



HIGH COURT OF AUSTRALIA

13 September 2017

THE QUEEN v KRITSINGH DOOKHEEA [2017] HCA 36

Today the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of Victoria concerning jury directions on the criminal standard of proof.

The respondent was charged with the murder of the deceased and stood trial in the Supreme Court of Victoria. The sole issue at trial was whether the respondent had acted with murderous intent. The evidence showed that, shortly after the deceased arrived at the respondent's home, a violent physical altercation started between the deceased and the respondent, during which the deceased attempted to flee from the respondent. It was accepted that the respondent placed his hands around the deceased's neck and squeezed until the deceased stopped resisting. The trial judge directed the jury that the Crown had to satisfy the jury of the respondent's guilt "not beyond any doubt, but beyond reasonable doubt". The respondent was convicted of murder.

The respondent appealed against conviction on a number of grounds and the Court of Appeal allowed the appeal on the ground that the trial judge erred in directing the jury that the Crown was required to satisfy them of guilt "not beyond any doubt, but beyond reasonable doubt". The Court of Appeal concluded that it was an error to suggest to the jury that they may entertain a doubt which is not a "reasonable" doubt and on that basis proceed to convict the respondent.

By grant of special leave, the Crown appealed to the High Court on the question of whether it was an error of law productive of a substantial miscarriage of justice for the trial judge to direct the jury that the Crown had to satisfy the jury of the respondent's guilt "not beyond any doubt, but beyond reasonable doubt". The Crown argued that although the trial judge had strayed from the traditional formulation of the criminal standard of proof by directing the jury in those terms, it was not an error to do so and, in any event, it was not productive of a substantial miscarriage of justice because the charge taken as a whole sufficiently made clear to the jury that the respondent was to be given the benefit of any reasonable doubt.

The Court held that a reasonable doubt is what a reasonable jury considers to be a reasonable doubt. Although it is generally speaking undesirable for a trial judge to contrast reasonable doubt with any doubt, in point of principle it is not wrong to notice the distinction and it is therefore not necessarily determinative of an appeal against conviction that the trial judge directed the jury by reference to that distinction. In this case, it could not be supposed that the jury might have been left in any uncertainty as to the true meaning of the need for proof beyond reasonable doubt. Accordingly, the appeal was allowed.

- *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.*