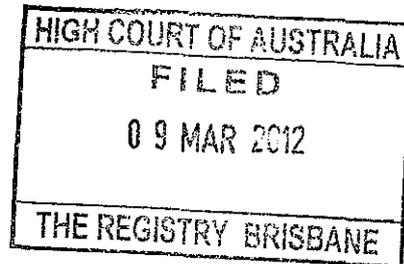


BETWEEN

JAYANT MUKUNDRAY PATEL
and
THE QUEEN



Appellant/
Applicant
Respondent

10 APPELLANT'S CHRONOLOGY

Part I: Certification that the chronology is in a form suitable for publication on the internet

We certify that the chronology is in a form suitable for publication on the internet.

Part II: List of principal events

20 PART IIA: CHRONOLOGY RELATING TO PATIENTS

<u>Date</u>	<u>Chronology</u>
19 May 2003	Dr Patel operates on Mr Phillips, performing oesophagectomy, at the Bundaberg Base Hospital.
21 May 2003	Mr Phillips dies. [This incident formed the basis for an indictment of manslaughter.]

Chronology continued overleaf

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Filed on behalf of:	The Appellant
Prepared by:	Raniga Lawyers Suite 4, Level 1, 123 Browns Plains Road BROWNS PLAINS QLD 4118 Tel: (07) 3800 5055 Fax: (07) 3800 5155 Ref: Mr Raniga

23 May 2003	Dr Patel operates on Mr Morris, performing a removal of his sigmoid colon, at the Bundaberg Base Hospital.
6 June 2003	Dr Patel operates on Mr Grave, performing an oesophagectomy at the Bundaberg Base Hospital. [Mr Grave's case was not the subject of any charge.]
14 June 2003	Mr Morris dies, 24 days after the operation. [This incident formed the foundation for an indictment of manslaughter.]
4 October 2004	Dr Patel operates on Mr Vowles, surgically removing his large bowel and rectum and performing an ileostomy at the Bundaberg Base Hospital. [This incident formed the basis of the indictment for unlawfully causing grievous bodily harm.]
20 December 2004	Dr Patel operates on Mr Kemps, performing an oesophagectomy at the Bundaberg Base Hospital.
21 December 2004	Mr Kemps dies. [This incident formed the foundation of an indictment for manslaughter.]
March 2005	Dr Patel leaves the Bundaberg Base Hospital and returns to the USA.

PART IIB: CHRONOLOGY RELATING TO TRIAL

<u>Day of trial</u>	<u>Chronology</u>
Day 1	<p>Crown opens case against Dr Patel. No particulars provided at this time but the opening contains broad and wide-ranging allegations, consistent with broad "original" particulars that will be provided progressively until Crown case is narrowed by revised particulars provided on Day 43.</p> <p>Crown opens case in relation to Mr Morris that includes allegations that Dr Patel died from a combination of the surgery conducted by Dr Patel, or inadequate post-operative case supervised by Dr Patel.</p> <p>It is opened that the case against Dr Patel includes that Mr Morris died, inter alia, of post-operative malnourishment for which Dr Patel was responsible.</p> <p style="text-align: right;">(T1-50 – T1-51)</p>
Day 2	<p>Crown continues to open case.</p> <p>In relation to Mr Phillips the case opened includes allegations relating to alleged incompetent surgery by Dr Patel and his surgically, inadvertently tearing the oesophagus.</p> <p>Facts concerning the case of Mr Grave (his case was not the subject of any</p>

