

***R v O'Grady* [1997] NSWCCA 1 (13 May 1997) – New South Wales Court of Criminal Appeal**

'Aggravated sexual intercourse without consent' – 'Character' – 'Denunciation' – 'Detention against will with intent to carnally know the victim' – 'Deterrence' – 'Factors not mitigating at sentence' – 'Public confidence in the criminal system' – 'Relevance of a prior relationship' – 'Sentencing' – 'Sexual and reproductive abuse' – 'Women'

Charge/s: Aggravated sexual intercourse without consent, detention against will with intent to carnally know the victim.

Appeal Type: Crown appeal against sentence.

Facts: The female victim and the male respondent had previously been in a consenting sexual relationship but at the time of the offence the relationship had ended and they were merely seeing each other as friends. The respondent asked the victim for another chance at the relationship but the victim refused. He then threatened the victim with a knife and tied her up. The respondent fondled the victim and had penile intercourse with her without her consent. The respondent was sentenced to three years imprisonment, to be served by way of periodic detention for the aggravated sexual intercourse without consent and deferred sentence for the detention offence on the condition that the respondent enter into a recognisance to be of good behaviour for a period of five years. In imposing this sentence, the judge found that these offences were 'foreign' to the respondent's normal character, had their roots in compulsive gambling, and were an 'aberration committed by a young man who loved a young girl'.

Issue/s: The sentence was manifestly inadequate.

Decision and Reasoning: The appeal was allowed. Sully J held that while there was sufficient evidence to support a finding that the offences were 'foreign' to the respondent's normal character, the offending did not have its roots in 'compulsive gambling' and nor could the objective seriousness of the offences be broken down as being no more than 'an aberration committed by a young man who loved a young girl'. These were extremely serious offences which resulted from the breakdown of the relationship between respondent and the victim and the victim's rejection of the respondent's request to resume the relationship (See 8). As per Sully J at p. 9 that where a relationship breaks down:

'the woman who is involved in the relationship is entitled to feel that, whatever other consequences ensue, her personal safety will not be threatened at all, let alone threatened by the commission of criminal offences of the gravity of those with which we are now called upon to deal'.

In sum, the sentences imposed were manifestly inadequate. They were wholly inadequate to denounce the violent rape, at knife point, of a defenceless young woman in what ought to have been the safety and security of her own home. They were wholly inadequate to properly denounce the victim's violent and prolonged detention for that purpose. They were also wholly inadequate to deter both the respondent and other young men from similar behaviour. Further, very importantly, the sentences imposed were hopelessly inadequate to ensure that there is maintained public respect for and confidence in current standards of criminal justice (See 11). The respondent was resentenced to five years imprisonment for the sexual intercourse with consent offence with a minimum term of three years and three years imprisonment on the detention offence.