HIGH COURT OF AUSTRALIA

16 October 2019

THE QUEEN v A2; THE QUEEN v MAGENNIS; THE QUEEN v VAZIRI
[2019] HCA 35

Today the High Court allowed three appeals from the New South Wales Court of Criminal Appeal ("the CCA"). A majority of the Court construed the term "otherwise mutilates" in s 45(1)(a) of the *Crimes Act 1900* (NSW), headed "[p]rohibition of female genital mutilation", as bearing an extended meaning that takes account of the context of female genital mutilation. A majority of the Court also held that the term "clitoris" in s 45(1)(a) encompasses the clitoral hood or prepuce.

Section 45(1)(a) of the *Crimes Act* relevantly provides that a person who "excises, infibulates or otherwise mutilates the whole or any part of the labia majora or labia minora or clitoris of any person" is liable to imprisonment. A2 and Magennis were charged upon indictment with having "mutilated the clitoris" of each of the complainants, C1 and C2. Vaziri was charged with assisting A2 and Magennis following the commission of those offences. The Crown case was that A2 and Magennis were parties to a joint criminal enterprise to perform a ceremony called "khatna", which involves causing injury to a young girl's clitoris by cutting or nicking it. The defence case was that Magennis had performed a procedure on C1 and C2, but that it was merely ritualistic. The trial judge in the Supreme Court of New South Wales directed the jury that "[t]he word 'mutilate' in the context of female genital mutilation means to injure to any extent", and that the term "clitoris ... includes the clitoral hood or prepuce". A2 and Magennis were each found guilty by the jury of two counts of female genital mutilation contrary to s 45(1)(a). Vaziri was found guilty of two accounts of being an accessory to those offences.

The CCA allowed the appeals against conviction on the ground that the trial judge had erred in his directions to the jury as to the meaning of the terms "otherwise mutilates" and "clitoris" in s 45(1)(a). The CCA concluded that the word "mutilates" should be given its ordinary meaning for the purposes of s 45(1)(a); it requires some imperfection or irreparable damage to have been caused. The CCA further held that the term "clitoris" does not include the clitoral hood or prepuce. The CCA allowed the appeals on various other grounds, including that the jury's verdict was unreasonable or unsupported by the evidence.

By grant of special leave, the Crown appealed to the High Court. A majority of the Court held that the term "otherwise mutilates" in s 45(1)(a) does not bear its ordinary meaning, but has an extended meaning that takes account of the context of female genital mutilation, and which encompasses the cutting or nicking of the clitoris of a female child. The purpose of s 45, evident from the heading to the provision and the extrinsic materials, is to criminalise the practice of female genital mutilation in its various forms. A majority of the Court also held that the term "clitoris" in s 45(1)(a) is to be construed broadly, having regard to the context and purpose of s 45. It followed that the trial judge did not misdirect the jury as to the meaning of either of these terms. A majority of the Court allowed the appeals, and held that each matter should be remitted to the CCA for determination of the ground alleging that the

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jury's verdict was unreasonable or unsupported by the evidence, in light of the proper construction of s 45(1)(a).

- *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.*