



HIGH COURT OF AUSTRALIA

15 August 2012

KHALID BAKER v THE QUEEN

[2012] HCA 27

Today the High Court dismissed an appeal by Khalid Baker against his conviction for murder. The Court held that out-of-court confessional statements of the appellant's co-accused, LM, were inadmissible in the appellant's trial.

In 2005, the appellant was involved in an altercation at a party in Brunswick, Victoria. In the course of the altercation, a young man crashed through a window and fell to his death. The appellant and LM were charged with murder. On the Crown case, the appellant and LM were acting in concert, or one was aiding and abetting the other. The precise circumstances of the fall were unknown. A push or punch may have projected the deceased through the window, or the window may have shattered as he backed away from the altercation. On either view, the act or acts of the appellant and LM were capable of being the legal cause of death. On the evening of the incident, LM admitted in a police interview that he had pushed the deceased. LM also made statements to witnesses which were capable of being viewed as an admission of responsibility for the deceased's fall.

The appellant and LM were jointly tried in the Supreme Court of Victoria. Witnesses gave different versions of the altercation. The appellant sought to rely on LM's out-of-court statements as evidence exculpating himself. Subject to some exceptions, the rule against hearsay precludes the admission of an out-of-court statement as evidence of the fact asserted in that statement. The trial judge ruled that LM's out-of-court statements were inadmissible in the appellant's trial. The jury

found the appellant guilty and LM not guilty. The appellant appealed against his conviction to the Court of Appeal of the Supreme Court of Victoria on grounds including that LM's out-of-court statements were wrongly excluded. The Court of Appeal dismissed the appeal.

By special leave, the appellant appealed to the High Court on the basis that LM's out-of-court statements were wrongly excluded. The appellant's principal contention was that a limited exception to the hearsay rule should be allowed for joint trials where a co-accused's admission is reliable. The appellant argued that LM's admissions were reliable because they were made against LM's penal interest. The appellant's broad contention was that it was appropriate to recognise a new exception to the hearsay rule for third party confessions in order to bring the common law into line with the uniform Evidence Act provisions governing the reception of hearsay evidence when a witness is unavailable.

The High Court dismissed the appeal. The Court held that the exclusion of the out-of-court statements was not unfair and did not occasion a miscarriage of justice in the appellant's trial. The appellant had intended to rely on LM's statements as an admission that LM had caused the fall of the deceased. However, the Court found that LM had not made such an admission: he admitted to pushing the deceased, but did not admit sole guilt. Further, LM's assertions which conveyed that the appellant was not involved in the assault on the deceased before his fall were not evidently against LM's penal interest. The admissions were also consistent with the Crown case.

- *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.*