

***R v Ragg* [2020] NSWDC 210 (18 May 2020) – New South Wales District Court**

‘Aggravated sexual assault’ – ‘Controlling, jealous, obsessive behaviour’ – ‘History of abuse’ – ‘Lack of remorse’ – ‘People with mental illness’ – ‘Physical violence and harm’ – ‘Poor prospects of rehabilitation’ – ‘Protection of the community’ – ‘Protection order’ – ‘Risk of reoffending’ – ‘Sentencing’ – ‘Specific deterrence’ – ‘Step-children in home’ – ‘Substance abuse’ – ‘Threat to set on fire’ – ‘Threats to kill’ – ‘Weapon’

Offences: Common assault; Reckless wounding; Intimidation; Using explosive fluid; Attempted cause grievous bodily harm to person with intent x 2; Aggravated sexual assault x 4; Contravene Apprehended Violence Order; Threaten witness to withhold true evidence; Aggravated detention with the intention of assaulting and intimidating the victim (at the time of the detention actual bodily harm was occasioned to the victim)

Proceedings: Sentencing

Facts: The male offender and female victim were in an on and off domestic relationship for 12 years. The victim had three children, one of which was the son of the offender. Throughout the relationship, the offender was physically and mentally abusive towards the victim and both parties used drugs. One night, the offender and victim stayed up smoking marijuana and ice. The next morning, the couple were in their car and the offender accused the victim of sleeping with up to 20 men at one time while the offender had been in custody for other charges. The victim denied this, but the offender got angry and cut the victim’s hair with scissors before punching her in the face multiple times, one of these being so hard that the victim’s head hit the windscreen (Common assault). The offender then ordered the victim into the back seat and told her that every time she lied, he would stab her with the scissors (which were small and blunt, not sharp). The offender stabbed the victim on her legs about 30 times (four of which punctured her skin – the others resulted in bruises only) whenever she gave an answer he did not like (Reckless wounding). He also stabbed her left ear and cut open her shirt, exposing her breasts and stomach (Reckless wounding).

The offender then threatened to cut off the victim’s nipples and vagina/clitoris (after removing her pants). The victim tried to deflect the offender and pleaded for him to stop (Intimidation). The offender locked the windows and doors of the vehicle to stop the victim from escaping. A while after a man walked past the vehicle and looked inside, the offender unlocked the car and the victim ran outside screaming for help, although the man could not be seen. The victim ran down the riverbank and saw the offender get out of the car with a jerry can. The offender tipped the can containing diesel over the victim’s head and body (Using explosive fluid). The victim ran down to the river and hid, but the offender chased the victim and told her she needed to wash the diesel out of her hair. The victim complied.

The offender told the victim to go back to the car and she complied. When there, the offender tried to light the victim's hair on fire with a cigarette lighter (Attempted cause GBH with intent). The victim put it out with her hands, but the offender lit her hair another two times (Attempted cause GBH with intent). The offender and victim then travelled to the offender's friend's house, stopping at various places along the way. The offender threatened to harm or kill the victim if she drove off, so the victim complied and did not leave. After visiting the friend's house, the offender and victim drove to a deserted scrub area where the offender continued to question the victim. The victim told the offender false stories to keep him happy, then the offender told the victim to get in the backseat because he was going to do what they did to her (implying that he would rape her but she would like it). The offender got some lubricant and put this in the victim's vagina and anus. He then penetrated her vagina and anus, the victim crying the whole time (Aggravated sexual assault x 2). The offender then inserted his entire first into the victim's vagina and then anus, while the victim screamed in pain and begged the offender to stop (Aggravated sexual assault x 2). The offender could see blood on the ground, running down her legs and on the offender's hand. The offender then punched the victim in the throat and told her he would do it again to knock her out. He then left her in the bush and drove off. She made it to a road and was picked up by a man passing by in a ute who took her to the police station. When the victim was recovering in hospital later, the offender called her and threatened to shoot the victim's mum and dad if she pressed charges (Threaten witness to withhold true evidence).

Medical reports showed that the victim may suffer long term issues as a result of her injuries and were potentially life threatening if they had not been treated.

Judgment: The judge convicted the offender of all charges and sentenced him to an aggregate of 24 years' imprisonment, with an 18-year non-parole period. Although a discount was given for the utilitarian value of the offender's early pleas, His Honour found that most offences were in the mid-range of objective seriousness, with the Aggravated sexual assault charges being in the highest range of seriousness, having been committed as "deliberate sadistic torture" [36]. His Honour further emphasised that the offender's "warped and sadistic desire to gratuitously inflict pain, dominate and terrorise overcame any empathy or concern for the wellbeing of his long-time partner, the mother of his child" [7].

All of the offences were committed in the context of a long-term relationship, so were each domestic violence offences. His Honour held that "It has long been recognised that such offences, particularly where the offender is a repeat domestic violence offender, require emphasis in sentencing on specific and general deterrence, together with powerful denunciation by the community of such conduct and the need for the protection of the community" [54].

The judge accepted that the offender's "long history of emotional and behavioural dysregulation, emanating from his early adolescence, and his complex trauma background, including a history of physical and sexual abuse, loss of family stability and structure from his childhood and a lack of positive and nurturing influences, his exposure to drug and alcohol abuse" had normalised his offending behaviour and desensitised him to the anti-sociality of his crimes, so the offender's moral culpability should be reduced according to principle in *Bugmy v R* [2013] HCA 37 [77]. However, His Honour held that, due to the nature of the offending, the offender's antecedents and his criminal history, there was a need in this case to give significant weight to retribution, specific deterrence and protection of the community, over and above diminution of the sentence by virtue of lessened weight to general deterrence and reduced moral culpability [79].

The judge specifically noted that the offender still blamed the victim for his violent offending, had no insight into his offending, had no compassion, and continued to hold negative attitudes towards interventions [80]. Furthermore, the offender lacked genuine remorse, with all representations on this point being entirely self-serving [91]. His Honour held that the offender had extremely poor prospects of rehabilitation and his risk of reoffending was medium to high [98], finding that he had "a significant history of hostility and aggression towards women, especially his female family members and intimate partners, including expressions of intention to kill" [82].