SUPREME COURT OF QUEENSLAND

CITATION:	*R v Rankmore; ex parte A-G (Qld)* [2002] QCA 492
PARTIES:	**R** **v** **RANKMORE, Craig John** (appellant/respondent/applicant) **EX PARTE ATTORNEY-GENERAL OF QUEENSLAND** (respondent/ appellant)
FILE NO/S:	CA No 223 of 2002 CA No 285 of 2002 CA No 288 of 2002 DC No 203 of 2002
DIVISION:	Court of Appeal
PROCEEDINGS:	Appeal against Conviction Appeal against Sentence by A-G (Qld) Sentence Application
ORIGINATING COURT:	District Court at Maroochydore
DELIVERED ON:	15 November 2002
DELIVERED AT:	Brisbane
HEARING DATE:	12 November 2002
JUDGES:	de Jersey CJ, Williams JA and Mullins J Separate reasons for judgment of each member of the Court, each concurring as to the orders made
ORDERS:	**1. The appeal against conviction is dismissed;** **2. The application for leave to appeal against sentence is refused;** **3. The appeal against sentence brought by the Honourable the Attorney-General is allowed; and** **4. Set aside the sentence of nine years' imprisonment in respect of counts 11 and 13 (rape) and seven years' imprisonment in respect of count 10 (torture), and in lieu thereof, order that the respondent be imprisoned, in respect of each of counts 11 and 13, to imprisonment for 12 years and in respect of count 10, to imprisonment for 10 years, to be served concurrently, and concurrently with the other terms of imprisonment imposed by the District Court**

on 21 August 2002.

CATCHWORDS: APPEAL AND NEW TRIAL – NEW TRIAL – IN GENERAL AND PARTICULAR GROUNDS – PARTICULAR GROUNDS – INCONSISTENCY BETWEEN FINDINGS OF JURY – INCONSISTENCY BETWEEN DIFFERENT FINDINGS – PARTICULAR CASES – whether *Markuleski* ((2001) 52 NSWLR 82) type direction required – whether convictions vulnerable for want of direction that pleas of guilty not be used to infer guilt on counts left to jury

CRIMINAL LAW – APPEAL AND NEW TRIAL AND INQUIRY AFTER CONVICTION – APPEAL AND NEW TRIAL – APPEAL AGAINST SENTENCE – APPEAL BY ATTORNEY-GENERAL OR OTHER CROWN LAW OFFICER – APPLICATIONS TO INCREASE SENTENCE – OFFENCES AGAINST THE PERSON – whether sentence was manifestly inadequacy for rape and torture convictions

Jones v R (1997) 191 CLR 439, followed
R v Chinfat [1995] QCA 508; CA Nos 354, 355 of 1995, 17 November 1995, considered
R v Edwards [1997] QCA 472; CA No 370 of 1997, 25 November 1997, considered
R v Hunt [1994] QCA 440; CA No 305 of 1994, 12 September 1994, considered
R v Lonesborough [1999] 120; CA No 423 of 1998, 13 April 1999, considered
R v M [2001] QCA 458; CA No 428 of 1998, CA No 126 of 2001, 26 October 2001, considered
R v Markuleski (2001) 52 NSWLR 82, considered
R v McCauley [2000] QCA 265; CA No 67 of 2000, 5 July 2000, considered
R v P [2000] 2 Qd R 401, followed
R v Robinson [1997] QCA 66; CA No 558 of 1996, 19 March 1997, considered
R v Sambo [2000] QCA 191; CA No 422 of 1999, 24 May 2000, considered
R v S [1997] QCA 287; CA No 186 of 1997, 25 July 1997, considered
R v Taiters [2001] QCA 324; CA No 380 of 2000, 10 August 2001, considered

COUNSEL: T Carmody SC, with C Smiley, for the appellant/applicant in CA No 223 of 2002 and CA 288 of 2002 and for the respondent in CA 285 of 2002
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SOLICITORS: Ryan & Bosscher for the appellant/applicant in CA No 223 of 2002 and CA 288 of 2002 and for the respondent in CA 285 of 2002
Director of Public Prosecutions (Qld) for the respondent in CA No 223 of 2002 and CA No 288 of 2002 and for the appellant in CA No 285 of 2002

[1] **de JERSEY CJ**: The appellant was convicted by a jury of a number of offences of violence committed upon the complainant woman. He pleaded guilty to two other counts. He was sentenced to various terms of imprisonment, all to be served concurrently. The longest is nine years. He was declared convicted of serious violent offences.

[2] The notice of appeal against conviction asserts inconsistency between the convictions and the acquittals. While effectively abandoning that ground at the hearing, the appellant was permitted to advance two separate additional grounds: that a direction based on *R v Markuleski* (2001) 52 NSWLR 82, 121, 135, 138 should have been given; and that, the jury being aware of the pleas of guilty, they should have been instructed not to have regard to them in their consideration of the other counts.