	<p>charge) are opened to the jury.</p> <p>A case of incompetent surgery is opened. (T2.12 L40-60)</p> <p>It is opened that Dr Patel put on a fit of pique when it was suggested to him that Mr Grave be transferred to Brisbane and that Dr Patel threatened to resign (T2.13 L40-60)</p> <p>Case in relation to Mr Vowles opened (T2.14 L40 – T2.16)</p> <p>Case in relation to Mr Kemps opened.</p> <p>Crown opens case that Dr Patel improperly caused a ventilator to be turned off on a brain dead patient not in accordance with proper procedures so that he could get the operation done on Kemps sooner and go on a holiday. (T2.18 L10 – T2.20 L10)</p> <p>Kemps' case opened as one involving incompetent surgery with Dr Patel's conduct of operation causing excessive bleeding (T2.20 L20 – T2.20 L40)</p> <p>Further opened that Dr Patel took too long to take Mr Kemps back into surgery to fix bleeding problem and that when he did he was unable to find the source of the bleeding. (T2.20 L40 – T2.21 L20)</p> <p>Crown commences calling its witnesses, commencing with the case concerning Mr Morris.</p>
<p>Day 5</p>	<p>Discussion between trial judge and counsel (T5.24 L40 – T5.31). Judge notes that defence counsel has not pressed earlier for full particulars (T5.26 L1-L20).</p> <p>However, Counsel for defence makes clear that defence does require particulars to be provided of each of the matters that the Crown has to prove to establish criminal responsibility (T5.28 L12-18).</p> <p>First witness, Ms Whitfield, called as witness by Crown. She is the daughter of Mr Morris. A considerable focus of her evidence is the condition of Mr Morris after the operation and the pain he was in. (T5.39 L40 – T 5.43 L30)</p>
<p>Day 6</p>	<p>First set of particulars delivered by Crown. They relate to the Morris Case. They are marked "K" for identification.</p> <p>Defence counsel requests that particulars concerning the case of Mr Phillips be provide (T6.2 L33)</p> <p>Trial judge begins what is to become a series of consistent, serious criticisms about the incoherence of the particulars.</p> <p><i>"...well, judging by this morning's particulars it is about to become considerably more difficult..."</i> (T6.5 L8-L10)</p> <p>Defence counsel makes clear that he requires the particulars in relation to Mr Phillips before the evidence on Mr Phillips commences (T6.8 L20)</p>
<p>Day 7</p>	<p>Trial judge says</p> <p><i>"I haven't counted the number of alternate cases pleaded [on Mr Morris] but it would be at least a dozen wouldn't it?"</i> (T7.77 L10-15)</p>

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	Counsel for Crown responds: “ <i>Not quite</i> ” (T7.77 L18)
Day 8	<p>Trial judge raises concern that a natural reading of s. 288 criminalises a negligently performed surgical operation but might not be thought to say anything that bears upon an allegedly negligent decision to operate (T8.27 L20-45).</p> <p>Trial judge raises concern as to how Crown case fits into s. 288 (T8.78 L55 – T8.79 L15)</p>
Day 9	Judge accepts that a lot of “ <i>mud</i> ” is being thrown at Dr Patel by the Crown but expresses optimism that case will be “ <i>pared back by the time it goes to the jury...</i> ” (T9.4 L6-10)
Day 10	<p>Defence makes unsuccessful application to have jury discharged.</p> <p>Trial Judge expresses the view that the fact that the particulars are too broad will be overcome if the Crown narrows the case by the time addresses commence so that a more confined and digestible case can be put to the jury. Counsel for defence refers to fact that prejudicial evidence will be led. Trial judge accepts viability of this course provided that Crown case is narrowed by the time it is put to the jury.</p> <p>Trial judge delivers reasons for refusing application for discharge of jury (T10.46 L10 – T10.49 L10)</p> <p>Counsel for defence then submits that he objects to the trial proceeding in relation to the case of Mr Phillips, given the failure of this application, in the absence of particulars and adequate time to obtain instructions (T10-82 L30)</p>
Day 11	Counsel for defence submits that he is still waiting for final particulars concerning the case of Mr Phillips (T11.60)
Day 12	<p>Original particulars provided in relation to case concerning Mr Phillips and marked “O” for identification. (T12.3 L48)</p> <p>Trial judge reads the particulars and exclaims “<i>Oh Dear</i>” (T12.3 L51)</p> <p>Counsel for the defence submits that he has not had the opportunity to absorb them (T12.5 L4).</p> <p>Counsel for Crown confirms that Phillips case involves allegations that the operation should never have taken place and that it was performed badly, with a lack of competence (T12.5 L10 – 20; L 30-43)</p>
Day 13	Evidence commences in relation to case concerning Mr Phillips.
Day 20	<p>Trial judge says to counsel that the case has to be brought within s. 288 (T20.79 L50)</p> <p>Trial judge says “<i>I am completely befuddled</i>” referring to Crown case (T20.80 L1)</p> <p>Trial judge says: “<i>The idea that the case could go to the jury as a disconnected set of</i></p>

