



HIGH COURT OF AUSTRALIA

30 March 2012

BAIADA POULTRY PTY LTD v THE QUEEN

[2012] HCA 14

Today the High Court allowed an appeal from the Court of Appeal of the Supreme Court of Victoria, which had upheld the conviction of Baiada Poultry Pty Ltd ("the appellant") under the *Occupational Health and Safety Act 2004* (Vic) ("the OHS Act"). Despite the trial judge failing to properly direct the jury, the Court of Appeal, by majority, had upheld the appellant's conviction on the ground that, pursuant to the "proviso" in s 568(1) of the *Crimes Act 1958* (Vic) ("the Crimes Act"), "no substantial miscarriage of justice [had] actually occurred".

The appellant operated a business processing broiler chickens. It had engaged independent contractors to round up the chickens, load them into crates, stack the crates into a series of steel modules, and then use a forklift truck to load the modules of filled crates onto a trailer ("the chicken catchers"). Other independent contractors were engaged to drive the trailer to the appellant's processing plant ("the transporters"). On 4 December 2005, a chicken catcher who was not licensed to drive a forklift was, without supervision, using a forklift to shift a module on the trailer when another module fell on and killed a transporter. The appellant was charged under s 21(1) of the OHS Act, for failing as an employer "so far as is reasonably practicable, [to] provide and maintain for employees ... a working environment that is safe and without risks to health".

At trial, and despite the submissions made by the appellant's counsel, the trial judge did not direct the jury that the prosecution needed to prove beyond reasonable doubt that by engaging apparently skilled subcontractors, the appellant did not discharge its statutory obligation to provide and maintain a safe working environment so far as was reasonably practicable. The jury found the appellant guilty, and the appellant appealed.

The Court of Appeal agreed that the trial judge had made an error and that there was either a "wrong decision of a question of law" or "a miscarriage of justice" within the meaning of the Crimes Act. However, a majority of the Court of Appeal held that "no substantial miscarriage of justice" had actually occurred, and pursuant to the proviso in s 568(1) of the Crimes Act, dismissed the appeal. The appellant appealed, by special leave, to the High Court of Australia.

The High Court allowed the appeal, with the result that the matter will be remitted to the County Court for a new trial. The High Court held that it was not open to the Court of Appeal to conclude, from the record of the trial, that the charge laid against the appellant was proved beyond reasonable doubt. The Court of Appeal could not therefore be satisfied that no substantial miscarriage of justice had actually occurred, and the proviso could not have been engaged.

- *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.*