

HIGH COURT OF AUSTRALIA

GAUDRON, McHUGH, KIRBY, HAYNE AND CALLINAN JJ

THE QUEEN

APPELLANT

AND

ROY ROBERT PUCKERIDGE

RESPONDENT

The Queen v Puckeridge [1999] HCA 68
Date of Order: 30 September 1999
Date of Publication of Reasons: 21 December 1999
S21/1999

ORDER

1. *Appeal allowed.*
2. *Set aside the orders of the Court of Criminal Appeal of New South Wales made on 2 November 1998 to the extent that those orders allowed the appeal to that court, quashed the conviction and sentence and directed entry of a verdict of acquittal on the indictment for murder.*
3. *Remit the matter to the Court of Criminal Appeal for the further hearing and determination of the appeal to that court on grounds other than ground 4 in the amended notice of appeal.*

On appeal from the Supreme Court of New South Wales

Representation:

N R Cowdery QC with A M Blackmore for the appellant (instructed by S E O'Connor, Solicitor for Public Prosecutions)

G P Craddock for the respondent (instructed by C Hunter)

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

The Queen v Puckeridge

Criminal law – Causation – Whether evidence capable of satisfying jury beyond reasonable doubt that act of defendant caused death of victim – Test for sufficiency of evidence.

1 GAUDRON, McHUGH, KIRBY, HAYNE AND CALLINAN JJ. On 15 August 1997, the respondent, Roy Robert Puckeridge, was convicted of the murder of Patricia Merle Thomas following a trial in the Supreme Court of New South Wales. On appeal to the Court of Criminal Appeal his conviction was quashed and a verdict of acquittal entered. By majority (Grove and Greg James JJ, Beazley JA dissenting), that court held that the evidence was not capable of excluding the reasonable possibility that it was not the respondent's act that caused the death of Mrs Thomas.

2 The Crown was granted special leave to appeal to this Court. On the hearing of the appeal, the respondent conceded that the appeal should be allowed. After hearing short argument, this Court made orders disposing of the appeal as follows:

1. Appeal allowed.
2. Set aside the orders of the Court of Criminal Appeal made on 2 November 1998 to the extent that those orders allowed the appeal to that court, quashed the conviction and sentence and directed entry of a verdict of acquittal on the indictment for murder.
3. Remit the matter to the Court of Criminal Appeal for the further hearing and determination of the appeal to that court on grounds other than ground 4 in the amended notice of appeal.

The following are our reasons for participating in that order.

The facts

3 Mrs Thomas lived alone in a home unit in a building in which the respondent also lived ("the building"). The respondent shared a unit in the same building with a Mr Bruce Campbell. Mrs Thomas was last seen alive on 13 August 1995. On 20 September 1995, her body was found in a shallow grave in a garden behind unit 2 in the building, which unit the respondent had previously shared with another person. When found, her body was significantly decomposed.

4 Notwithstanding the state of decomposition, Dr Ellis, a forensic pathologist, was able to ascertain that Mrs Thomas died from an intracranial haemorrhage. He was also able to observe bruising to her chest and internal bruising above the abdomen consistent with the application of blunt trauma. He also observed a reddish discolouration on the back right-hand side of the head, which he believed to be bruising. Dr Ellis gave evidence of these matters at the respondent's trial.

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Callinan J

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5 In addition to the evidence of Dr Ellis, evidence was led of conversations in which the respondent admitted that he had killed Mrs Thomas. In one conversation, he said he entered her unit, attempted to suffocate her with a pillow and, then, "gave her a karate kick to the chest [and] smashed her windpipe". In another, he added that he smashed her head against a wall. In a third, he said that Mr Campbell tried to suffocate Mrs Thomas and that he, the respondent, banged her head against a wall and kneed her in the chest. At his trial, the respondent gave evidence that Mr Campbell had told him that Mr Campbell had killed Mrs Thomas and had then forced him to help bury her body.