	<p><i>complaints or criticisms about what was done is not only unappealing but very likely to be erroneous in law. So some careful analysis before the addresses begin awaits us...</i></p> <p>(T20.82 L 30)</p>
Day 21	<p>Trial judge expresses further concern as to how one can bolster a case of gross negligence causing death by reference to other acts or omissions not causally related to death (T21.5 L50-60)</p> <p>Judge foreshadows possibility “...for all I know we may then be confronting, 10 weeks down the track, an application to discharge without verdict because the jury will have heard so much that can't ultimately be left to them.”</p> <p>(T21.8 L 34-45)</p>
Day 22	<p>Trial judge says “How much more complicated can the case be made?” (T22.6 L55)</p>
Day 23	<p>Particulars in relation to Mr Grave handed up with qualification that they are not particulars of a charge with respect to Mr Grave (T23.11 L34-50)</p>
Day 26	<p>Trial judge raises issue again of role of s.288 and the breadth of prosecution case. His Honour indicates that he has no concluded view but indicates:</p> <ul style="list-style-type: none"> (a) he has not found a case where s. 288 or its counterparts in other jurisdictions, have been found to extend beyond the operation itself to a pre-surgery decision to operate (T26.10 L11-20); (b) he expresses view (not concluded) that s. 288 concerns a duty of care in administering treatment but it is by no means obvious that it has anything to do with a decision whether to undertake surgery (T26.11 L1-20). <p>Judge says:</p> <p><i>“Now, I reiterate, I have no concluded view about the reach of s. 288, but if it does not extend to presurgery advice to the patient to undergo the procedure – that is to say, if it does not potentially criminalise negligent advice – then surely it is better to confront the ramifications of that sooner rather than later, especially as the trial has several weeks left to run.”</i></p> <p>(T26.11 L12-22)</p> <p>Counsel for defence puts on record that the defence is waiting for the Crown to provide the arguments to support the proposition that s.288 can extend to a decision to operate. Counsel points out that the Crown is moving from second case to third and that defence would like the matter resolved sooner rather than later (T26.13 L40-50)</p> <p>Judge raises serious concerns about the large litany of complaints being made against Dr Patel and what the actual Crown case is under s. 288 (T26.80 L3→; T26.88)</p> <p>The trial judge refers to “the myriad number of alternative cases that have been propounded” and says they do not “sound like” a case where a decision</p>

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	<p>to operate should not have been made. (T26.83 L49-55)</p> <p>Judge says:</p> <p><i>“Now, this is where you run fair and square into the scope of section 288, because on one view it is restricted in its reach to botched surgery, not surgery which ought not to have been commended to the patient for the patient’s decision”.</i> (T26.86 L1-5)</p> <p>The trial judge describes the contrary view as not being likely but says he remains open to persuasion on the question (T26.86 L1-15)</p> <p>Trial judge refers to the optimism of the Crown that <i>“by the time we get to the conclusion of the evidence or the addresses, the range of alternative cases that you wish to leave to the jury will be narrowed...”</i></p> <p style="text-align: right;">(T26.84 L1-5)</p>
Day 28	Evidence commences concerning the case of Mr Kemps.
Day 30	<p>Judge says:</p> <p><i>“Enough of these things that have nothing to do with what may have caused the death. It is not a third Commission of Inquiry. A man is standing trial on very serious charges on the footing that he is criminally responsible for those consequences. The idea that we should have roving investigations into every little thing he is said to have done imperfectly is most unattractive.”</i></p> <p style="text-align: right;">(T30.4 L31-40)</p> <p>Original particulars for the Kemps case handed up and marked “T” for identification. (T30.7 L40)</p> <p>Judge notes that these particulars seek to make a case (as with other particulars already provided) based on a breach of s. 288. He notes that from the outline he saw yesterday [this is the outline prepared by Mr Sofronoff QC SG on behalf of the Crown] the primary case is not under s. 288 and s. 288 is a fallback position. (T30.8 L10-20)</p> <p>The Counsel for the Crown, Mr Martin SC says that the particulars address a case either under s. 288 or s.282. Mr Martin SC submits in relation to the Kemps particulars:</p> <p><i>“Your Honour, they address – shortly put, they reflect upon 288 and 282. So they are, as it were, to cover the field of whatever possibilities might emerge from the argument...”</i></p> <p style="text-align: right;">(T30.8 L29-35)</p>
Day 35	<p>Trial judge refers to his presumption that by the time the case goes to the jury there will be different particulars identifying the act or omission which is said to be negligent with a relevant cause.</p> <p style="text-align: right;">(T35.57 L30-38)</p> <p>Judge indicates that he is not understanding the nature of the Crown case:</p>

