

***R v HAC* [2006] QCA 291 (11 August 2006) – Queensland Court of Appeal**

‘Assault occasioning bodily harm’ – ‘Emotional and psychological abuse’ – ‘Physical violence and harm’ – ‘Rape’ – ‘Sexual and reproductive abuse’ – ‘Torture’ – ‘Verbal abuse’

Charge/s: Torture, assault occasioning bodily harm, rape.

Appeal Type: Appeal against conviction.

Facts: The appellant held a longstanding belief in his wife’s infidelity. The acts relied on to constitute the offence of torture included abusive and humiliating acts such as: insisting that the children refer to the complainant as a slut or a whore rather than Mum, not allowing the children to show physical or verbal affection to her; forcing her to chew and swallow chillies in the appellant’s presence and forcing her to lick her vomit up; insisting that she perform sexual acts on his friends for money; insisting that she sleep outside the house without amenities; demanding that she drink his urine and attempting to persuade her to engage in a sexual act with a dog. The assault occasioning bodily harm conviction occurred when the appellant broke the complainant’s arm after she denied having sexual dealings with a neighbour. The rape conviction involved the appellant inserting the wooden handle of a ‘gaff hook’ into the complainant’s vagina. He was sentenced to 10 years’ imprisonment for torture, two years’ imprisonment for assault occasioning bodily harm and five years’ imprisonment for rape. A ‘serious violent offence’ declaration was made.

Issue/s:

1. Whether the directions given by the trial judge in respect of torture were inadequate.
2. Whether the proviso should be applied.

Decision and Reasoning: The appeal was dismissed in respect of issue 2.

1. It was accepted that the directions given by the trial judge were not consistent with McMurdo P’s judgment in *R v LM* [2004] QCA 192 which requires that when more than one act in a series is relied upon to prove the elements of torture, the jury must be unanimously satisfied beyond reasonable doubt that the appellant committed at least one of the particularised acts. In this case, the trial judge’s directions, ‘effectively permitted the jury to convict of torture even though the jury might not have been unanimously satisfied as to which act or series of acts were intentionally inflicted to cause severe pain or suffering’ (see at [2]).
2. The Court held that notwithstanding this error, no substantial miscarriage of justice occurred and the proviso should be applied. Jerrard JA (Holmes JA agreeing) held that it was clear which acts amounted to torture and this evidence was substantiated by unchallenged evidence from the complainant’s daughters. Williams JA (Holmes JA agreeing) held (despite some initial concerns with applying the proviso) – *‘The offence of torture was clearly established beyond reasonable doubt by the evidence; the relevant particulars being the conduct sworn to by the complainant, supported by the evidence of her daughters, and admitted by the appellant’*

(see at [11]).