SUPREME COURT OF QUEENSLAND

CITATION:	*R v MAB* [2004] QCA 281
PARTIES:	**R** **v** **MAB** (applicant)
FILE NO/S:	CA No 220 of 2004 DC No 1407 of 2004
DIVISION:	Court of Appeal
PROCEEDING:	Sentence Application
ORIGINATING COURT:	District Court at Brisbane
DELIVERED EX TEMPORE ON:	4 August 2004
DELIVERED AT:	Brisbane
HEARING DATE:	4 August 2004
JUDGES:	Davies JA, McPherson JA and Helman J Separate reasons for judgment of each member of the Court, each concurring as to the order made
ORDER:	**Application for leave to appeal against sentence dismissed**
CATCHWORDS:	CRIMINAL LAW – JUDGMENT AND PUNISHMENT – SENTENCE – FACTORS TO BE TAKEN INTO ACCOUNT – CIRCUMSTANCES OF OFFENDER – applicant convicted on pleas of guilty – where counts of common assault, assault occasioning bodily harm, stealing and burglary were against applicant's de facto wife and her children – whether head sentence of imprisonment for two years suspended after six months with operational period of three years excessive where no prior convictions. *R v Wentt* [1995] QCA 613; CA No 440 of 1995, 6 December 1995, considered
COUNSEL:	S A Lynch for the applicant M J Copley for the respondent
SOLICITORS:	A W Bale & Son for the applicant Director of Public Prosecutions (Queensland) for the respondent.

HELMAN J: This is an application for leave to appeal against sentences imposed on the applicant on 15 June 2004 in the District Court at Brisbane. He was charged on seven counts and pleaded guilty to each.

In counts 1 and 2 common assaults at Drewvale, Queensland were alleged – in each case on a date unknown between 30 September 1999 and 1 December 1999. The assault alleged in count 1 was upon the applicant's then de facto wife, and that in count 2 upon the wife's daughter, issue of a previous relationship. In the course of an argument between the applicant and his wife, he called her a prostitute and slapped her face twice. The wife began to cry and the daughter intervened. The applicant struck the daughter on the face and again struck the wife. The applicant desisted after a neighbour intervened.

In count 3 an assault occasioning bodily harm on the wife's son, then aged seven or eight years was alleged. The son, too, was issue of the wife's previous relationship. The incident that gave rise to this charge took place when, after an argument in the applicant's car, the wife and her son fled from it, but the applicant chased them and dragged the boy across rocky ground to the car and threw him onto the back seat. The boy's legs bled from contact with the ground. That offence was alleged to have taken place at Toowoomba or elsewhere in Queensland on a date unknown between 30 September 1999 and 20 January 2000.

Count 4 was another allegation of common assault. It was alleged that it took place on or about 19 January 2000 at Brisbane or elsewhere in Queensland. The assault occurred following arguments between the applicant and the woman concerning his suspicion of her having an intimate relationship with another man. He hit her with his hands and pushed her over and her head hit a steel cupboard door. The incident ended when the wife drove away in her car. Police officers were called and they spoke to the applicant.

The following day, the applicant committed the offences alleged in counts 5, 6, and 7: burglary with a circumstance of aggravation, assault occasioning bodily harm, and stealing from the person respectively. He broke into the woman's house at night. She was in bed. He sat on top of her, slapping her face using both hands, pulled necklaces she was wearing, choking her, and made off with one of the necklaces. The woman was admitted to hospital. She had suffered a fractured little finger, a perforated eardrum, bruising to the neck and face, grazed lips, and tenderness of the jaw.

The learned sentencing judge imposed sentences of imprisonment for three months for each common assault, imprisonment for six months for each assault occasioning bodily harm and for stealing from the person, and imprisonment for two years for the burglary. His Honour ordered that the last-mentioned sentence be suspended after the applicant had served six months and that the operational period for the sentence be three years. The applicant was declared to have served three

days in pre-sentence custody. The applicant, who had not been convicted of any offence before he was sentenced for these offences, asserts that those sentences were manifestly excessive.

He was born in Sri Lanka on 29 October 1960. He left that country in 1989, and was naturalized in this country in 1996. The principal complainant was in her early forties when the offences were committed. The applicant met her in about 1989. He was a friend of her former husband, the father of the other complainants, and from whom she obtained a divorce. In 1992, the applicant and the principal complainant began their intimate relationship. In October 1999, they took part in a marriage ceremony in India, although the applicant denies that it was legally binding. His Honour was not called upon to decide whether it was or not. The necklace the subject of the stealing charge is called a “thali”, and it was given to the woman by the applicant. It appears to fulfil the same function as a wedding ring does in other wedding ceremonies. It was not returned to the woman. According to her, the loss of the thali is of incredible cultural importance and significance within her community. The intimate relationship between the applicant and the woman continued after January 2000 until December 2000. By 2001, the relationship had deteriorated to the point where each party sought a restraining order against the other. On 22 September 2001 the applicant married a primary school teacher from Sri Lanka, and supports her and two children born of their union.

The applicant was a farmer in Sri Lanka and left because of political unrest and disorder there. He has been a hard and productive worker in this country in a variety of occupations. The applicant's unblemished history before he committed these offences – and since – is an important feature of the case. References provided to his Honour included one from his wife which confirms his good behaviour since his relationship with the principal complainant ended. The applicant's pleas of guilty entitled him to some further favourable consideration and appear to show remorse. His Honour's sentencing remarks indicate that he took those features of the case into account in sentencing the applicant.

We have been referred to a number of cases asserted to be comparable with this one. They are comparable in the sense that they are cases of what have come to be labelled "home invasions". But of course the circumstances of the cases vary greatly as to the ages of the offenders, their motives, the damage done and injuries inflicted and so on, so there is little utility in a minute dissection of differences. It suffices to say that it is well accepted that custodial sentences have been thought appropriate in many such cases, even when the offender has not previously been convicted of any offence: see, e.g., the remarks of Thomas J in *Reg. v. Wentt* [1995] Q.C.A 613. The reason for the imposition of such penalties is obvious and needs little elaboration: the courts recognize that people are entitled to feel safe and secure in their homes, and intruders who violate the sanctity of the

home must expect severe punishment because of the gravity of the offence and to deter them and others from such conduct.

There is, as I have indicated, a good deal to be said for the applicant, but one cannot overlook either certain obvious aggravating features of his case. The aggression towards the principal complainant was persistent and increasingly violent. He was spoken to by police officers on the day before his most violent attack. That attack put the principal complainant in hospital, and, as well as suffering physical injury, she has suffered a good deal of mental anguish. On the applicant's behalf it was conceded before us and before his Honour that this case called for the applicant to serve some time in actual custody, so that the argument for him came down to one asserting that there should be some adjustment of the terms ordered by his Honour. I am not persuaded that any such adjustment would be justified in this case. I am not persuaded that it has been demonstrated that the penalties imposed by his Honour exceeded the bounds of a sound sentencing discretion. The application should, in my view, be dismissed.

DAVIES JA: I agree.

McPHERSON JA: I agree.

DAVIES JA: The application is dismissed.