



HIGH COURT OF AUSTRALIA

24 August 2012

JAYANT MUKUNDRAY PATEL v THE QUEEN

[2012] HCA 29

Today the High Court unanimously upheld an appeal by the appellant, Jayant Mukundray Patel, against his convictions for manslaughter and unlawfully doing grievous bodily harm. The Court found that a miscarriage of justice had occurred because, on the 43rd day of a 58 day trial, the prosecution radically changed its case in a way that rendered irrelevant much of the evidence that had been admitted. The Court ordered that there be a new trial.

The appellant was convicted in the Supreme Court of Queensland of three counts of manslaughter and one count of unlawfully doing grievous bodily harm contrary to ss 303 and 320 of the *Criminal Code* (Q). The charges arose out of surgery conducted by the appellant on four patients while he was employed as a surgeon at the Bundaberg Base Hospital. The prosecution alleged that the standard of care provided by the appellant to the patients was so low as to breach the duty imposed by s 288 of the *Criminal Code* upon a person who undertakes to administer surgical treatment. Initially the prosecution alleged that the appellant had been generally incompetent and grossly negligent in recommending the surgical procedures, in the manner in which he carried out those procedures, and in the post-operative treatment which he supervised. But on day 43 of the trial, the prosecution narrowed its case to focus on whether the surgical procedure in each case should have been undertaken.

The appellant appealed to the Court of Appeal of the Supreme Court of Queensland on grounds which included that a miscarriage of justice had resulted from the change in the prosecution case. The Court of Appeal dismissed the appeal and upheld the appellant's conviction.

The appellant appealed by special leave to the High Court on the ground that he had been convicted on a wrong basis. The appellant submitted that s 288 applied only to the conduct of surgery, not to the anterior decision to operate. The Court unanimously rejected that contention. Section 288 applied to "surgical... treatment", which encompassed all that was provided in the course of such treatment. Properly construed, the provision imposed a duty with respect to the formation of a judgment that surgery be undertaken.

However, the High Court unanimously granted special leave to appeal, and allowed the appeal, on the ground that there was a miscarriage of justice in the conduct of the appellant's trial. The prosecution led a large body of evidence criticising the appellant's surgical skills and post-operative care in order to establish its original case that the appellant had been grossly negligent in all aspects of his treatment of the patients. As the trial progressed it became apparent, and it was not seriously disputed, that the evidence showed that the surgery had in fact been performed competently enough. The prosecution then radically changed its case, at a late point in the trial, to focus on the appellant's decision to undertake the surgical procedures. Much of the evidence about the surgery and post-operative care was prejudicial to the appellant but no longer relevant on the prosecution's

revised case. The prejudicial effect on the jury was not overcome by the directions given by the trial judge about the limited use that could be made of that evidence. A substantial miscarriage of justice occurred. The Court set aside the order of the Court of Appeal and in its place ordered that there be a new trial.

- *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.*