

<h2 style="margin: 0;">Manslaughter</h2> <h3 style="margin: 0;">Assault - Asphyxiation / Strangulation</h3>

Maximum Penalty: 25 years (s.25 (NSW) Crimes Act)

	Case (age if known)	Type	Plea	Sentence	Appeal	Record	Facts
1.	Dodd (1991) 57 A Crim R 349 NSWCCA	Unlawful and dangerous - assault Assault – general Strangulation	PG	3y PD	Crown AA FT 3y		Strangled victim after she refused sex - voluntary disclosure of guilt to otherwise unsolved crime after 10 years - had sex with woman's body - affected by drugs
2.	Haynes NSWSC Studdert J 25.3.1994	Diminished responsibility Child victim Assault – domestic Strangulation	PG 2 x Mansl	MT 6y AT 6y		driving offence	Strangled and suffocated daughter and stepdaughter during access after argument with estranged wife - children told him they could not see him again and had been subjected to sexual abuse Obsessive personality and depressive disorder - news from children triggered catastrophic depression
3.	Forsyth (20) NSWSC Finlay J 26.7.1994	Diminished responsibility Assault – domestic Strangulation	PG	MT 4y AT 4y			Bashed / strangled girlfriend's mother Brain damage caused by assault - loss of self-control

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4.	Dawney (30) [1999] NSWSC 944 Barr J	Substantial Impairment Child victim Assault – domestic Asphyxiation	PG	MT 5y AT 3y		nil	Mother smothered 3y daughter - father of child taking Family Court action to gain custody Violent upbringing - history of sexual abuse - major depressive illness - borderline and schizotypal personality disorder - stresses at time of offence
5.	Nguyen (mid 40s) [1999] NSWCCA 333	Unlawful and dangerous - assault Assault – domestic Asphyxiation	PG Mansl Kidnapping 2 x Mal discharge rifle Sched: 6 x discharge firearm	MT 6y AT 4y FT 4y FT 4y (all concurrent)	AD	nil	Went to ex-girlfriend's house armed with rifle to confront her about money owing - tied up sister and mother - siege developed when police arrived, and gunfire exchanged - mother died from asphyxiation caused by being gagged and rib broken
6.	Duthie (35) [1999] NSWSC 1224 Newman J	Diminished responsibility Assault – general Strangulation	PG	MT 5y AT 3y		long criminal record	Strangled friend/cell mate in suicide pact - both prisoners on remand and intended to commit suicide – euthanasia Suffering chronic schizophrenia - hepatitis C

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7.	Wang [2000] NSWSC 447 Adams J	Unlawful and dangerous – assault Assault – domestic Strangulation Substantial impairment Poison / drug Child victim	PG Mansl husband Mansl daughter	6y NPP 4y 2y (concurrent)		nil	Female strangled husband and poisoned 1y daughter - attempting to kill self when found by police - accidentally killed husband trying to keep him from preventing her killing herself and daughter Severe depressive illness - daughter suffering from cerebral palsy and worried no one would look after her
8.	Graham (20) [2000] NSWSC 1033 Whealy J	Unlawful and dangerous - assault Assault – general Strangulation	VG (at murder trial)	5y NPP 3y		nil	Became involved in homosexual encounter with stranger in park - pursued by victim when changed mind and attempted to disengage - strangled victim in headlock acting in unreasonable fear for safety Youth - good character - suffering depression - isolated incident
9.	Hawkins (76) [2001] NSWSC 420 O'Keefe J	Substantial impairment Assault – domestic Strangulation	PG (25%)	3y NPP 2y		nil	Strangled wife of nearly 50 years – suffering depression - adverse reaction to overdose of Zoloft (anti depressive medication) Offence completely out of character - excellent personal and family history - remorse - voluntarily surrendered to police - considered suicide but concerned about effect on daughter
10.	Adamson (19) [2001] NSWSC 499 Howie J (2002) 132 A Crim R 511 [2002] NSWCCA 349	Unlawful and dangerous - assault Assault – general Asphyxiation	PG (10%) Mansl 2 x s.61J	11y NPP 7y 6m 8y <u>Total:</u> 14y NPP 10y 6m	AD	malicious wounding	During party had vaginal and anal intercourse with victim knowing she was not consenting - deliberately placed hand over victim's mouth and nose to prevent her calling out, causing asphyxiation Raised alarm and attempted to resuscitate victim

