

The case against George Pell was misguided, unreasonable and vile

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By Greg Craven

The spectacular 7-0 decision of the High Court in favour of Cardinal George Pell is impossible to describe in conventional terms of winning or losing.

It can be understood only in terms of impact. The impact of wrongful imprisonment and vile insult in the case of Pell. The impact of years of legal anxiety, and the final crushing collapse for the complainant.

But the greatest impact will be on the Victorian criminal justice system. How could that proud system get something as important as this so legally wrong so consistently through so many steps over a process that lasted years?

In the final analysis, the decision of the High Court came down to the most basic proposition of the Australian criminal law. Nobody can be convicted of a criminal offence unless that offence is proved beyond reasonable doubt — no matter how much they, or the organisation they represent, may be loathed.

Facts pointing to a reasonable doubt cannot be overcome by anything, even the perception that the person making the allegations presents as highly believable.

And appeal courts are not entitled to ignore factual doubts through deference to the view of a jury that a complainant was deeply convincing.

Because facts, in criminal law, beat impressions. To justify the decision of the High Court, no one has to believe that the complainant was lying. It simply was the case that his evidence could not legally meet the facts.

This is a major part of the tragedy of this case. No one is going to emerge unscathed.

On the one hand, we have a man who has been unjustly imprisoned and reviled. True, his enemies will never again be able to call him a “convicted paedophile” — the High Court has substituted a verdict of acquittal — but his life and reputation have been trashed.

Then we have another man, his accuser, who has been dragged through the thorns of the same justice system over a period of years to what looked like triumph but now is a bitter end.

How could all this have happened?

The grim answer is that the beginning of this disaster was the same as its end: the concept of a reasonable doubt. This never was a case where charges could be proved beyond reasonable doubt.

There always were too many witnesses who were in the right place but saw nothing. Too many mathematical failures of timing. Too many improbabilities of opportunity and action.

Yet it has taken the highest and final court in the land to state the flatly obvious.

From the beginning, in legal circles there was virtually no dispassionate observer who thought the charges could stick: not in terms of being prosecuted, let alone to the point of conviction.

Lonely dissenters hated Pell so much they did not care, said he certainly was guilty of other crimes anyway or that he was the right person to be punished for the general crimes of Catholic clergy. In other words, they had abandoned their legal ethics.

The inescapable conclusion is that Pell was prosecuted on an unwinnable charge for two reasons: first, that there were those within the justice system, particularly the police, who were determined to destroy him; second, that there was a large segment of the media, fuelled by the police and “victims’ lawyers”, that so clamoured for Pell’s conviction that the weaknesses of the case against him were drowned out by howls of accusation.

For many years, police had a dreadful record in prosecuting sexual offences. The slightest difficulty would see them drop a case and the hope of a victim for vindication and affirmation. Lives were ruined and lost.

But with Pell, the police pursued him relentlessly, improperly and publicly. Repeatedly, the Office of Public Prosecutions refused to put the police charges. Finally, the police themselves forced its hand.

The same police force that stalked Pell, giving regular press conferences along the way referring to his “victims”, and briefing selected journalists, is now the subject of a royal commission, effectively into their use of a defence lawyer as an informant.

This is less a culture than a drain.

At the same time, a self-congratulatory media acted as a mob rather than journalists. Instead of reporting a case, they did their best to create an atmosphere conducive to a conviction.

The ABC — supposedly our “most trusted” source of news — was and remains particularly virulent. Its spear carrier is journalist Louise Milligan, whose life’s work has been her book shredding the Cardinal’s reputation.

But after the High Court’s decision, there now will need to be an extra, very uncomfortable chapter.

One remarkable thing is how the ABC sought to trash Pell and the Catholic Church even as the High Court appeal proceeded.

Coincidentally, the first episode of Sarah Ferguson’s Revelation was aired on St Patrick’s Day, while its last — dealing with what falsely were claimed to be “new” allegations against Pell — was rushed forward once the date of the High Court’s decision was announced.

It was almost as if the ABC had the breathtaking arrogance to think that it might influence the decision of our highest court.

But more likely it had to do with opening shots in the second campaign against Pell by the ABC and its media allies, largely being waged to drown out their catastrophic failure in the High Court.

One part of this is to salivate over alleged impending civil claims against Pell. The other is to demand the release of the redacted portions of the royal commission’s report, which they clearly believe will propose charges against Pell for concealing child sexual abuse.

Anyone can be civilly sued, but this has not yet happened to Pell, let alone has a judgment been given. The royal commission conceivably may recommend charges, but they have yet to be laid, heard or adjudged.

The feverish speculation about them is merely the same self-serving, irresponsible behaviour of a media faction that worked so hard to get and keep Pell in jail.

And failed: seven-nil.

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