

SENT BY: DIRECTOR PUBLIC PROS'N; 4- 7-91 ; 4:28PM ;

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DPP/H/91/2185/0324**DIRECTOR OF PUBLIC PROSECUTIONS**

New South Wales

4th July 1991

DIRECTOR

Regina v Akhandananda SARASWATI

Sexual assaults

Gosford District Court No. 88/31/0307

Question of resolution of outstanding charges

The accused was committed on a number of charges of sexual assaults against young girls, four offences alleged to have been committed between 1983 and 1985. He was convicted on counts of committing acts of indecency under S.61E(2) and appealed to the High Court on the basis that those offences were statute-barred. He succeeded on that appeal and the question now arises as to the fate of outstanding charges against the accused of a similar nature in relation to other children. The Crown Prosecutor (Mr Rosser, Q.C.) recommends no further proceedings because of the judgment of the High Court.

In relation to the child Buchanan, the accused has already been convicted of a count under S.61E(2) but is awaiting sentence. In Mr Rosser's view the facts in relation to that matter would support a conviction because the nature of the conduct would not amount to an offence under S.61E(1) and therefore there was no reason why the prosecution could not continue. His recommendation is that this matter proceeds to sentence and that an application by the accused for a stay be resisted. I agree with that recommendation as it seems to me that the only way in which that conviction can be considered will be by way of an appeal.

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In relation to the girl Mr Rosser recommends no further proceedings. Although there is an offence charged of the accused having carnal knowledge as a teacher which offence is not statute-barred, Mr Rosser is of the view that that charge ought not to proceed. At the last trial, judge Nash held that there was no pupil/teacher relationship and in the matter which went to the High Court although Judge Maguire allowed evidence of the relationship to go to the jury, the jury in fact acquitted the accused of that charge. There seems therefore to be no reasonable prospect of convicting the accused of that offence. In relation to the other charges, I agree with Mr Rosser that they really amount to offences under S. 61E(1) and whilst some aspects of the charges might be considered as acts of indecency, they were really part of the one transaction giving rise to the more serious offences and it would be too technical to simply base charges on those aspects.

In respect to the child the allegation is clearly one of indecent assault and therefore could not be prosecuted under S.61E(2) by reason of the High Court's decision.

I therefore agree with Mr Rosser and recommend that there be no further proceedings against this accused in respect of the complainants and .



R. Howie, Q.C.
Deputy Director

I agree and so direct