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	<p><i>“Not all errors in what context? In the context of the decision to operate or trying to find a vein and not finding it? What’s it about?”</i></p> <p>(T35.57 L40-53)</p>
<p>Day 36</p> <p>10</p> <p>20</p> <p>30</p>	<p>Trial judge expresses concern about how the Crown evidence will relate to its ultimate case. (T36.24 L38) His Honour says:</p> <p><i>“We keep hearing a great deal of criticisms, and at the moment I remain, as I have been for many weeks, concerned that this may be putting a fair trial at risk.”</i></p> <p>(T36.25 L1-3)</p> <p>Counsel for Crown seeks to justify reception of evidence reflecting adversely on Dr Patel on basis of “grossness of what was done”. It is submitted that if the prosecution has to prove gross negligence it can do so by looking “much more widely than just the narrow focus”</p> <p>(T36.26 L28-33)</p> <p>The Trial Judge responds:</p> <p><i>“Well, I remain to be persuaded of the proposition that you can demonstrate that a particular act or omission bears the character of criminally culpable negligence by reference to other acts or omissions that are disconnected with a pertinent event, but we may not need to deal with that. That depends upon the argument yet to be had about the shift in the prosecution position [the Judge was referring to a shift in reliance on s. 288 to s. 282]. That’s why I am leaving aside, for the moment, any reference to section 288.”</i></p> <p>(T36.26 L34-41)</p> <p>The Counsel for the Crown ripostes this submission by stating that “one can look widely on the issue of grossness: at T36.28 L29-31.</p> <p>Crown Counsel makes clear that at this stage one of the cases being run by it is of failures during the conduct of the operation. (T36.27 L17-18)</p> <p>Trial Judge expressly considers that it is now likely that the ultimate prosecution case to go to the jury will only be known when the prosecution case closes.</p> <p>(T36.27 L42-45)</p>
<p>Day 38</p> <p>40</p>	<p>Evidence concerning the case of Mr Vowles commences.</p> <p>Crown hands up particulars relating to Mr Vowles, marked “U” for identification.</p> <p>Trial judge says:</p> <p><i>“...what concerns me, still concerns me, is the state of the particulars, but I’ve borne in mind your optimism that by the time the case is left it will be considerably narrowed...”</i></p>

	<p><i>...I'm, frankly, struggling to see how we will move past the particulars to a digestible case. Anyhow, we shall see how these things develop."</i></p> <p>(T38.47 L8-22)</p>
Day 39	<p>Conclusion of oral evidence from Crown witnesses.</p> <p>Trial Judge refers to Vowles' particulars (which were in relevantly identical terms to those in other cases) and says the Crown case will:</p> <p><i>"...need to be sorted out, otherwise the addresses may end passing like ships in the night and I have to focus the jury's attention on what the case is for their evaluation. Take paragraph 7 [of Vowles' particulars], I've assumed that's not seriously intended [paragraph 7 of the Vowles' particulars alleged that Patel knew that the surgical procedure on Vowles was "unnecessary and dangerous...]". (T39.63 L34-38)</i></p> <p>Trial Judge also criticises paragraph 11 of the Vowles' particulars which allege a lack of "good faith" by Patel.</p> <p>(T39.64)</p> <p>Judge makes further serious criticisms of the particulars:</p> <p><i>"...no, I'm concerned about it because it, like the absence of good faith later, involves an imputation on character. It's one thing to allege incompetence. It's quite another to impute serious misconduct reflecting on integrity or morality..."</i></p> <p>(T39.64)</p> <p>Trial judge makes further serious criticism of particulars alleging lack of good faith:</p> <p><i>"I had assumed that we won't be hearing any more of this."</i></p> <p>(T39.64 L31-32)</p> <p>Counsel for Crown does not resile from allegation of lack of good faith, submitting that the case has a <i>"great deal to do with a lack of good faith..."</i>.</p> <p>(T39.64 L42-43)</p> <p>Trial Judge describes the particulars in paragraph 11 of the Vowles' particulars that Dr Patel did not comply with the Oregon order <i>"... as a nonsense"</i> because the order did not, by its terms, apply in Queensland.</p> <p>(T39.64 L54 – T39.65 L2)</p> <p>Trial Judge says he hopes that the particulars making imputations that the procedure was not performed with the object of benefiting the patient <i>"will go"</i>.</p> <p>(T39.65 L7-12)</p> <p>In relation to particulars alleging incompetent surgery (paragraph 9 of the Vowles particulars), the trial Judge says that if this were a civil pleading it would be struck out as not disclosing a reasonable cause of action.</p> <p>(T39.66)</p>

