



HIGH COURT OF AUSTRALIA

1 March 2017

PEDRO PERARA-CATHCART v THE QUEEN
[2017] HCA 9

Today the High Court, by majority, dismissed an appeal from the Full Court of the Supreme Court of South Australia. Following a trial in the District Court of South Australia, the appellant was convicted of one count of rape and one count of threaten to kill. He appealed against the convictions to the Full Court, sitting as the Court of Criminal Appeal, on grounds including that the trial judge erred in directing the jury under s 34R of the *Evidence Act* 1929 (SA) ("the Evidence Act") as to the permissible and impermissible uses of discreditable conduct evidence admitted under s 34P. The discreditable conduct evidence was that the appellant was in possession of an amount of cannabis, less than an ounce, which the police had found at his home seven days after the alleged offending ("the cannabis evidence").

The Full Court (Kourakis CJ, Gray and Stanley JJ) unanimously held that the cannabis evidence was admissible pursuant to s 34P of the Evidence Act. As to the sufficiency of the trial judge's directions to the jury, Kourakis CJ concluded that the directions did not comply with s 34R as to the permissible and impermissible use of the cannabis evidence. Kourakis CJ would have allowed the appeal, holding that it was not open in the circumstances of the case to apply the proviso; Gray J considered that the directions complied with s 34R and, accordingly, would have dismissed the appeal; and Stanley J held that the directions given by the trial judge did not meet the requirements of s 34R but was satisfied that no substantial miscarriage of justice had actually occurred, and so would have dismissed the appeal. In the result, the appeal to the Full Court was dismissed.

Special leave to appeal to the High Court was granted on the question whether the order of the Full Court dismissing the appeal could not be sustained by s 353(1) of the *Criminal Law Consolidation Act* 1935 (SA) ("the CLC Act"), given the conclusion of a majority of the Court that the verdict was attended by an error of law and the absence of a conclusion by a majority of the Court that no substantial miscarriage of justice had occurred. By way of notice of contention, the respondent argued that the trial judge's directions to the jury met the requirements of s 34R(1) of the Evidence Act.

The High Court held, by majority, that the appeal should be dismissed on the basis of the respondent's notice of contention. The trial judge's directions to the jury were sufficient to identify the permissible and impermissible uses of the cannabis evidence for the purposes of s 34R(1) of the Evidence Act. The verdict at trial was therefore not attended by an error of law. A majority of the High Court also considered that, under s 353(1) of the CLC Act, two questions arose for determination before the Full Court: whether the Full Court thought that the verdict of the jury should be set aside on any one or more of the three grounds there stated; and whether the Full Court considered that no substantial miscarriage of justice had actually occurred. By virtue of s 349 of the CLC Act, each of these questions was to be determined according to the opinion of the majority of the members of the Court hearing the case. In the result, the appeal was dismissed.

- *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.*