

STATE OF TASMANIA v ABHINAV AGGARWAL
COMMENTS ON PASSING SENTENCE

7 JUNE 2024
WOOD J

The defendant, Abhinav Aggarwal, has pleaded guilty to one count of wounding.

The defendant was in a relationship with the complainant, they were married with no children, and they lived together in Springfield Avenue.

On 7 January 2024, in the early afternoon, the defendant was driving the complainant to work. The complainant questioned the defendant about his treatment of her and why he treated her badly. He yelled at her, and was violent towards her; he slapped her to the face, grabbed her hair and pulled her head forward, punched her to the back of her head, and struck her to the face, twice. The defendant then bit her finger and, in an attempt to stop him, the complainant bit his arm. The defendant stopped but continued to yell at her. They reached the complainant's workplace and she got out of the vehicle.

The defendant's conduct of assaulting the complainant in the car is relied upon by the State as background to the wounding and, noting there are no charges before me for that conduct, he is not to be sentenced for that violence.

Once the complainant finished her shift at approximately 7:00 pm, she called her brother, Mr Patel and told him about the incident in the car. He insisted that he pick her up from work and, together with his wife, the three attended the complainant and defendant's home. Understandably, Mr Patel would have been concerned about his sister and the situation. The complainant entered alone and confronted the defendant about his behaviour. He did not respond to or interact with her.

She called her brother and sister-in-law to come inside, and her brother confronted the defendant, asking him, "Why did you do all these things to my sister this morning?" Mr Patel then punched the defendant which led to a physical altercation.

The complainant intervened to try and break it up but the physical altercation between the defendant and Mr Patel continued. The complainant tried to pull the defendant away from her brother and the defendant bit her finger. Mr Patel punched the defendant to the face, and the defendant lunged towards Mr Patel and bit him to the face.

The complainant again intervened and jumped onto the defendant's back to try and keep away him from Mr Patel, and in doing so, the defendant bit her on the arm. At one point, the complainant applied pressure to the defendant's throat which interfered with his breathing. In a panicked state, he bit the complainant on her face near her chin, committing the act of wounding. The defendant stopped when Mr Patel bit him on the shoulder.

The defendant left the room, and Mr Patel and the complainant followed him. After another brief altercation with Mr Patel in the hallway, the defendant left the house and waited for police to arrive.

Police officers arrived and arrested the defendant, and he participated in a video record of interview where he made admissions. He acknowledged that the situation and the injury to the complainant's face were serious.

I accept that the defendant's act of biting the complainant's face was carried out with the purpose of trying to get free when he was being restrained and his breathing was affected. He suffers from asthma, and he felt panicked at that point. While he acted to defend himself, he does not have a lawful defence in the circumstances of this case. His physical response of biting the complainant's face was unlawful as the force was excessive given the circumstances. I note that the defendant accepts he used excessive force and indeed, he acknowledged that to police in his interview.

The complainant attended the Royal Hobart Hospital after the incident with minor injuries to her fingers and her arm, and a soft tissue injury to her face. She had an open wound to her left cheek, namely a 15 mm circular laceration which was approximately 3 mm deep.

The wound was closed with three sutures under local anaesthetic, and the complainant was prescribed antibiotics. She may be left with a scar depending on the healing process. The harm caused to the complainant is not just the physical injury and pain associated with that injury. The violence inflicted by the defendant in a context of conflict and aggression was an emotionally distressing and frightening experience for the complainant.

The defendant is 34 years of age. He has no prior convictions here or in his home country.

He has been in custody since 7 January 2024. He is an Indian national who has been in Australia since March 2023. His wife had a student visa, and he had a partner visa. As a result of his visa expiring in March and these criminal proceedings, his current immigration status is as an illegal non-citizen. The information from the Australian Federal Police is that he will not be able to remain in Australia. Once he has served his sentence, it is likely he will be taken into detention and arrangements will be made for his deportation. If the defendant is in a position to fund his own travel to India, he may be granted a bridging visa for 48 hours or such period. If he is not granted a bridging visa, he may not be able to recover his belongings, including his car.

The consequences of the defendant's crime have had significant consequences for him, aside from the punishment the Court will impose.

It is noted that if provision was made in the sentence for parole, realistically, it would not be granted because of his circumstances.

In India, the defendant had a successful career in the banking industry and was highly regarded. After moving to Australia in March 2023, he has worked in hospitality, and at the time of his arrest he had two jobs, one working at McDonalds and another at an Indian restaurant. He was financially supporting his wife who was studying.

There was discord in the relationship and difficulties. The defendant was subjected to emotional abuse and demands for money which became unreasonable.

On the day in question, he telephoned his father and father-in-law to inform them about the situation and to ask them for help. It was soon afterwards that his wife and brother-in-law arrived at the residence in a heightened state. While, initially, he tried to ignore the situation, it escalated, and he was punched by Mr Patel.

The defendant's time in custody has been difficult, due to overcrowding. He is the only person from a culturally diverse background and unfortunately he has been subjected to denigrating remarks and insults from other inmates.

I take into account that he has pleaded guilty at an early stage and saved the complainant and her brother the stress of having to give evidence.

Once he has served his sentence, and on his return to India, he hopes to return to his former career and get on with leading a productive life.

Mr Aggarwal, the violence was inflicted in the context of a relationship, and that is a serious aspect of this case of wounding. The nature of the wound inflicted was serious and the harm caused must be reflected in the sentence. I also note it was not an isolated occasion of violence by you on the day. A somewhat unusual feature of this crime is that it arose out of an altercation and exchange of physical force with your brother-in-law, and that after the complainant intervened, the wound was inflicted upon her as an act of excessive self-defence. You have no prior convictions and as a first offender, incarceration is felt by you as a very heavy punishment. I take these matters into account when determining the length of the sentence.

I record a conviction and I impose six months' imprisonment backdated to 7 January 2024.