

***Kumar v Love* [2019] ACTSC 238 (30 August 2019) – Australian Capital Territory Supreme Court**

‘Children’ – ‘Evidence issues’ – ‘Family violence’ – ‘People from culturally and linguistically diverse backgrounds’ – ‘Physical violence and harm’

Charges: Common assault

Case type: Appeal against convictions

Facts: The appellant was found guilty of two charges of common assault arising out of an altercation with the victim (his wife). The acts of assault included slapping the victim across the face, pushing her forehead backwards striking the wall behind, grabbing her hair, twisting her head and hitting her face on the wall, and striking his daughter’s shoulder. The charges fell into the category of family violence. The appellant pleaded not guilty to each charge and did not testify. The defence argued that the victim fabricated the assaults with the intention of terminating the marriage ([17]).

Issue: The appellant appealed on the ground that the Magistrate’s findings of guilt were unsafe and unsatisfactory on the basis that:

- > It was not open to the Magistrate to wholly reject the appellant’s evidence; and
- > There were a number of significant parts of the evidence relied upon by the prosecution which should have given rise to a reasonable doubt as to the appellant’s guilt.

Held: Crowe AJ dismissed the appeal. His Honour rejected the first ground of appeal and saw no basis upon which to doubt the Magistrate's rejection of the appellant's version of events. His version of events changed as the interview progressed. For example, after he said that he had not touched the victim at all, he then said that he had tickled her ([35]). In relation to the second ground, the Magistrate was entitled to accept the complainant as a witness of truth, and reject the proposition that the victim fabricated the entire story in order to terminate her unhappy marriage with the appellant. The discrepancy between the victim's evidence and that of her female friend did not provide a sufficient basis to reasonably doubt the victim's evidence as to the appellant's violence towards her. The discrepancy was explained by reference to the extent of the victim's distress, and the physical and language communication difficulties at that time ([40]-[47]).

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