



HIGH COURT OF AUSTRALIA

9 August 2017

IL v THE QUEEN
[2017] HCA 27

Today the High Court, by majority, allowed an appeal from a decision of the Court of Criminal Appeal of the Supreme Court of New South Wales.

The appellant was tried in the Supreme Court of New South Wales. Count 1 on the indictment charged the appellant with manufacturing a large commercial quantity of a prohibited drug, namely methylamphetamine. Count 2 charged the appellant with murder, or alternatively manslaughter, pursuant to s 18(1) of the *Crimes Act* 1900 (NSW).

At trial, the Crown alleged that the appellant had committed the offence in Count 1 by participating with the deceased in a joint criminal enterprise to manufacture a large commercial quantity of methylamphetamine. The Crown case on Count 2 was that the appellant was guilty of "felony" or "constructive" murder, or alternatively manslaughter, because the act which caused the deceased's death was committed in the course of the joint criminal enterprise to manufacture a large commercial quantity of methylamphetamine, an offence punishable by imprisonment for life. The act causing death was the lighting of a gas ring burner in a small and inadequately ventilated bathroom, which caused a fire. Although the Crown could not exclude the possibility that the deceased had lit the gas ring burner himself and so was killed accidentally as a result of his own act, the Crown argued that, because the appellant participated with the deceased in the joint criminal enterprise, the appellant was criminally liable for all acts committed in the course of carrying out that enterprise for the purposes of s 18(1) of the *Crimes Act*.

At the close of the Crown case, the appellant moved for directed verdicts of not guilty in respect of each of the alternative counts in Count 2. The trial judge acceded to that application and directed the jury accordingly. On appeal, the Court of Criminal Appeal held that the trial judge was incorrect to direct a verdict of acquittal on each of the alternative counts.

By grant of special leave, the appellant appealed to the High Court. By majority, the Court allowed the appeal. Three Justices allowed the appeal on the basis that s 18(1) of the *Crimes Act* is not engaged if a person kills himself or herself. Two Justices allowed the appeal on the basis that it is not open to attribute criminal liability to one participant in a joint criminal enterprise for an act committed by another participant in the course of carrying out that enterprise unless the act is, or is part of, the actus reus of a crime. Assuming the deceased lit the gas ring burner, that act was not the actus reus of the crime of murder or manslaughter. The appeal was therefore allowed, and the verdicts of acquittal on Count 2 reinstated.

- *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.*