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Day 40	Legal argument occurs in relation to s. 228/s.282 which culminates in the delivery of Ruling No. 3 on Day 41.
Day 41	Trial Judge delivers Ruling No. 3, expressing view in reasons that s.288 only deals with incompetent surgery and not an incompetent decision to operate.
Day 42	<p>Trial Judge delivers Ruling No. 4</p> <p>Trial Judge informs Crown that it needs to particularise its case. (T42.4 L49-57)</p> <p>Counsel for Crown submits that one can take all the evidence of errors and mistakes by Dr Patel collectively and they point to a surgeon who lacks skill (T42.6 L21-27)</p> <p>The Trial Judge replies "<i>Oh, dear.</i>" (T42.6 L29)</p> <p>The Trial Judge expressed a clear awareness that much prejudicial material had gone into evidence:</p> <p><i>"...it just sounds like throwing a welter of prejudicial material at the jury..."</i> (T42.7 L1-12)</p> <p>The Trial Judge says:</p> <p><i>"It sounds as though the Crown is very anxious to over-egg the pudding and to throw – well, we have been over this before – every little piece of mud in the hope that some will stick."</i> (T42.10 L6-11)</p>
Day 43	<p>Crown hands up revised particulars on each of the four cases: Morris, Phillips, Kemps and Vowles (T43.2)</p> <p>The Trial Judge describes them as a "<i>vast improvement</i>" (T43.3 L11)</p> <p>Trial Judge comments that "<i>many jurors have been making notes</i>" [during the evidence] (T43.18 L29)</p> <p>Trial Judge describes case as set out in the new particulars as "<i>now a sensible, considered case</i>" and refers to what has gone before as "<i>It is not just a mud-slinging exercise anymore</i>". (T43.19 L9-15)</p> <p>Counsel for the Crown submits that Counsel for the defence has not been making objections to the evidence.</p> <p>The Trial Judge responds:</p> <p><i>"For the first time in the trial he has comprehensible particulars that make sense"</i>. (T43.23 L9-10)</p>
Day 44	<p>Defence applies for jury to be discharged (T44.2 L11-12)</p> <p>Trial Judge observes that he noticed that many members of the jury made notes of evidence given by family members (T44.4 L8-11).</p> <p>Trial Judge also says that if the Judge who conducted the pre-trial hearings (Justice P Lyons) had had available to him the original particulars they would not have done him "<i>any good</i>" (T44.4 L48-51)</p>

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	<p>Trial Judge comments that the evidence concerning the turning off of the ventilator prematurely on a brain dead patient by Dr Patel was: <i>“well, that’s pretty nasty stuff before a jury”</i> (T44.5 L22)</p> <p>The Trial Judge questions how this evidence was ever relevant (T44.5 L26-31).</p> <p>Trial Judge says that the defence conducted the case without seeking a halt to obtain coherent particulars. (T44.6 – 44.7)</p> <p>Trial Judge says that he has been <i>“highly critical”</i> of the original particulars (T44.6 L56).</p> <p>Trial Judge refers to the new particulars contrasted with the original in the following terms: <i>“...until coherent particulars that bore some relationship to a sensible case were supplied.”</i> (T44.7 L1-3)</p> <p>Counsel for the defence submits that no tactical decision had been made not to seek particulars and they had been sought (T44.7 L5-22)</p> <p>Trial Judge says that the original particulars <i>“...to me at any rate didn’t make much sense”</i> (T44.7 L35-40)</p> <p>Defence Counsel submits: <i>“It’s not for the defence to tell the prosecution how to run their case We can’t tell them what particulars to rely upon. What we can do and what we did was to seek particulars”</i> (T44.7 L42-45)</p> <p>Defence Counsel also submits that where evidence was allowed in it was done so on the basis of the original particulars. (T44.15 L5)</p> <p>In relation to the original particulars the Trial Judge says: <i>“I do not even find looking at them an appealing exercise they are so bad.”</i> (T44.15 L45-47)</p> <p>Counsel for the Crown concedes there was a lack of clarity in the original particulars but seeks to sheet home responsibility for this to defence (T44.19 L55 – T44.20 L23)</p> <p>Trial Judge delivers reasons rejecting the application by defence for discharge of the jury (T44.28 L10 – T44.29 L45).</p> <p>In those reasons, the Trial Judge describes the original particulars as having largely lacked legal coherence. (T44.28 L15)</p>
Day 47	<p>Crown closes its case (T47.3 L37)</p> <p>Dr Patel elects not to give or call evidence (T47.3 L39-45)</p> <p>Crown addresses jury</p>
Day 49	<p>Crown address finishes (T49.28 L10)</p> <p>Defence addresses jury (commencing T49.28 L17)</p>
Day 51	<p>Defence address to jury concludes (T51.36 L 49)</p>

Day 52	Trial Judge sums up to the jury (T52.42)
Day 53	Judge concludes summing up (T53.91 L35)
Day 58	Jury returns guilty verdicts in relation to each of the four cases (T58.2 L32 – T58.3 L23)
Day 60	Trial Judge delivers sentence (T60.2 – T60.19)



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L.F. Kelly SC

P.F. Mylne

D.M. Turner

Counsel for the Appellant

9 March 2012

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