***Ahmu v The Queen; DPP v Ahmu* [2014] NSWCCA 312 (15 December 2014) – New South Wales Court of Criminal Appeal**

'Crown appeal against sentence' – 'Denunciation' – 'Deterrence' – 'Exposing children' – 'Indecent assault' – 'Offender often believes violence is justified' – 'Physical violence and harm' – 'Pregnant women' – 'Protection of the community' – 'Rape' – 'Sentencing' – 'Sexual and reproductive abuse' – 'Vindication of the victim' – 'Women'

Charge/s: Rape x 15, indecent assault x 2.

Appeal Type: Appeal against conviction and Crown appeal against sentence.

Facts: The male appellant and the female complainant were in a relationship and had a two year old son at the time of the offences. At trial, it was alleged by the prosecution that the appellant was sexually predatory, violent and abusive in his relationship with the complainant and that he was a child molester with a sexual interest in children, including his two year old son. The complainant obtained an apprehended violence order against the applicant in 2009 but the relationship resumed in 2010 because she was concerned about the appellant having unsupervised access with the child. The rape and indecent assault offences occurred throughout one night in 2010, in the presence of their two year old son. The complainant, who was pregnant at the time, pleaded with the appellant to stop, but the appellant threatened to kill her and continued regardless. A number of the sexual acts were accompanied by humiliating and degrading conduct. The appellant was sentenced to seven years imprisonment, with a non-parole period of four years.

Issue/s: One of the grounds of appeal was that the sentence was manifestly inadequate.

Decision and Reasoning: The appeal against conviction was dismissed but the Crown appeal against sentence was allowed. The overall sentence demonstrated that the sentencing judge either misapprehended the significance of the standard non-parole period or underestimated the objective seriousness of the offences. Here, the gross, repeated attacks on the complainant occurred over an extended period and were committed by the appellant who understood what he was doing despite his (limited) mental issues and possible intoxication. This, combined with deliberate additional humiliation and a callous indifference to the presence of their son, meant that the objective seriousness of the offence fell within the middle of the range and brought the standard non-parole period into sharp focus as a yardstick: *Muldrock v The Queen* (See [78]-[79]).

Even in light of the residual discretion of the Court to decline to interfere with the sentence, re-sentencing the appellant to nine years and six months imprisonment with a non-parole period of six years and six months was appropriate in the interests of justice. As per Adams J at [83]:

‘In considering the exercise of the residual discretion, it is appropriate in my view to bear in mind - in terms not usually used but implicit in sentencing for offences such as the present - the need to do justice to the victim, so appallingly dealt with, whose vindication is part of the function of the administration of criminal justice. This applies with particular force in cases of so-called domestic violence, where there seems to often be present in offenders a degree of self-justification as if, in some way, the victim (to use the vernacular) had it coming. I do not say that this was specifically the offender's state of mind in the present case but the facts strongly suggest that he thought he had some kind of right to do what he did. This aspect of domestic violence emphasises the importance, to my mind, of general deterrence, as well as the protection of the community, especially women, who are far too often the victims of this attitude. These considerations also underline the importance of denunciation’.