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11.	Masson (23) [2001] NSWSC 1037 Howie J	Unlawful and dangerous - assault Assault – general Accessory Asphyxiation	VG (at murder trial) Rob with wounding Larceny	7y 6m NPP 4y 6m FT 3y 6m FT 18m (all concurrent)		nil	Went with co-offender to house of 75y female acquaintance to borrow money – co-offender unexpectedly suffocated – continued involvement in robbery out of fear - contemplated unlawful and dangerous act by co-offender during robbery - aware that co-offender had knife Supportive family Offender dealt with for murder
12.	Laupama (29) [2001] NSWSC 1082 Bell J	Substantial impairment Assault - domestic Child victim Hanging	PG (just under 10%) Sched: Kidnapping	12y NPP 8y		assault	Hung de facto wife's 5y daughter in noose from pergola following separation from de facto Major depressive illness with PTSD, social phobia, substance dependence - sexually assaulted as child
13.	Tran (25) [2003] NSWSC 373 Greg James J	Unlawful and dangerous – assault Assault – domestic Asphyxiation	PG	5y NPP 2y 3m		Nil	Went to bed with partner – both intoxicated – killed partner during night possibly by suffocation – verging on automatism due to intoxication and sleep disorder – vague as to details – disposed of body – lower end of culpability Prior good character – good prospects of rehabilitation – Vietnamese
14.	Hoerler (20) [2003] NSWSC 1187 Miles AJ (2004) 147 A Crim R 520 [2004] NSWCCA 184	Unlawful and dangerous - assault Assault – domestic Child victim Asphyxiation	PG (10%) Sched: 5 unrelated offences	11y NPP 8y 3m	Crown AA 14y 4m NPP 10y 9m	Mal damage, burglary, assaults	Multiple injuries to 7m son of de facto – punch forced lower teeth into roof of mouth – punch to abdomen – clamp to toes causing breaks – died by asphyxiation or vomit inhalation Protective custody

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15.	Dawes [2004] NSWCCA 363	Substantial impairment Assault – domestic Child victim Asphyxiation	PG	5y GBB	Crown AD	Nil	Mother suffocated 10y autistic son – suffering major depressive illness – unable to obtain proper assistance or intervention – victim very difficult to manage – verbal and physical abuse by husband – illness and death of family members – step father physically abusing daughter – made serious attempt at suicide Depressive illness - remorse and contrition – evidence of rehabilitation with daughter
16.	Hamoui [No.4] (27) [2005] NSWSC 279 Kirby J	Provocation Assault – domestic Strangulation	VG (at murder trial)	11y NPP 8y		Serious offences involving violence – breached bail	Strangled girlfriend and left body in car –circumstances of killing not clear – victim bound at some stage – intent to kill – gratuitous cruelty – victim’s relationships with other men probable provocation Physically and emotionally abused as a child – no contrition but evidence of rehabilitation in jail – resumed religious studies – engaged to sister of another inmate – possible mental illness
17.	Nicol (86) [2005] NSWSC 547 Hulme J	Substantial impairment Assault – domestic Asphyxiation	PG	2y NPP 1y Suspended		Nil	Assaulted wife with iron bar and asphyxiated her with plastic bag – intent to kill Elderly couple with many health problems – depression – genuine attempt at suicide
18.	Massei [2005] NSWSC 1030 Adams J [2006] NSWSC 1298 Adams J	Substantial impairment Assault – domestic Asphyxiation	PG (25%)	Sentencing initially deferred for 12m 5y 6m NPP 2y 9m 14d			Awoke during night and struck wife with glass ornament – placed sufficient pressure on throat to break bone – doused victim with accelerant and set fire to unit – cause of death probably suffocation or asphyxiation – victim died before burned by fire Suffering chronic and severe depression – Argentinian – separated from wife but on good terms – attempted suicide after lighting fire

