



HIGH COURT OF AUSTRALIA

Public Information Officer

10 November 2004

KALA SUBRAMANIAM v THE QUEEN

The conduct of Ms Subramaniam's trial under the New South Wales *Mental Health (Criminal Procedure) Act* did not fully comply with the Act, the High Court of Australia held today.

In August 1995, a car owned by Sydney solicitor Leigh Johnson failed to stop at a red light on Crown Street, Surry Hills. The driver's identity could not be made out from the red-light camera photograph. Ms Johnson contested the charge. In February 1996, her employee Ms Subramaniam made a statutory declaration that she had been driving the car. However, the prosecutor refused to discontinue the case and to send an infringement notice to Ms Subramaniam. Ms Johnson was convicted in absentia in the NSW Local Court but successfully appealed to the District Court. In December 1996, Ms Subramaniam was charged with knowingly making a false statutory declaration and giving false evidence to the District Court. She was committed to stand trial.

At her first trial in the NSW District Court in August 1999 the jury failed to reach a verdict. Her mental health had begun to deteriorate and she applied for a permanent stay of proceedings. The District Court rejected this and the Court of Criminal Appeal dismissed an appeal. In March 2001, the District Court directed that there be a hearing with respect to Ms Subramaniam's fitness to stand trial. In September 2001, the Mental Health Review Tribunal found she was unfit to stand trial. She had been diagnosed with an adjustment disorder with severe anxiety and depressive features. The NSW Attorney-General, in accordance with section 19 of the Act, directed that a special hearing be conducted into the charges.

The late Judge Charles Luland refused an application for a permanent stay and the trial by special hearing before a jury of 12 proceeded. A special hearing is similar to a criminal trial, with some added requirements. Among these, section 21(4) of the Act specifies that the judge at the outset must explain to the jury that the accused is unfit to be tried under normal procedures, the meaning of unfitness to be tried, the purpose of the special hearing, the verdicts available and the legal and practical consequences of those verdicts. Ms Subramaniam was found not guilty of giving false evidence but guilty of making the false statutory declaration. The Court of Criminal Appeal, by majority, dismissed an appeal.

Ms Subramaniam appealed to the High Court on a number of grounds, including the ground that the special hearing miscarried because Judge Luland failed to comply with requirements imposed by section 21(4). The Court unanimously allowed the appeal on this ground, holding that his introductory remarks fell short of what was required. The mandatory nature of section 21(4) was not satisfied by Judge Luland's other remarks during the trial, his summing-up, his answer to a question from the jury, or counsel's submissions. Such a departure from section 21(4) constituted a miscarriage of justice which required the conviction to be quashed. The Court ordered a new trial, pointing out that it would be for the prosecution to decide whether to proceed.

- *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.*