



CROWN PROSECUTORS' CHAMBERS  
New South Wales

1 July 1991

THE DIRECTOR OF PUBLIC PROSECUTIONS

**REGINA -v- AKHANDANANDA SARASWATI**

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

**SUBMISSION RE EX OFFICIO INDICTMENT**

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This matter came before his Worship Mr B Butler, Magistrate at Gosford Local Court on 19 March 1991 and 25 June 1991.

I appeared for the Crown instructed by Mr A. Tillers.

Mr Chester Porter, Q.C. assisted by Mr Paul Byrne of Counsel and instructed by Mr G. Walsh appeared for and with the defendant.

The Court had before it four Informations relating to (1) Sexual Intercourse w/o consent (S.61D(1)), (2) Indecent Assault x 2 (S.61E(1)); and (3) Commit Act of Indecency (S.61E(2)).

I conceded that the Crown could not negative consent in relation to the sexual assault. Section 78 operated to prevent the use of alternates (which did not require the negating of consent because of the operation of S.77). Accordingly, the defendant was discharged in relation to this matter.

The remaining three charges were not affected by the recent High Court decision in Queen -v- Saraswati.

His Worship then considered the evidence relating to the two counts of "Indecent Assault" (towelling breasts when 13 years old) and he concluded that there was no real prospect of conviction and discharged the accused on both counts.

His Worship then considered the remaining charge of "Commit Act of Indecency". He found that he could not conclude that there was no real prospect of conviction and accordingly, committed the defendant for trial.

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In my view, if the Magistrate had spent less time trying to impress Chester Porter, Q.C. and more time applying his commonsense to the evidence he would not have arrived at the decision he did and certainly not given the tortured reasonings that he did.

The credit of the complainant was and is an important issue. She spent from aged 7 years to 16 years in the Mangrove Mountain Ashram of which the defendant was spiritual and administrative head. She was separated from her parents during this period as Saraswati had sent them to other Ashrams.

The complainant's parents were strong supporters of the Swami even after he was charged with offences relating to other girls. In fact, they gave evidence for him at one of his earlier trials. At about this time (30/8/87) whilst her parents were still strongly supporting the Swami the complainant was interviewed by Mr Greg Walsh, Solicitor for the defendant. She admits that she lied to him saying that nothing had happened to her except some accidental touching of her breasts whilst being tickled.

I had a number of conferences with the complainant who is now aged 20 years and attending Newcastle University. She was candid re her lies to Mr Walsh (as she also was when cross-examined at committal). I found her to be a witness of truth. I also felt that her evidence at committal was strong, despite vigorous and at times harsh cross-examination.

Prior to her interview with Mr Walsh, the complainant had complained about the defendant touching her breasts to the following people :

- (i) APA (a day after one of the charged incidents - APA was a young lady about four years older than the complainant).
- (ii) Shishy - the head female at the Ashram who was also the mistress of the defendant.
- (iii) Sandra Smith - a local psychiatrist who visited the Ashram on a personal basis from time to time.
- (iv) Mrs Hetherington - a lady employed as a Social Worker by the Family & Community Services Department.
- (v) Mrs APJ - the complainant's mother.

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The evidence of the complainant was corroborated by the following :

- (i) APL [redacted] - a young woman who also lived at the Ashram and who was the victim in the first trial - she gave evidence of the defendant telling her that he ".... was hot for APH (complainant)" and urging her to convince the complainant to go to bed with him.
- (ii) APA [redacted] - another young woman who lived at the Ashram - she gave evidence corroborating the complainant about a trip to Queanbeyan during which one of the Indecent Assaults took place. She gave evidence of (a) opportunity supporting the complainant's version; (b) of defendant's continued reference to getting the complainant to share his bed; (c) of complaint by APH [redacted] of the defendant kissing and touching her breasts at a Hotel in Young on the way to Queanbeyan.
- (iii) Alecia Buchanan - another young woman who was the victim in the second trial - she gave direct evidence of being present during the incitement and act of indecency.

The accused gave evidence (this was a complete ambush of the Crown) and simply denied all incidents. Despite this and my poor quality cross-examination he was not a convincing witness at all. (I note in passing that he has given evidence twice and he found guilty by both juries.)

The complainant was criticised for attending the gaol with her parents to visit the defendant. (See T.98 re Mrs APJ [redacted]'s answers on this topic.)

The complainant was criticised and attacked on the basis that her complaint was motivated by the break in her parents relationship with the defendant and the existence of a legal squabble over possession/ownership of "Lillian Rock" which was the North Coast Ashram (near Lismore). See transcript 100, 101 and 105 re Mrs APJ [redacted]'s observations in this regard. The complainant denied that this aspect played any part.

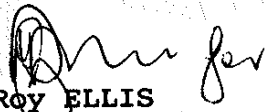
In terms of the assessment of the overall Crown case against this defendant on the two "Indecent Assault" counts, I have no doubt whatsoever that an ex-officio indictment is justified.

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It should be noted, however, that the legal representatives of the defendant speak in terms of "persecution" by the DPP at the thought or suggestion of an ex-officio indictment. Despite the fact that the two previous victims have been accepted at least in part by the jury and that the accused has avoided conviction by a legal technicality, the cries of "..... this man has been pursued for enough" spring readily to the lips of Messrs Porter and Byrne.

Taking all this into account, I still recommend that an ex-officio indictment be presented against this accused re the two counts of "Indecent Assault" upon which he has been discharged. I am supported in this attitude by Mr Rosser, Q.C.



ROY ELLIS  
Crown Prosecutor

1 July 1991