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19.	Leach (23) [2007] NSWSC 429 Hulme J (2008) 183 A Crim R 1 [2008] NSWCCA 73	Unlawful and dangerous - assault Assault – domestic Child victim Asphyxiation	PG (10%) Sched: 2 x AOABH	7y 6m NPP 4y 6m	AA 6y NPP 3y 6m	Nil	Father killed 7w daughter by asphyxiation – sat on unsettled daughter to stop her crying – assault offences constituted by hitting victim on head with hand Intellectually disabled – depressive disorder – frustrated at inability to settle child – good character – remorse – excellent prospects of rehabilitation
20.	Hansell (31) [2007] NSWSC 1136 Latham J	Excessive self defence Assault – domestic Strangulation	PG (15%)	3y 4m NPP 2y		Nil relevant	After evening of drinking with friends victim turned violent and seriously assaulted offender's brother and wife – offender held victim around neck blocking airway – intent to restrain not choke – element of punishment and recklessness – lower end of scale of seriousness Good character – married with daughter – genuine remorse
21.	Frost [2008] NSWSC 220 Barr J	Provocation Assault – domestic Strangulation	PG	6y NPP 3y 6m		Nil	Ex-wife visited from Philippines and asked to take youngest daughter back for purpose of prostitution – choked ex-wife – panicked and buried body – left trail suggesting victim returned to Philippines
22.	Paddock (78) [2009] NSWSC 369 Rothman J	Substantial impairment Assault – domestic Asphyxiation	PG (20%)	6y NPP 4y 3m		Nil	Suffocated 70y partner preparing to move out – attempted to kill self – mid-range – significant impairment Paranoia and early dementia
23.	Nguyen (No.2) (29) [2009] NSWSC 1120 Hoeben J	Substantial impairment Assault – domestic Child victim Asphyxiation	VG Manslaughter Manslaughter	5y NPP 3y 5y NPP 3y <u>Total</u> 6y NPP 4y		nil	Vietnamese mother killed 5y son and 3y daughter – attempted to kill children with rat poison – suffocated both children then took poison herself – made several unsuccessful attempts at suicide - distressed at husband's infidelity and leaving relationship – severe depression – killings had an element of retribution although primarily altruistic Severe depression Genuine remorse

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24.	Gloginya (41) [2009] NSWSC 1435 McCallum J	Unlawful and dangerous Assault – domestic Strangulation	PG (10%)	7y 8m NPP 4y 9m		Record for lesser offences of violence – no offences since 1998	Shared residence as carer for 56y male victim – difficult relationship and offender had taken recent steps to end responsibilities – spontaneous offence – Strangled victim although circumstances of killing unclear Suffering brain injury
25.	Cavanagh [2010] NSWSC 670 Rothman J	Substantial impairment Assault – domestic Strangulation	VG (at murder trial – 25% for offer)	9y NPP 5y		nil	Strangled mother with extension cord - separated from wife and children – victim loaned money to offender to assist with keeping his home for children – home transferred into victim's name – relationship between victim and offender deteriorated – victim suffering from early dementia – offender suggested they move into separate premises – victim responded by telling offender and children to leave - offender attacked victim – brutal killing – approaches but not in worst category Major depressive illness from marriage breakdown and access to children – good character – good rehabilitation prospects – remorse
26.	Mathers [2011] NSWSC 339 Hall J	Substantial impairment Asphyxiation Assault - domestic	PG	2y suspended sentence		Nil	Assisted partner to commit suicide - ingestion of amitriptyline tablets and final act of suffocation - long relationship of 22 years – victim suffered pain from spinal condition and expressed wish to die in suicide note – participation would not have been discovered but for offender's disclosures to police – suffering depressive illness/adjustment disorder - only motive was to assist victim carry out her express intention - no lengthy period of planning or premeditation - culpability at low end of range of sentences for manslaughter - leniency due to disclosures, confession of guilt and plea of guilty

