



HIGH COURT OF AUSTRALIA

27 June 2013

NGUYEN v THE QUEEN

[2013] HCA 32

Today the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of Victoria. Dang Khoa Nguyen ("the appellant") had been convicted in the Supreme Court of Victoria on one count of murder and one count of attempted murder. The Court of Appeal upheld the convictions. The High Court quashed the convictions and ordered a new trial on both counts.

On 8 November 2004, the appellant, in company with Dang Quang Nguyen ("Quang") and Bill Ho, went to a flat in Carlton to collect a drug debt. There were seven people in the flat at the time. Bill Ho shot two of the occupants, killing one of them and wounding the other. The appellant and Quang were both found guilty of murder and attempted murder for their complicity in Bill Ho's crimes.

In 2009, the appellant and Quang appealed against their convictions to the Court of Appeal. Quang's convictions were quashed and a verdict of acquittal was entered on the basis that his convictions could not be supported by the evidence and were, therefore, unsafe or unsatisfactory. The appellant's appeal was dismissed.

In 2010, the prosecution appealed to the High Court against the judgment of the Court of Appeal relating to Quang. Quang cross-appealed in relation to the sufficiency of the directions given by the trial judge to the jury. On 3 November 2010, the High Court held that the jury had been misdirected because the trial judge's directions did not instruct the jury that manslaughter was available as an alternative verdict with respect to the murder charge if Bill Ho was found to be guilty of murder. The High Court ordered that Quang's convictions be quashed and a new trial had on both charges.

After the decision in Quang's case, the appellant appealed to the High Court substantially on the same grounds as those successfully raised by Quang. The Court accepted that there was no material difference between the position of the appellant and Quang. As in Quang's case, the trial judge erred by failing to direct the jury that it was open to them to conclude that the appellant was guilty of manslaughter, even if they were satisfied that Bill Ho was guilty of murder. The misdirection constituted a substantial miscarriage of justice which required the convictions to be quashed and a new trial had.

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.