

BEKELE
v
THE KING & ORS
[2026] HCADisp 131
A8/2026

- 1 Special leave to appeal is granted.
- 2 The grant of special leave be limited to the following questions:
 - a. On a prosecution appeal against a directed acquittal under s 157(1)(b)(ii) of the *Criminal Procedure Act 1921* (SA), to what extent is it relevant to the grant of permission or exercise of discretion that the case to be presented on a retrial would be materially different from the case advanced by the prosecution at trial, in circumstances where the case as advanced at trial was incapable of sustaining a conviction?
 - b. Does *Hawell v The King* [2025] NSWCCA 210 accurately state the requisite fault elements for an accused said to be liable for an offence of rape (s 48(1) of the *Criminal Law Consolidation Act 1935* (SA)) on the basis of joint criminal enterprise liability and, in particular, is either "advertent recklessness" or "inadvertent recklessness" sufficient to found such liability?

Gageler CJ
Gordon J
Edelman J
Steward J
Jagot J
Beech-Jones J

11 June 2026