HIGH COURT OF AUSTRALIA

FRENCH CJ AND CRENNAN J

NICHOLAAS PAUL MICHAELIDES APPLICANT

AND

THE QUEEN RESPONDENT

Michaelides v The Queen
[2013] HCA 9
Date: 15 February 2013
B42/2012

ORDER

Special leave to appeal refused.

On appeal from the Supreme Court of Queensland

Representation

M J Byrne QC with S Di Carlo for the applicant (instructed by Hannay Lawyers)

A W Moynihan SC with S L Dennis for the respondent (instructed by Director of Public Prosecutions (Qld))

CATCHWORDS

Michaelides v The Queen

Criminal law – Appeal – Appeal on ground jury verdict unreasonable or can not be supported having regard to evidence – Application of test in *M v The Queen* (1994) 181 CLR 487 – Whether error for appellate court to ask whether jury "must have had sufficient doubt" about complainant's evidence to warrant acquittal.

Words and phrases – "unreasonable, or can not be supported".

Criminal Code (Q), s 668E.

1 FRENCH CJ AND CRENNAN J. The applicant, who was convicted on two counts of extortion, seeks special leave to appeal against a unanimous decision of the Court of Appeal of the Supreme Court of Queensland dismissing his appeal against conviction, which had been brought under s 668E of the *Criminal Code* (Q) on the ground that the verdict of the jury was unreasonable or could not be supported having regard to the evidence. For the reasons which follow, special leave should be refused.

2 The applicant complains that the Court of Appeal adopted an erroneous formulation of the test for the application of s 668E. A formulation which the Court of Appeal applied was that the jury, acting reasonably, "must have had sufficient doubt about [the complainant's] evidence to warrant the acquittal of the [applicant]."[1] The applicant contends that as a matter of law that formulation of the test has been overtaken by the judgment of this Court in *MFA v The Queen*[2]. It is said that the correct formulation of the test now is whether it was "open to the jury" to be satisfied beyond reasonable doubt of the accused's guilt[3].

3 As explained by Mason CJ in *Chidiac v The Queen*[4]:

> "In deciding whether a verdict should be set aside as unsafe or unsatisfactory, the question for the appellate court to determine is whether the jury, acting reasonably, must have entertained a reasonable doubt as to the guilt of the accused … Or, to put it another way, it is for the court to decide whether, on the relevant evidence, it was open to the jury to be satisfied beyond reasonable doubt of the accused's guilt".

4 That passage was referred to in *M v The Queen*[5]. In *M v The Queen* it was recognised that differences in formulation of this kind are best put aside in order to have one authoritative formulation. *M v The Queen* continues to be authoritative, as recognised in *SKA v The Queen*[6]. In any event, there is no error in the Court of Appeal's conclusion that s 668E of the *Criminal Code* was not

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1 *R v Michaelides* [2012] QCA 166 at [38].

2 (2002) 213 CLR 606; [2002] HCA 53.

3 (2002) 213 CLR 606 at 623 [55] per McHugh, Gummow and Kirby JJ.

4 (1991) 171 CLR 432 at 443; [1991] HCA 4.

5 (1994) 181 CLR 487 at 495 per Mason CJ, Deane, Dawson and Toohey JJ; [1994] HCA 63.

6 (2011) 243 CLR 400; [2011] HCA 13.

enlivened because of the factual circumstances of this case. The prospects of ultimate success do not warrant the grant of special leave.

5 Special leave is refused.