

***Kalala v R* [2017] VSCA 223 (30 August 2017) – Victorian Court of Appeal**

‘Approaching “worst category of case”’ – ‘Current sentencing practices’ – ‘Incitement to murder’ – ‘People from culturally and linguistically diverse backgrounds’ – ‘Sentencing’ – ‘Women’

Charges: Incitement to murder x 1.

Appeal type: Appeal against sentence.

Facts: The appellant and victim were in a de facto relationship ([4]). While the victim was visiting relatives in Burundi, the applicant became suspicious that she was seeing another man ([7]). The applicant arranged and paid for the victim to be killed ([8]). While speaking with the victim on the phone, the applicant told her to go outside ([9]). Upon walking outside, the victim was forced into a vehicle, held captive for 2 days and told that she would be killed. However, the kidnappers did not kill her because she was a woman ([10]). The victim returned to Australia. The applicant pleaded guilty and was sentenced to 9 years’ imprisonment with a non-parole period of 6 years ([1]).

Issues: Whether the sentence was manifestly excessive.

Decision and Reasoning: The appeal was dismissed. The main argument advanced by the applicant was that the sentence was the highest yet imposed for the offence, and the circumstances of the offending were not more serious than previous offences ([3]).

President Maxwell and Redlich JA (‘the joint judgement’) made some general conclusions ([3]), including:

- > previous sentences do not impose an upper limit on a sentencing judge (see [51]-[54]);
- > the circumstances of the offending were more serious than previous sentences (see [44]-[50];
- > inciting the murder of a partner is an extreme form of family violence; and
- > previous sentences for incitement to murder have not reflected the objective gravity of the crime, and must be increased (see [66]-[70]).

The joint judgement remarked that the case had many aggravating factors, including the fact that the applicant played an active role in initiating the plan and delivering her into the hands of the kidnappers ([24], [46]). Since it was not suggested that the case warranted the maximum penalty, it was inappropriate to classify the case as a ‘worst category’ case (citing *R v Kilic* [2016] HCA 48) ([28]). However, the sentence was reasonably open to the sentencing judge ([54]).

The joint judgement stated at [62]:

The applicant's motivation — to have NR killed as punishment for perceived infidelity — is expressive of the very worst of male attitudes towards women ... It follows that this offending must be viewed as involving moral culpability at the highest level.

Justice Osborn agreed with the joint judgement, but was reluctant to express a global view on the adequacy of current sentences for incitement to murder ([92]).