

***R v Ahmed (No 2)* [2019] NSWSC 517 (8 May 2019) – New South Wales Supreme Court**

‘Abnormality of mind’ – ‘Physical violence and harm’ – ‘Sentencing’

Charges: Murder x 1.

Case type: Judge alone trial.

Facts: Mr Ahmed allegedly murdered his wife (the victim) by inflicting 14 stab wounds. He called 000, and told the operator that he had stabbed and killed his wife. He told police that he assaulted and threatened to kill her if she did not give him access to her phone, and that it was only after he read her recent text messages, which confirmed the continuation of an affair she had with Mr Khan, that he lost control and stabbed her. He also said that he did not intend to kill her. When Mr Ahmed killed the victim, he was suffering a mental illness, which the experts agreed was likely to have been an adjustment disorder, that being a form of depressive illness ([13]). He later offered to plead guilty to manslaughter, but this was not accepted by the Crown. At his trial, Mr Ahmed advanced a partial defence of substantial impairment under section 23A of the *Crimes Act 1900* (NSW) which would, if established, reduce the conviction of murder to manslaughter ([1]-[5]).

Section 23A requires that Mr Ahmed establish, on the balance of probabilities, that at the time that he killed the victim:

- > He suffered an abnormality of mind arising from an underlying condition;
- > That abnormality substantially impaired his capacity to control himself; and
- > That his impairment was so substantial as to warrant his liability for murder being reduced to manslaughter.

Issues: The issue before the Court was whether the partial defence of substantial impairment could be established. There were also issues as to what should be made of Mr Ahmed’s various accounts and which expert’s opinion should be preferred.

Decision and reasoning: Mr Ahmed was convicted of murder and did not discharge his onus of establishing the partial defence of substantial impairment by abnormality of mind. In coming to this conclusion, Schmidt J considered the facts, as well as the issues about Mr Ahmed's accounts and the experts' competing opinions ([35]). His Honour noted that it was difficult to determine whether the stabbing was a result of Mr Ahmed's 'abnormality of mind' or his deliberately acting on his feelings of humiliation and fury ([221]). This was explained by the diverging expert opinions ([222]).

Schmidt J agreed that Mr Ahmed suffered from an 'abnormality of mind' when he killed the victim ([25]), but held that this did not 'substantially impair' his capacity to control himself ([200]-[253]). He was satisfied that it had been established on the evidence, beyond reasonable doubt, that he deliberately acted on an intention, formed when he read the text messages, to kill the victim, instead of having an impaired capacity to control himself ([253]). Not only was Mr Ahmed well aware that the victim was intent on divorce, but he also suspected that it was the continuation of her relationship with Mr Khan which was driving her desire for a divorce. This led him to assault and threaten her in order to gain access to her phone, and then kill her when he read the text messages which confirmed his suspicions ([246]).

His Honour held that his sentence could not, in any event, be reduced to manslaughter, particularly in light of community standards. Mr Ahmed neither had a criminal record, nor any history of domestic violence, apart from one occasion in 2016 when he admitted to punching a wall in an argument. However, despite his prior good character, Mr Ahmed was found to have deliberately acted on his intention to kill his wife, evidenced by his deliberate delay in calling 000 until he was certain she had stopped breathing ([255]).