



HIGH COURT OF AUSTRALIA

12 December 2012

MICHEL BAINI v THE QUEEN

[2012] HCA 59

Today a majority of the High Court allowed an appeal by Mr Michel Baini against the decision of the Court of Appeal of the Supreme Court of Victoria to uphold his convictions for blackmail of Mr Hassan Rifat. The High Court remitted the matter to the Court of Appeal for its further consideration.

The appellant and another accused were charged with numerous counts of blackmail. All but one of the charges alleged blackmail of Mr Rifat. The other count alleged blackmail of Mr Nicholas Srour. In the course of the trial, an application was made to sever the trial of the count relating to Mr Srour but the trial judge refused that application. The jury found the appellant guilty of some of the counts, including the count relating to Mr Srour.

The appellant appealed to the Court of Appeal, which held that the trial judge should have severed the trial of the count relating to Mr Srour. The Court of Appeal concluded that this error resulted in a substantial miscarriage of justice in the trial of the count relating to Mr Srour but not in the trial of the counts relating to Mr Rifat. It therefore ordered that there be a new trial of the count relating to Mr Srour but upheld the appellant's convictions for blackmail of Mr Rifat. By special leave, the appellant appealed to the High Court in relation to his convictions for blackmail of Mr Rifat.

A majority of the High Court allowed the appeal. The majority held that, because all the counts were tried together, the jury heard prejudicial evidence from Mr Srour which would not have been admissible in a separate trial of the counts alleging blackmail of Mr Rifat. Unless this error could have had no effect on the jury's guilty verdicts, the error in refusing to sever the counts resulted in a substantial miscarriage of justice in the trial of the counts about Mr Rifat. The Court of Appeal not having considered whether the error could have had no effect on the outcome of the trial having regard to the full record of the trial, and the High Court not having available to it the full record, the majority allowed the appeal and remitted the matter to the Court of Appeal for its further consideration.

- *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.*