[3] As to sentence, the appellant, as applicant, challenges the serious violent offence declaration. The Honourable the Attorney-General also appeals against sentence on the ground that the effective nine years sentence is manifestly inadequate.

Appeal against conviction

[4] The complainant was formerly in a de facto type relationship with the appellant. The appellant took the break-up of that relationship badly. He inflicted substantial violence upon the complainant on five occasions spanning a period of three months from December 2000. That violence comprehends the nine counts on which he was found (seven) and to which he pleaded (two) guilty. The pleas relate to counts of torture and deprivation of liberty. The jury convictions concern two counts of torture, two of rape, one deprivation of liberty, one assault occasioning bodily harm and one common assault. At the time of the offences, the appellant was aged 30 to 31 years. He was then subject to a domestic violence order. I deal now with the circumstances of the respective offences.

Count 2, torture, plea of guilty / Count 3, rape, acquittal

[5] The complainant yielded on 14 December 2000 to the appellant's demand to be let into her house. An argument ensued. He plugged in the iron. He tore her dress off. He placed her on the bed, positioning himself on top between her legs. He held the iron close to her body and in response to her protests, burned her arm and leg. He said to the effect that if he could not have a life, neither would she.

[6] The appellant prevented the complainant's leaving. He threw her on to the lounge room divan. Still with the iron, he positioned it around her vagina, making further cynical threats and observations.

[7] The complainant was sick, and fell into a state of shock. The appellant took her to the bedroom and engaged in sexual acts culminating in his ejaculating on to her stomach. As she showered, he apologised, but then, as she apparently prepared to leave, he tried to put her fingers into the power socket of a lamp. He desisted in response to a neighbour's call for him to stop.

[8] The complainant had to collect her daughter from school. The appellant drove her to the school. She sought unsuccessfully to elude him.

[9] The rape acquittal concerned alleged anal penetration. The complainant's evidence was limited to slight penetration, with the complainant struggling and stiffening against the appellant's depredations. There was no supporting evidence, medical or otherwise. By contrast, in relation to the torture, the appellant conceded the complainant's account as to his manner of entering the premises, that he had the iron and that she was burnt.

Count 4, assault, guilty / Count 5, deprivation of liberty, plea of guilty

[10] These convictions concerned events on the following day, 15 December 2000. The appellant telephoned apologetically, and asked the complainant to go fishing with him. She indicated her disinclination, but agreed in response to his threats against her children. He used the occasion to press his case for restoration of their relationship. She asked to be taken home.

[11] Near to her home, the appellant insisted on going inside. When the complainant refused, he threatened to kidnap her. There was a scuffle in which she fell to the ground. He began to strangle her. She kicked away, infuriating him. He held a knife to her. She secured it and threw it into bushes.

[12] The appellant threw her into the car and drove off, fast and erratically, expressing all sorts of threats, involving "suicide". At a service station, the complainant sought to attract the assistance of a console operator. The appellant told her that he would "f… [her] up the butt till [she] split apart".

[13] There was substantial evidence supporting the complainant's version of these events: police evidence of locating the knife in the place indicated by the complainant; police evidence of observing injuries referred to by the complainant; evidence of a man trying to throw a woman into a car in circumstances as referred to in the complainant's allegation; and the appellant's concession that the complainant sought the intervention of the console operator.

Count 6, assault, not guilty / Count 7, deprivation of liberty, guilty

[14] These allegations concerned events on 10 January 2001. The appellant was then staying in a tent at "Rustic Cabins". He wanted to resume family life with the complainant. In response to her rejection, he threatened to kill her children, with her lastly, so that she would not be spared the grief of losing them. She agreed to camp with him overnight. But when she arrived, she was on his view too quiet, and that enraged him.

[15] The appellant tore off the complainant's clothes, with the complainant screaming. Neighbours left, with the appellant fearing that they may be fetching the police. So he forced her, naked, into the car and drove off. She covered herself with a blanket. At a service station, as he left to pay – taking her key card with him, she ran off. He chased her. To another customer, she screamed that the appellant was trying to kill her. She got into the console area and the police were summoned.

[16] The console operator gave evidence supporting the complainant's account in relation to the deprivation of liberty. There was, on the other hand, no objective support for the complainant's account in relation to the alleged assault.

Count 8, torture, guilty / Count 9, rape, not guilty

[17] These counts concerned events on 19 March 2001. The appellant persisted in his attempt to resume life with the complainant. She agreed that he may occupy a shed in her backyard.

[18] An argument developed. The appellant threw the complainant on to a bed. He held a hot iron close to her face, then near to her groin. Later, he held a knife to her throat, and in the close vicinity of her vagina. He cut off her underwear.

[19] Against her struggles and stiffening, he tried to penetrate her anus. He ejaculated on to her stomach.

