

Intimate Partner Sexual Abuse: Adjudicating This Hidden Dimension of Domestic Violence Cases

CRIMINAL CASE STUDY:

State v. Ved Mirchandani

National Judicial Education Program*
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Intimate Partner Sexual Abuse:

CRIMINAL CASE STUDY

STATE V. VED MIRCHANDANI

The defendant has been charged with the first degree rape of his wife of 25 years, Anita Mirchandani. In grand jury testimony, the officer who responded to a 911 call from the complainant immediately following the incident stated that upon arriving at the family home he observed that the complainant's robe was torn and that she appeared distraught. She would not say anything to the police until she was out of earshot of the defendant. When the police officer interviewed her in a separate room, she said that her husband had raped her. The defendant was also interviewed. He acknowledged that he had had intercourse with his wife, but denied that it was "rape," stating that, "In my country, when a husband has sex with his wife it's not rape."

The complainant was taken to the hospital and examined by a Sexual Assault Nurse Examiner, who noted injuries to the complainant's fingers and a reddened area on her cervix. She had no sign of infection.

You have decided to admit limited evidence of the defendant's prior bad acts in order to allow the prosecutor to show that the defendant's intent was not to engage in consensual marital relations but to rape the complainant. The evidence includes testimony from the complainant that when she and the defendant were in their country of origin, he had forced her to watch him have sexual relations with underage girls; that he had impregnated their servants and compelled her to take them for abortions; and that prior to the charged offense, he had been in their home country for nine months, during which time he had taken a second wife, who was 17 years old.

The prosecutor now seeks to introduce testimony of a clinical psychologist with expertise in the effects of domestic violence and intimate partner sexual abuse upon women. The expert has evaluated Ms. Mirchandani and determined that she suffers from post-traumatic stress disorder consistent with battered women's responses to their experiences. The prosecutor asserts that without this expert testimony, the jury will not understand the significance of the prior bad acts presented in the People's case, and may instead regard the complainant as deficient for tolerating such conduct from the defendant for so many years. An understanding of this dynamic is crucial to prove that the charged incident should not be seen as "consensual." The defendant argues that the only effect of expert testimony about battered women's responses to their experiences is to bolster the credibility of the complainant, prejudicing him.

Q1.

Is there any probative value to such evidence in a case where the battered woman is not herself on trial?

[over]

Cultural Defense:

The defendant seeks to introduce expert testimony concerning marriage traditions and the respective roles and duties of husband and wife in the Mirchandani's culture of origin.

Q2.

Should such testimony be allowed to explain the defendant's behavior?

Intimate Partner Sexual Abuse:

DISCUSSION GUIDE FOR FACULTY

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Q1.

Is there any probative value to such evidence in a case where the battered woman is not herself on trial?

Social science testimony setting forth the current and best understanding of the dynamics of domestic violence is necessary to help jurors understand how a pattern of coercion and control can erode the victim's independence of thought and action.

Originally introduced to support the defense of justification when a battered woman was charged with the homicide of her abuser, use of expert testimony to explain battered women's responses to their experiences has since expanded. Prosecutors may seek to introduce such an expert to provide the jury with important knowledge about how to view the evidence.

Particularly where consent is an issue, it is important for the jury to hear how a victim can be affected by long-term exposure to such abuse.

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Q2.

Should such testimony be allowed to explain the defendant's behavior?

"Cultural competency" is an important area of knowledge for any judge considering cases involving immigrants who continue to identify with their culture of origin. Understanding why a defendant may have acted in a manner that might be acceptable in a home country is not the same, however, as a defense to a criminal charge.

Particularly in cases that result in bodily and emotional injury to a victim, it is important that the victim receive the same level of support as would any other victim. A victim living in a closed community may have undertaken considerable risk in reaching out for help outside of her cultural group. To fail to hold an offender accountable to our society's standards would send a disheartening message to immigrant victims.

Depending on the facts of a case, a court might want to consider cultural beliefs that colored the defendant's intent during the offense in question when considering the appropriate disposition. However, such accommodation should be granted with caution,

as many abusers can offer a reason why they feel their conduct was justified. That is a typical batterer characteristic.

[over]

In the Mirchandani case, consideration of cultural defenses is not appropriate. Cultural defenses are described in detail in the National Judicial Education Program's Web course, *Intimate Partner Sexual Abuse: Adjudicating the Hidden Dimension of Domestic Violence Cases*, www.njep-ipsacourse.org in Module XI: Cultural Defenses and Cultural Evidence.