

## ***R v Silva* [2015] NSWSC 148 (6 March 2015) – New South Wales Supreme Court**

‘Battered woman syndrome’ – ‘Expert evidence - psychiatrist’ – ‘Manslaughter by excessive self-defence’ – ‘Physical violence and harm’ – ‘Post-traumatic stress disorder’ – ‘Sentence’

Charge/s: Manslaughter by excessive self-defence.

Hearing: Sentencing.

Facts: The offender stabbed and killed her partner, James Polkinghorne. The relationship had been characterised by escalating physical and verbal abuse from the deceased towards the offender. On the 13 May 2012, the deceased made increasingly threatening and abusive telephone calls and messages to the offender. That night, he went to the home of the offender’s parents, where the offender was present. He was highly aggressive and high on methylamphetamine. The facts of what followed were confused and confusing (see [29]-[36]). In summary, the deceased threatened to kill the offender, he assaulted the offender, and the offender’s brother and father intervened. They began fighting with the deceased. The offender retrieved a knife from inside and, while the offender was on top of her brother, stabbed and killed the deceased. The offender was found not guilty of murder but guilty of manslaughter.

Decision and Reasoning: A sentence of 18 months imprisonment, wholly suspended was imposed. Hoeben CJ first made a number of factual findings. At [38] His Honour found that:

*‘the offender stabbed the deceased with an intention to inflict grievous bodily harm because she believed her act was necessary to defend not only herself but her brother and father. However, in accordance with the jury’s verdict, the offender’s conduct was not a reasonable response in the circumstances as she perceived them, thereby rendering her guilty of the crime of manslaughter by way of excessive self-defence’.*

His Honour also had regard, with some qualifications, to the evidence of Associate Professor Quadrio, a consultant psychiatrist. In her report, Professor Quadrio concluded that during her relationship with the deceased, the offender developed chronic and complex Post Traumatic Stress Disorder (PTSD) with particular features which were described as ‘Battered Woman Syndrome’. She also concluded that the offender continued to suffer from PTSD. Hoeben CJ found at [40]:

*'In the absence of any psychiatric opinion to the contrary, I would normally accept such a diagnosis. In this case I am not prepared to do so. This is because the diagnosis is based upon significant pieces of history from the offender which are different to the evidence at trial and to what the offender said in her ERISP. I am prepared to accept that the offender currently suffers from PTSD. The events of the night of 13 May 2012 would of themselves be sufficient to bring about such a condition and there is no reason to doubt the existence of the symptoms which the offender described following the deceased's death. What I am not prepared to accept is that the Post Traumatic Stress Disorder was due to the offender's relationship with the deceased and was in existence before the deceased's death'.*

However, His Honour did accept that the offender stabbed the deceased when she was in a highly emotional and hysterical state (see [41]-[43]).

In reaching an appropriate sentence, Hoeben CJ took into account a number of considerations. These included that specific deterrence were not relevant in light of the offender's rehabilitation and the unlikelihood of re-offending (see [58]). General deterrence was not accorded substantial weight in light of exceptional factual circumstances (the deceased had made escalating threats of violence approaching the offender's home and the offender's state of mind was affected by being already brutally assaulted and witnessing the struggle between her family members and the deceased) (see [59]). The objective seriousness was at the lower end of the range as was the offender's culpability (see [60]-[61]).

As against these matters, Hoeben CJ had regard to the sanctity of human life, the need to denounce the conduct of the offender and hold her accountable for her actions (see [62]).

The offender successfully appealed against her conviction to the Court of Appeal. See *Silva v The Queen* [2016] NSWCCA 284 (7 December 2016).