

## **THE QUEEN v DOOKHEEA (M159/2016)**

Court appealed from: Court of Appeal of the Supreme Court of Victoria  
[2016] VSCA 67

Date of judgment: 12 April 2016

Special leave granted: 18 November 2016

This appeal concerns whether the trial judge, in directing the jury in a murder trial that the prosecution had to prove an element of a crime “*not beyond any doubt, but beyond reasonable doubt*”, caused a substantial miscarriage of justice.

The respondent was convicted by jury verdict of murder following a 10 day trial and sentenced on 4 December 2014 to 19 years’ imprisonment with a non-parole period of 15 years. His wife the co-accused was charged with and pleaded guilty to manslaughter. She was sentenced to 8.5 years’ imprisonment with a non-parole period of 6 years.

From 2007 the respondent and his wife were both employed by the victim in his fast food business. In mid-2012 the respondent took over a franchise of the business from the victim. By the end of 2012 the franchise was in debt and the victim resumed control of it, with the respondent’s wife remaining as the manager. By early 2013 the accused were in debt and the respondent gambled at a casino in an attempt to win money to pay off debts. On 9 May 2013 when the victim attended at the accused’s home to collect the business’ takings (which the respondent had gambled away earlier that day at Crown casino) the respondent and his wife attacked the victim and the victim died.

The sole element of the offence of murder in issue at the trial was whether the respondent had an intention to kill or cause really serious injury to the deceased at the time he committed the act/s which caused the deceased’s death. The direction in question by the trial judge related to the standard of proof regarding that element of the crime.

The Court of Appeal allowed the respondent’s appeal from his conviction on the basis that in summing up to the jury the trial judge had erroneously sought to explain the phrase ‘beyond reasonable doubt’ and had therefore occasioned a substantial miscarriage of justice. The Court ordered that the conviction be quashed and the sentence set aside and directed that there be a new trial.

The Crown appealed to the High Court. The grounds of appeal are:

- That the Court of Appeal erred in concluding that the trial judge, in her charge to the jury, erred in directing that the prosecution has to prove an element of a crime “*not beyond any doubt, but beyond reasonable doubt*”.
- That the Court of Appeal erred in concluding that the said direction occasioned a substantial miscarriage of justice in all the circumstances.