, whose name he did not know, of whose address he was uncertain and whom he was unable to discover. The accused was identified by each of the women concerned, but was not paraded with a number of others for the purpose of identification.

Held that the evidence of a plan or system was relevant and admissible and that the fact that some of the evidence related to the operation or exercise of such plan or system after the date of the last offence charged did not make

MELBOURNE,
May 31.
Latham C.J.,
Rich, Dixon
Evatt and
McTiernan JJ.

H. C. OF A.
1937.
}
GRIFFITH
v.
THE KING.

the evidence any the less admissible, and that, upon this view of this evidence, criticism of the identification of the accused entirely lost its weight.

Martin v. Osborne, (1936) 55 C.L.R. 367, applied.

Special leave to appeal from the decision of the Court of Criminal Appeal of Victoria refused.

APPLICATION for special leave to appeal from the Court of Criminal Appeal of Victoria.

John Thomas Griffith was presented on two counts for rape. The first count related to an offence on a woman, A, on 4th December 1936, and the second count related to an offence committed on a woman, B, on 3rd February 1937.

The evidence as to the first count disclosed that on 2nd December 1936 A had advertised in a newspaper for a position, giving an address to which answers might be sent. The accused sent a reply to this advertisement signed in the name of "Mrs. Loden" asking her to meet "Mrs. Loden" at the East Malvern railway station. On 4th December 1936 she met the accused, who said that he was "Mr. Loden" and that "Mrs. Loden" had asked him to come to the station to bring her home to see "Mrs. Loden" about the position. On the pretext of taking A to see "Mrs. Loden" the accused led A through several paddocks and assaulted her.

The evidence as to the second count showed that the accused advertised a fictitious position in another newspaper on 30th January 1937. A number of letters from women were found in the prisoner's possession after his arrest in answer to such advertisement. B answered this advertisement in the name of "Miss Watts." In consequence, the accused telephoned to her, saying that it was "Mr. Mills" speaking for "Mrs. Mills," and made an appointment for her to meet him and "Mrs. Mills," on 3rd February 1937 at the East Malvern railway station. The accused explained the absence of "Mrs. Mills," and on the pretence of taking her to see "Mrs. Mills" took her along a similar track to that along which he had taken A and assaulted her. The accused had a personal interview with a woman, C, relative to the same advertisement.

There was also evidence that on 10th February 1937, subsequently to the date of the last offence charged, another advertisement

appeared in a newspaper to the like effect. Several replies to this advertisement were found in the accused's possession after his arrest. A woman, D, was among those who answered the advertisement. The accused wrote to D, signing the letter in the name of "Mrs. Wilson," making an appointment for D to meet the writer. D, accompanied by her mother, kept this appointment. Nothing eventuated. There was other evidence that the prisoner had been in the habit of advertising in newspapers offering domestic employment to women, and of communicating with them and interviewing them in circumstances which indicated that the advertisements were mere subterfuges.

The accused was arrested in the following circumstances:—A woman, E, had seen the advertisement of 30th January 1937, above referred to, in a newspaper and had answered it. The accused then wrote a letter to her dated 11th February 1937 signed "Mrs. Mills" asking E to meet him at the East Malvern railway station on 13th February 1937. E handed the letter to the police, who arranged that a police woman would keep the appointment with the accused in the place of E. The appointment was kept, and the accused asked the policewoman whether she was E. The policewoman said that she was. The accused then said that he came from "Mrs. Mills" and proceeded to speak about the advertised position. On a signal given by the policewoman the accused was then arrested. After his arrest several letters were found in his pockets, all of which were answers to one or other of the advertisements of 30th January or 3rd February 1937.

The method of identification adopted in at least one case was that a woman, having told the police that she could identify her assailant, was brought by a police officer to the police station where the accused was then held in custody and she expressly went to the police station for the purpose of making an identification. When there a police officer brought her into the presence of the accused in the presence of other members of the police force. In these circumstances she identified the accused as the man who had assaulted her. In neither case was the accused paraded with a number of others and the identifier allowed to pick out her assailant.

H. C. OF A.

1937.

GRIFFITH

v.

THE KING.

(6) (1894) A.C. 57.

type. Letters were proved to have been written by the accused in different names, which were false; interviews took place as to suggested, but entirely fictitious, domestic employment. This alleged system was seen in operation in each of the cases the subject matter of the charges, and evidence was given as to quite a number of other occasions on which what the Crown calls this system had been used. A considerable number of letters from women applicants for employment were found in the possession of the prisoner when he was arrested or at his home. If the evidence were believed it was such as to produce a moral certainty of the guilt of the accused. The accused sought to explain his actions in relation to the advertisements, the correspondence and the interviews, by saying that he was acting for some other person whose name he did not know, of whose address he was uncertain, and whom he was unable to discover. Obviously it was a matter for the jury to say whether such a story as that should be believed. The court is of opinion that this evidence of a plan or system was relevant and admissible, and that the fact that some of the evidence related to the operation or exercise of such a plan or system after the date of the last offence with which the prisoner was charged does not make the evidence any the less admissible. See *Martin v. Osborne* (1). Upon this view of this evidence, the criticism made of the identification of the accused by certain witnesses, in the opinion of the court, entirely loses its weight.

In this case the court is therefore of opinion that special leave should be refused.

Application for special leave to appeal refused.

Solicitor for the applicant, *C. M. S. Power*, Public Solicitor.

Solicitor for the respondent, *F. G. Menzies*, Crown Solicitor for Victoria.

H. D. W.

(1) (1936) 55 C.L.R. 367.

H. C. OF A.

1937.

GRIFFITH

v.

THE KING.

Latham C.J.

Rich J.

Dixon J.

Evatt J.

McTiernan J.