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27.	Li (22) [2012] NSWSC 477 Adamson J	Unlawful and dangerous – assault Assault – domestic Asphyxiation	PG (25%) Mansl Agg Rob 8 x Obtain money by deception	10y 6m NPP 7y FT 6y FT 1y <u>Total</u> 12y NPP 8y 6m		Nil	63y male met with offender for sexual encounters on various occasions – male found at home bound and gagged - died by asphyxiation – offender had beaten and bound victim and left him abandoned – taken ATM cards and made number of withdrawals totalling \$7k – did not check to see whether victim was alright Student from China - support from family.
28.	McCann (67) [2012] NSWSC 1462 Barr AJ	Excessive self defence Assault – domestic Strangulation	VG (murder trial)	7y NPP 3y 6m		Nil	Strangled boarder staying at offender's home with nylon cord after argument – offender disliked and feared victim – mental issues gave rise to increasingly erratic behaviour by offender Depression / bipolar – prior good character.
29.	Kain [2013] NSWSC 638 Adams J	Unlawful and dangerous - assault Assault - domestic Strangulation	PG (25%)	6y 9m NPP 4y		Nil	Strangled mother following argument – had lived together – immediately called sister and confessed Offence out of character - offender suffered dementia - state of mind likely to have prevented him truly appreciating likely outcome of his actions - cognitive impairment caused by brain damage caused delay in processing information – dementia caused loss of control in extent of violence inflicted
30.	Salcedo (24) [2014] NSWSC 1099 Adams J	Unlawful and dangerous Assault – domestic Strangulation	VG (murder trial - 15% for offer)	4y NPP 2y		Record including low level violence – breached suspended sentence and bail	Pulled and twisted scarf on girlfriend as she tried to stop him leaving unit – caused compression of blood vessel but no other injury – moderate force only - very unexpected death – did not intend harm – no argument – victim amphetamines intoxication significantly contributed to death - well within lowest range History of psychotic symptoms and schizophrenia – drug use - reduced moral culpability and general deterrence but increased focus on personal deterrence

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31.	Telemete (30) [2015] NSWSC 909 Adams J	Unlawful and dangerous - assault Assault – general Asphyxiation Fight - assault Accessory	VG (murder trial – 25% for offer)	7y 6m NPP 4y 6m		Trivial offence	Fight between group of Samoan born men and victim and friends after midnight on street – all intoxicated – victim assaulted and kicked by co-offender – offender inflicted some injuries – victim died from positional asphyxiation – offender left scene unaware of seriousness of injuries Genuine remorse – out of character – good prospects of rehabilitation
32.	Duffy (No.7) (34) [2015] NSWSC 1321 Davies J [2017] NSWCCA 77	Unlawful and dangerous - assault Assault - General Accessory Strangulation	VG (murder trial) Mansl PG (25%) Steal from dwelling house	12y NPP 8y FT 2y Total: 12y 8m NPP 8y 8m	AD	Contravening domestic violence restrictions, break and enter, behave offensive manner.	Co-offender strangled female victim with belt around her neck while offender held victim down - victim met co-offender at hotel and invited offender, co-offender and others to parents' place – all parties affected by drug and alcohol – victim killed after sexual involvement with offender – buried in shallow grave at property – guns and other property stolen from property after killing - spontaneous killing - above mid-range of objective seriousness No psychiatric or psychological issues - drug and alcohol abuse – lack of remorse – poor prospects of rehabilitation – continued illicit drug use in custody - supportive family. Co-offender sentenced for murder: <i>Evans</i> [2015] NSWSC 254
33.	Errington (29) [2018] NSWSC 79 Adamson J	Unlawful and dangerous - assault Assault – domestic Asphyxiation	VG (at murder trial – 35% for offer to plead and assistance)	8y 5m NPP 6y 4m		AR - robbery - firearm offences	Offender and girlfriend came to live with half-brother – offender's ice addiction caused serious tension with victim – following argument offender punched and assaulted victim with cooking pot causing loss of consciousness - hog-tied and gagged victim and left him in unit – returned two hours later to discover victim had died as a result of cardiac arrest or asphyxiation - did not contact police but made arrangements for escape - above mid-range but not in most serious category. Assistance – remorse – drug addiction Note: co-offender acquitted on appeal: [2019] NSWCCA 260

