

***Sudath v The Queen* [2008] NSWCCA 207 (9 September 2008) – New South Wales Court of Criminal Appeal**

‘Assault’ – ‘Evidence issues’ – ‘Evidence via cctv’ – ‘Exposing children’ – ‘Physical violence and harm’ – ‘Rape’ – ‘Sexual and reproductive abuse’

Charge/s: Rape, assault.

Appeal Type: Appeal against conviction and appeal against sentence.

Facts: The male appellant had become violent and abusive towards the female complainant throughout their relationship. On the night of the offences, the complainant was breast feeding their child when the appellant started pulling up her night dress. The complainant said no. She then put her son down and tried to get something from under the bed. While she was kneeling, the appellant forced his penis into her anus. She screamed no but the appellant continued. The next day the appellant yelled at the complainant and physically assaulted her. The appellant was sentenced to three years and six months imprisonment with an aggregate balance of term of two years.

Issue/s: One of the grounds of appeal was that the trial judge erred in law by holding that he was ‘satisfied’ within the meaning of s 294B(6) of the *Criminal Procedure Act* 1986 that the complainant was “entitled” to give her evidence pursuant to the provisions of s 294B(3) of the Act.

Decision and Reasoning: The appeal was dismissed. The trial judge was correct in ruling that evidence could be given by alternative means. For complaints in sexual offence proceedings, it is generally not a sufficient reason to deny the use of CCTV or other technology merely because the jury might form the impression that the accused is/was violent. As per McClellan CJ at [29]:

‘The submission which the appellant made could of course be made in any case where there is an allegation of sexual intercourse without consent in a relationship of ongoing violence. There are many cases of this character. It was because of the personal trauma likely to be experienced by a complainant when giving evidence that s 294B was enacted. If the submission was accepted a substantial purpose of the legislative provision would be defeated. It may be that in an unusual case a submission in these terms may be accepted by a trial judge. However, the discretion is to be exercised in the individual circumstances of each case’.