HIGH COURT OF AUSTRALIA

10 August 2022

DANSIE v THE QUEEN
[2022] HCA 25

Today, the High Court allowed an appeal from a decision of the Full Court of the Supreme Court of South Australia sitting as the Court of Criminal Appeal ("Court of Criminal Appeal"). The issue on appeal was whether the majority of the Court of Criminal Appeal correctly applied the test in *M v The Queen* (1994) 181 CLR 487 ("*M*") to determine whether the verdict of guilt in respect of the appellant was unreasonable or could not be supported having regard to the evidence.

The appellant was tried and convicted of the murder of his wife, by judge alone, in the Supreme Court of South Australia. The prosecution case was that the appellant had deliberately pushed his wife's wheelchair into a pond in the South Parklands in Adelaide with the intention of drowning her. The defence case was that she had drowned as a result of her wheelchair accidentally entering the water whilst the appellant was attempting to manoeuvre it away from the pond. The issue at trial was whether the prosecution could prove that the appellant murdered his wife, thus excluding accidental drowning as a reasonable possibility. At trial, there was little dispute about the primary facts established by the evidence. The critical question was what inferences could be drawn from those primary facts. The trial judge drew a number of inferences adverse to the appellant and concluded that the only rational inference available on the whole of the evidence was that the appellant deliberately pushed the wheelchair into the pond with intent to kill his wife. The trial judge therefore found the prosecution had proved its case beyond reasonable doubt.

The majority of the Court of Criminal Appeal dismissed the appeal against conviction on the unreasonableness ground. Placing particular reliance on reasoning in a decision prior to *M*, the majority reasoned that the inferences drawn, and the weight to be given to those inferences, were primarily matters for the trial judge as the trier of fact.

The High Court unanimously found that the majority of the Court of Criminal Appeal had misapplied the test in *M.* As a consequence of *M*, prior formulations of principle on the unreasonableness ground must be approached with caution. What each member of the Court of Criminal Appeal needed to do in order to apply the test in *M* in the circumstances of this case was to ask whether they were independently satisfied, as a result of their own assessment of the whole of the evidence adduced at trial, that the only rational inference available on that evidence was that the appellant deliberately pushed the wheelchair into the pond with intent to kill his wife and, if not, whether the satisfaction arrived at by the trial judge could be attributed to some identified advantage which the trial judge had over the appeal judge in the assessment of the evidence. The matter was remitted to the Court of Appeal of the Supreme Court of South Australia for rehearing.

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.

Please direct enquiries to Ben Wickham, Senior Executive Deputy Registrar
Telephone: (02) 6270 6893 Fax: (02) 6270 6868
Email: enquiries@hcourt.gov.au Website: www.hcourt.gov.au