HIGH COURT OF AUSTRALIA

20 June 2018

PAUL IAN LANE v THE QUEEN
[2018] HCA 28

Today the High Court unanimously allowed an appeal from the Court of Criminal Appeal of the Supreme Court of New South Wales.

The appellant was charged with murder. The offence was alleged to have occurred during an altercation between the appellant and the deceased. CCTV footage of the incident showed the deceased falling to the ground on two occasions. On the first occasion, the deceased retreated towards a roadway, with the appellant in pursuit, before falling backwards and striking his head. After rising to his feet, the deceased could be seen to fall to the road a second time. After the second fall, the deceased lost consciousness, and died in hospital nine days later. The jury acquitted the appellant of murder, but found him guilty of manslaughter.

The appellant appealed against his conviction to the Court of Criminal Appeal of the Supreme Court of New South Wales. The Court of Criminal Appeal held that the trial judge had erred in failing to direct the jury that it must be unanimous in its deliberations as to the factual basis on which it might convict the appellant of manslaughter; that being the first fall, the second fall, or both falls. However, the Court of Criminal Appeal, by majority, dismissed the appeal under the proviso to s 6(1) of the *Criminal Appeal Act* 1912 (NSW), on the basis that no substantial miscarriage of justice had actually occurred. The majority held that the evidence was not capable of supporting a finding beyond reasonable doubt that a deliberate act of the appellant caused the first fall. The absence of a specific unanimity direction did not prevent the jury from considering the appellant's guilt on the basis that his deliberate act caused the second fall and, having done so, it was not open to the jury to have had a reasonable doubt as to his being guilty of manslaughter by that unlawful and dangerous act.

By grant of special leave, the appellant appealed to the High Court on the ground that the majority of the Court of Criminal Appeal erred in applying the proviso. The High Court accepted this contention. The Court noted that the case was left to the jury on the basis that it was open to it to convict the appellant by pooling individual jurors' conclusions on issues in respect of which the jury was required to be unanimous. Irrespective of whether an appellate court might conclude that the evidence in respect of the first fall was incapable of supporting a conviction, it was distinctly possible that some jurors may have convicted on the basis of the first fall alone. To dismiss the appeal, as the majority of the Court of Criminal Appeal did, was to disregard the requirement of a unanimous verdict on the part of the jury and to substitute trial by appeal court for trial by jury. The Court held that such an error is apt to deny the application of the proviso because it means that it cannot be said that no substantial miscarriage of justice has actually occurred.

Accordingly, the Court ordered that the appellant's appeal be allowed, his conviction be quashed, and a new trial be had.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*

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