6 Some ten or eleven years prior to her death, Mrs Thomas had undergone unsuccessful surgery for the repair of a cerebral aneurysm, a weakness in a blood vessel which may result in a fatal cerebral haemorrhage. It was that fact that led the Court of Criminal Appeal to hold that the evidence did not exclude the reasonable possibility that the respondent's act did not cause her death.

Cause of death

7 The ground of appeal upon which the Court of Criminal Appeal quashed the respondent's conviction complained that the trial judge wrongly failed to direct a verdict of acquittal at the close of the prosecution case. In essence, however, the issue is whether, on the prosecution evidence, the jury was entitled to be satisfied beyond reasonable doubt that it was the act of the respondent that caused the death of Mrs Thomas¹.

8 So far as concerns the cause of death, Dr Ellis gave evidence that there were three possible explanations for the intracranial haemorrhage that was its immediate cause. The first, general rupturing of blood vessels as a result of force to the head, was unrelated to the unrepaired aneurysm referred to earlier in these reasons. The other two possibilities, however, were directly related to it.

9 The second possibility of which Dr Ellis gave evidence was that the intracranial haemorrhage resulted from the bursting of the aneurysm, that being caused either by trauma to the head or increased blood pressure by reason of events immediately preceding the death of Mrs Thomas. The third was that the aneurysm

1 *May v O'Sullivan* (1955) 92 CLR 654 at 658 per Dixon CJ, Webb, Fullagar, Kitto and Taylor JJ; *Plomp v The Queen* (1963) 110 CLR 234 at 242 per Dixon CJ, 247 per Menzies J (with whom Kitto, Taylor and Windeyer JJ agreed).

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had ruptured spontaneously and was not in any way causally connected with those events.

10 In his evidence, Dr Ellis said that it was "extremely unlikely", and, that it would have been an "amazing coincidence" if the aneurysm had ruptured spontaneously. He based his opinion in that regard on the evidence of events involving force and trauma, which events could also lead to elevated blood pressure, and the occurrence of those events at the same time as, or shortly before, the death of Mrs Thomas.

11 The evidence of Dr Ellis and the other witnesses called by the Crown, if accepted, clearly established that Mrs Thomas had been subjected to trauma and the application of force. The bruising to the chest and the internal bruising above the abdomen, of which Dr Ellis gave evidence, were consistent with the accounts given by the respondent in the conversations referred to earlier. It was, thus, open to the jury to be satisfied beyond reasonable doubt that the respondent had physically attacked Mrs Thomas and that his attack either coincided with or immediately preceded her death. Once that conclusion was reached, it was open to them to dismiss as unreasonable the possibility that her death was unconnected with that attack. The Court of Criminal Appeal was wrong to conclude otherwise.

Additional orders

12 The ground of appeal on which the Court of Criminal Appeal allowed the respondent's appeal to that court was added during the hearing of the appeal. Initially, the respondent appealed to the Court of Criminal Appeal on three grounds, claiming that:

- "1. [The trial judge] erred in his directions to the jury upon cause of death.
2. [The trial judge] erred in failing to adequately direct the jury in relation to the appellant's case.
3. [The trial judge] erred in his directions to the jury upon the onus and standard of proof."

13 In the Court of Criminal Appeal, Grove J, with whose reasons Greg James J agreed, first dealt with the additional ground of appeal added during the course of argument. His Honour then noted that the original grounds of appeal were directed to the trial judge's charge to the jury and set out three passages from that charge. Those passages were concerned with the onus on the prosecution to establish beyond reasonable doubt that it was the accused's act that caused death. His

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Honour said that he detected no error in those passages. It is not clear that his Honour, thereby, intended to express a concluded view as to the merits of any of the three grounds of appeal. His Honour then set out another passage which, he said, suggested that the jury may have been led to think that there was an onus on the accused to show that there was a reasonable possibility that he had not caused the death of Mrs Thomas. However, no concluded view was expressed. Accordingly, although the Court has allowed the appeal in this matter, the proper course, as embodied in the Court's order, is for the matter to be remitted to the Court of Criminal Appeal for it to hear and determine the appeal to that court on the original three grounds of appeal.