[20] During a subsequent shower, he held a knife to her throat. She left for the local shops. He followed and pestered her, including with a knife.

[21] There was independent evidence as to the complainant's distressed condition at one of the shops. On the other hand, in relation to the alleged rape, the complainant's evidence was that though his penis penetrated, it did so only a little.

Count 10, torture, guilty / Count 11, rape, guilty / Count 12, assault occasioning bodily harm, guilty / Count 13, rape, guilty

[22] These counts concerned events on 24 March 2001.

[23] The appellant insisted on visiting the complainant, notwithstanding her objection. He entered the house and threw the complainant on to a mattress. He removed her clothes and threatened her with a knife. He placed the knife in the vicinity of her vagina, breast, ear and stomach, making particular revolting threats. He stabbed the knife into the mattress, near to where her head lay. He performed oral sex upon the complainant, who was then in a state of shock. By way of reaction to her non-responsiveness, the appellant bit her on the leg. He raped her vaginally, and attempted to do so anally. She urinated in shock.

[24] The complainant's allegations were supported by police evidence of her distressed state; their discovery of the appellant hiding in a cupboard; and independent evidence of damage to the mattress and of the injury to the complainant's leg.

Inconsistency

[25] As the appellant now concedes, there was a rational ground explaining the differential verdicts (*Jones v R* (1997) 191 CLR 439; *R v P* [2000] 2 Qd R 401, 404)). It rests in there being evidence independent of the complainant, supporting in various ways the complainant's account, in relation to the counts on which the jury convicted, absent on those leading to acquittal. The verdicts of not guilty did not mean that the jury should be seen as having rejected the credibility of the complainant generally,.

Markuleski

[26] The appellant contends that the Crown case depended solely on the evidence of the complainant. In *Markuleski*, a majority of the New South Wales Court of Appeal favoured a direction in such cases ("word against word cases") that a reasonable doubt in respect of a complainant's credibility on one count should be taken into account in assessing a complainant's general credibility.

[27] Some matters are so obvious they need not be stated. In *R v M* [2001] QCA 458; CA No 428 of 1998, CA No 126 of 2001, the Queensland Court of Appeal resisted the suggestion that such a requirement should be imposed on trial judges in this jurisdiction. Was such a direction nevertheless warranted here?

[28] Counsel for the appellant pointed to the complainant's failure to give evidence supporting count one (wilful damage to a wall, door and painting): the complainant having given no evidence, the verdict of not guilty was effectively "directed". The complainant's failure may have been attributable to her distress at the trial. Counsel also relied on the various inconsistencies within the complainant's various accounts – albeit the jury was directed in orthodox terms about the possible significance of those inconsistencies.

[29] The substantial reason why nevertheless no *Maruleski* "direction" was necessary or warranted here was the circumstance that the complainant's evidence gained independent support in a number of important respects, as covered already, which readily explains the jury's discrimination in the verdicts returned. I note that no re-direction was sought on this aspect at the trial.

Pleas of guilty

[30] The appellant contended, through his counsel's written material, that the jury should have been required to return verdicts in relation to the counts on which the appellant had pleaded guilty. This was based on the erroneous belief that the jury was given the responsibility for returning verdicts on those counts. The jury was specifically given responsibility for the accused only on those counts to which he had pleaded "not guilty". Their having rendered verdicts on those counts, the *allocutus* was administered in respect of all guilty counts – following both pleas and convictions, and the sentencing proceeded. There was no irregularity in this, and counsel for the appellant abandoned the point at the hearing.

[31] There is another aspect to the pleas of guilty. The learned judge made the jury aware of those pleas, saying it removed any need for the jury to consider those

counts further. The jury were instructed in the usual way as to the need to consider each count separately and only by reference to the evidence relevant to that count, and, in terms, "you must not say guilty of one, therefore guilty of all". He added that the jury may regard the pleas of guilty as "an acceptance that the (appellant) committed those offences". That could have some marginal relevance because the offences to which the appellant pleaded guilty occurred on the same day as and close in time to the alleged offences involved in the counts on which the appellant went to trial, and thereby formed part of the background to or 'setting' of the other offences. The events were intertwined, and really formed part of the same flow of conduct. The judge said to the jury, "the context or setting in which an event occurs adds meaning or colour to the event".

[32] While it would have been better had the learned judge directed the jury expressly that the pleas of guilty might not be used as a basis for inferring guilt on other counts, the direction for separate consideration of the counts only by reference to the evidence relevant to the count, that the jury need not consider further the counts to which the appellant pleaded guilty, and that they must not say "guilty of one, therefore guilty of all", means that the summing-up was nevertheless adequate. I note that no re-direction was sought on this matter at the trial.

[33] It follows that in my view the appeal against conviction should be dismissed.

