

***R v Saedam* [2015] ACTSC 85 (1 April 2015) – Australian Capital Territory Supreme Court**

‘Assault’ – ‘Bail’ – ‘Emotional and psychological abuse’ – ‘People from culturally and linguistically diverse backgrounds’ – ‘Physical violence and harm’ – ‘Pregnant women’ – ‘Rape’ – ‘Risk of reoffending’ – ‘Sexual and reproductive abuse’ – ‘Theft’ – ‘Views of victims’

Charges: Engaging in sexual intercourse without consent (3 counts), assault, assault with the intent of engaging in sexual intercourse, theft

Proceeding: Bail

Facts: The applicant and his wife (the victim) lived together for some time after migrating to Perth from Syria. While living in Perth, the victim left the applicant and moved into a refuge as a result of domestic violence in the relationship. After the applicant and victim reconciled, they moved to Canberra where their relationship remained volatile. One day the applicant went into the bedroom and had sexual intercourse with the victim, despite her asking him not to, attempting to push him away and crying throughout. Later in the day, the applicant verbally abused the victim and threatened to withdraw his immigration sponsorship of the victim’s family to come to Australia. He then again had intercourse with the victim, who continued to cry but otherwise did not move. The next day, the applicant slapped the victim and dragged her by her hair, rolled her on her back and again had intercourse with her. The victim continued to struggle, hitting the applicant’s chest and pushing him away. The applicant was charged with three counts of engaging in sexual intercourse without consent, one count of assault, one count of assault with the intent of engaging in sexual intercourse and one count of theft. He pleaded not guilty to each charge.

While in custody, the victim visited the applicant every two or three days. She subsequently made a statutory declaration that she was ‘a little tired and confused’ at the time of making her complaint to the police. She sought to change her statement that all sexual intercourse was consented to and that she had been drinking before the assault. The victim wrote a letter to the Court in respect of the bail application, in which she said she did not object to the applicant being granted bail. She also stated that she was not pressured into writing the letter, that the applicant was not harmful to the community, and that as a pregnant woman she did not want her child to grow up knowing their father was in gaol.

Issue: Whether bail should be granted.

Decision and reasoning: Bail was granted on conditions including that his family pay a surety of \$5000, he surrender travel documents, he not contact the victim, and that he reside in Perth.

The offences that the applicant was charged with were serious. However, Refshauge J determined he could not assess the strength of the Crown case given the absence of much evidence and the victim's damaged reputation as evidence because of her apparent retraction of the complaint. The applicant also had a substantial cash surety available to him and proposed to live with his parents. He had no criminal record. His departure from Canberra to Perth immediately after the offences were alleged was an indication of his intention to flee. However, this risk could be mitigated by imposing conditions on bail such as the surrender of travel documents, that he report to police and be prohibited from being at a place of international departure. Refshauge J accepted that the applicant was likely to commit further violent offences against the victim if he had contact with her. However, this could also be mitigated by the applicant living in Perth and on the condition that he not contact the victim. The Crown's submission that the applicant could intimidate and interfere with witnesses if bail was granted was rejected. The fact the applicant could withdraw his sponsorship of the victim's family was unlikely to be affected by his bail status. Further, the victim had already retracted her initial complaint, with no evidence from the prosecution that this was a result of intimidation from the application.