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34.	Dowdle (57) [2018] NSWSC 240 Hamill J	Assault – Domestic Substantial Impairment Asphyxiation	PG (25%)	3y NPP 2y		PCA	Female - killed adult son severely disabled from car accident – disability caused son to drink and be physically abusive towards mother over long period – received little support - administered sedatives then placed plastic bag over head Suffering major depressive disorder with underlying psychiatric conditions - remorse
35.	Patel (30) [2018] NSWSC 952 Lonergan J [2019] NSWCCA 170	Excessive self- defence Asphyxiation / strangulation Assault - general	VG (murder trial - 15% for offer to plead)	9y 4m NPP 7y	AD	Nil	Female - killed female victim – victim to marry offender's friend with whom offender had been sexually involved – in confrontation offender threatened by victim with knife resulting in physical struggle - victim died by strangulation and suffocation – failure by offender to try to resuscitate or call 000 - serious offence of its kind – killing occurred in home of victim. Good prospects rehabilitation - good character - unlikely to reoffend
36.	Hutchison (36) [2019] NSWSC 25 Hamill J Co-offender: WILKINSON	Excessive self- defence Substantial impairment Assault – domestic Asphyxiation	VG (murder trial – 25% for early offer)	9y NPP 5y 6m		Nil	Female – brutal premeditated attack on ex-husband in company of new fiancé - tricked victim into returning home to extract confession that victim had abused or mistreated their two children - victim struck and punched numerous times suffering broken nose - use of electric prod - offence committed in presence of 9y son - victim aspirated food into lungs and died of asphyxia – body placed in boot of car and dumped on roadside - precise roles of each offender not known though evidence shows H was major perpetrator - most serious example of manslaughter due to planning and premeditation of assault - intention to inflict GBH formed after attack while offender in a rage – offender's compromised mental state led to belief actions necessary to protect children due to allegations by children – excessive response - mother kills children's father Chronic mental health issues arising from early child sexual assault – drug abuse – difficult relationships

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37.	Wilkinson (39) [2019] NSWSC 235 Hamill J Co-offender: HUTCHINSON	Assault – domestic Asphyxiation Accessory	VG (at murder trial – 25% for offer)	8y NPP 4y 9m		minor offences	Planned assault of partner's ex-husband to obtain confession to his assaults on son – victim lured to his own home where he was assaulted by co-offender – offender involved in assault to lesser extent - injuries and ligature caused asphyxiation – committed in company, in presence of victim's 9y son and in home of victim – panicked when victim died and dumped body by side of dirt road Prior good character – good prospects of rehabilitation - remorse
38.	Davidson (No.3) [2020] NSWSC 58 Davies J	Unlawful and dangerous - assault Assault – General Strangulation	VG (at murder trial)	11y NPP 7y		serious violent offences	Unable to form intent for murder due to intoxication from drugs – walked into cell of another prisoner during day and closed door – choked victim and assaulted him fracturing several ribs – offender left cell and victim found by another prisoner – sustained assault – no history of animosity - mid range seriousness - offence committed while awaiting sentence for attempt to choke different cell mate - major factor in offending was drugs although underlying mental illness also taken into account – deterrence and community protection significant Commenced drug use as a child – very low intellectual capacity – onerous custodial conditions as a result of offences – institutionalised – special circumstances
39.	Songcuan (No.3) (73) [2023] NSWSC 183 Campbell J	Strangulation / choking Extreme provocation	VG (murder trial – 25% for offer)	7y 6m NPP 6y		Nil	Strangled wife who wrongly believed offender having affair – deceased aggressive and physically violent toward offender – offender felt he “had no choice but to silence her” - put arm around throat and his hand over mouth, applied pressure until deceased calmed down and stopped breathing - attempted to make scene look like a suicide with fake suicide note by deceased. Cumulative provocation over years by deceased, aggressive and controlling towards offender, with physical violence and threatening to kill him if unfaithful - provocation intensifying over short period up to killing, with degree of physical violence in minutes leading up to offender losing immediate self-control. Advanced age – good character.

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