

***R v Bastan; DPP v Bastan* [2009] VSCA 157 (4 August 2009) – Victorian Court of Appeal**

‘Arranged marriage’ – ‘Rape’ – ‘Relevance of prior relationship’ – ‘Sentencing’ – ‘Sexual and reproductive abuse’

Charge/s: Rape.

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

Facts: The complainant gave evidence that her marriage to the applicant was arranged by her parents. After the applicant was aggressive, she fled to a women’s refuge. They were divorced and the complainant obtained a family violence intervention order. The applicant began sending text messages to the complainant, masquerading as another man. The complainant invited this man to her house but told the applicant to leave when he arrived. He then dragged her to the bedroom, forced her onto the bed and penetrated her vagina with his penis. The applicant was found guilty after a trial and sentenced to four years imprisonment, with a non-parole period of two years and three months.

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

Decision and Reasoning: The Crown appeal against sentence was allowed. In upholding the appeal, Buchanan JA said at [36]:

‘I consider that the sentence would generally be regarded as inadequate if imposed upon an offender who tricked his way into the house of a stranger and raped her. The fact that the applicant and the complainant, in the past, had shared a consensual sexual relationship may have played a part in producing this sentence. In my opinion it should have played no part save insofar as those who have been in a relationship should be deterred from asserting any right or power in a like fashion against their former partners. This rape constituted an act of dominion by the applicant over the complainant’s body, which is not to be tolerated. In my opinion, the sentence, and in particular the non-parole period, was manifestly inadequate and represents an error that warrants interference by this Court’.