Attorney-General's appeal against sentence

[34] In addition to what emerges from what I have already said, it should be noted the respondent to this appeal had a prior criminal history in relation to the property and person of the complainant, and that at the time of these offences, he was subject to a current domestic violence order. For the Attorney, counsel stresses the psychological torment to which the respondent subjected the complainant:

> "Prolonged, relentless psychological abuse and torment … The complainant was subject to extremely frightening situations at the will of a man who demonstrated no fear … She tried to placate him by not fighting back while also trying to resist his actions which were against her will … His hold over her was complete."

Against the sentence imposed of nine years, counsel for the Attorney contended for a range of 12 to 14 years, comparing the case with *R v S* [1997] QCA 287; CA No 186 of 1997, *R v Chinfat* [1995] QCA 508; CA Nos 354, 355 of 1995, *R v Taiters* [2001] QCA 324; CA No 380 of 2000 and *R v McCauley* [2000] QCA 265; CA No 67 of 2000. On the other hand, counsel for the respondent relies on the Court's traditionally moderate approach on Attorney's appeals, as discussed in *R v Melano* [1995] 2 Qd R 186, and other cases including *R v Lonesborough* [1999] 120; CA No 423 of 1998, *R v Sambo* [2000] QCA 191; CA No 422 of 1999, *R v Edwards* [1997] QCA 472; CA No 370 of 1997, *R v Robinson* [1997] QCA 66; CA No 558 of 1996 and *R v Hunt* [1994] QCA 440; CA No 305 of 1994

[35] While the nature of the offending in *S* was comparable, it occurred on but one occasion. Williams JA spoke there of a range of 10 to 12 years imprisonment. Twelve years was imposed. The sentencing in *S* occurred prior to the "serious violent offence" regime introduced into the *Penalties and Sentences Act* in 1997, reflecting the community's strengthening attitude towards crimes of serious

violence. In this case, by way of additional contrast, there are convictions for torture, and the persistent nature of the offending over about three months. On the basis of *S*, I consider that the applicable range here would be of the order of 12 to 14 years imprisonment, and I say that appreciating that the appellant would automatically thereby be regarded as convicted of serious violent offences.

[36] *Chinfat* also preceded the 1997 statutory amendments. His nine year sentence was for offences involving a lesser level of violence, and none of torture. *Taiters*, sentenced to eight years imprisonment, offended on only one occasion, and he was not convicted of torture. The eight years sentence in *McCauley* was for three offences of rape by anal intercourse, a less serious level of offending than in the present case. The penalties imposed in *Lonesborough, Sambo, Edwards, Robinson* and *Hunt* referred to for the respondent, for rapes, were again in respect of offending more isolated, less sustained, cruel and relentless than in the present case, and absent what in law amounts now to torture.

[37] I consider that the sentences of nine years imposed in respect of counts 11 and 13 (rape), and three, five and seven years imprisonment respectively for counts 2, 8 and 10 (torture), to have been manifestly too low. I would allow the Attorney's appeal, set aside the sentences imposed in respect of those counts, and in lieu order that the respondent be imprisoned, in respect of each of counts 11 and 13, to imprisonment for 12 years, and in respect of counts 2, 8 and 10 respectively to imprisonment for 6, 8 and 10 years, reflecting the persistence of the offending. It would follow, from my judgment, that the respondent would be subject to an effective sentence of 12 years, rather than the nine years to which he is presently subject. If would automatically follow that he would be considered convicted of serious violent offences.

Application for leave to appeal against sentence

[38] This application was devoid of merit. The serious violent offence declaration, as applied to all the offences, was formally regular in light of s 161C(2)(b) of the *Penalties and Sentences Act*. Counsel submitted that as a matter of discretion, the declaration should not have been made. But the point need not be pursued because of what I would propose in determining the Attorney's appeal.

Orders

[39] I would order:

1. that the appeal against conviction be dismissed;
2. that the application for leave to appeal against sentence be refused;
3. that the appeal against sentence brought by the Honourable the Attorney-General be allowed; and
4. that the sentence of nine years imprisonment in respect of each of counts 11 and 13 (rape) and three, five and seven years imprisonment respectively on counts 2, 8 and 10 (torture), be set aside, and that in lieu thereof, it be ordered that the respondent be imprisoned, in respect of each of counts 11 and 13, for 12 years, and in respect of counts 2, 8 and 10 respectively, for 6, 8 and 10 years, the terms to be served concurrently, and concurrently with the other terms of imprisonment imposed by the District Court on 21 August 2002.

(The declaration as to pre-sentence custody would of course remain in place.)

[40] **WILLIAMS JA:** I have had the advantage of reading the reasons for judgment prepared by the Chief Justice and there is nothing I wish to add thereto. I agree with the orders he proposes.

[41] **MULLINS J:** I agree with the reasons of and the orders proposed by the Chief Justice.