



CROWN PROSECUTORS' CHAMBERS

New South Wales

26 Jun 91

THE DIRECTOR OF PUBLIC PROSECUTIONS

**REGINA -v- AKHANDANANDA SARASWATI**

**GOSFORD DISTRICT COURT NO. 88/31/0307**

**QUESTION OF RESOLUTION OF OUTSTANDING CHARGES**

The recent decision of the High Court in the appeal arising out of the abovenamed's original conviction raises the question of what to do about the matters outstanding against him. From that consideration, I exclude the set of charges presently before the Gosford Local Court - as I understand it they are not affected by the High Court's decision.

What remain on foot are charges with respect to three complainants :

Alecia Buchanan (d.o.b. **REDA** 1967)

Saraswati stood trial in October 1990 upon two charges - one of inciting an act of indecency, the other of carnal knowledge as a teacher. On the latter charge, he was acquitted by direction of the trial judge, Nash DCJ. On the first charge he was found guilty.

He remains unsentenced on that count. On the application of the defence the matter was adjourned to a date to be fixed pending the result of the appeal to the High Court. The matter is now listed for sentence on 29 August 1991.

The complainant in her evidence at the trial described the incident thus :

"Well at first it was just - he just asked me to rub his shoulders or his back, his legs and then after a while during that same time he asked me to - he was - he would just direct my hands to other points of his body and, you know, like gradually I was massaging his - up his thigh and his lower abdomen and then he would guide my hand on to his penis and he would request me to massage there too, and his buttocks."

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Later in her evidence she specified that the first occasion when he hand was "guided" to his penis had been in about January 1983, about four months prior to her 16th birthday. The true state of the law being yet to be revealed by the High Court she was not asked to describe in any greater detail how, precisely, she came to perform the act specified by the Crown as indecent.

It is, in my view, at least arguable that the High Court's decision does not affect this matter. The analysis of McHugh, J as to the nature of the offence created by section 76A (now 61E(2)) and the reasons for its creation suggests to me that the facts in this case are such that the offence of indecent assault might not have been available to the Crown. The facts here are somewhat analogous to DPP -V- Rogers [1953] 1WLR1017 (referred to by McHugh, J). In my opinion this conviction can be held by the Crown.

I understand that it is the intention of the defence to seek a permanent stay of any further proceedings following the verdict of guilty. Subject to any direction to the contrary, I would propose that any such application be resisted.

APA [REDACTED] (d.o.b. REDACT 69)

In respect of this complainant I found a bill as follows :

1. about July 1985 at Bellingen did commit an act of indecency, she then being under the age of 16;
2. about July 1985 at Lillian Rock did commit an act of indecency, she then being under the age of 16 years;
3. between 1 January 1985 and 10 November 1985 at Young being then a teacher did carnally know, she then being under 17; and
4. (alternatively to 3) did commit an act of indecency, she then being under 16.

As to the count of carnal knowledge as a teacher, I am now persuaded that it does not fit the facts. Nash, DCJ held that there was no relevant pupil/teacher relationship in the Buchanan trial. Although at the earlier trial (being the matter that went to the High Court) Maguire DCJ left the matter to the jury it is now my view that the relationship that exists here was not one contemplated by Section 73. (The jury at the first trial, in fact, acquitted on these counts). I accordingly recommend no further proceedings on this count.

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Count 4 was expressed as an alternative to Count 3. The act of indecency relied upon was the same act of sexual intercourse. By reason of the High Court's decision this is not available to the Crown.

Similarly Counts 1 and 2 relate to allegations of sexual touching by the accused which would clearly be indecent assaults. Once again, it does not appear to be open to the Crown to charge these incidents as acts of indecency (see the committal transcript at pp 215-6 (Count 1) and pp 216-7 (Count 2). Whilst there are aspects of what the complainant recounts with respect to each of those incidents which could amount to acts of indecency falling short of indecent assault, it appears to me to be somewhat unrealistic and artificial to try to separate those aspects to ground a count for an act of indecency.

Regretfully, I recommend that there be no further proceedings with respect to the counts relating to this complainant.

APB (d.o.b. REDAC 72)

In respect of this complainant I found a bill for one count alleging the commission of an act of indecency in about February 1986 when the complainant was 13 years of age. The allegation is that the accused had placed both of his hands under her loose fitting top and touched her breasts.

Even prior to the High Court decision, I was of a mind to recommend no further proceedings. The matter is relatively trivial and does not - so far as this complainant is concerned - form part of a lengthy course of sexual misconduct. She makes no other complaint against him.

It does, in any event, appear to me to be caught by the High Court's decision.

I accordingly recommend no further proceedings.

(Yours faithfully



P D ROSSER, Q.C.  
Deputy Senior Crown Prosecutor