ORIGINAL

IN THE HIGH COURT OF AUSTRALIA

SOULOS

v.

THE QUEEN

TSACALØS

v.

THE QUEEN

REASONS FOR JUDGMENT

ORIGINAL

Oral *Judgment delivered at* Sydney

on Monday, 26th November 1962

W. M. Houston, Govt. Print., Melb.

SOULOS

v.

THE QUEEN

TSACALOS

v.

THE QUEEN

UDGMENT
(ORAL)

JUDGMENT OF THE COURT
DELIVERED BY DIXON C.J.

CORAM: DIXON C.J.
McTIERNAN J.
OWEN J.

SOULOS

v.

THE QUEEN

TSACALOS

v.

THE QUEEN

This is an application for special leave to appeal from the judgment or order of the Supreme Court of New South Wales sitting as a court of criminal appeal. I treat the two motions as one in saying "this is an application" because the indictment was against two persons and they were both convicted; they both appealed to the Supreme Court and they were both dealt with in that Court by the same judgment. It is true that separate notices of motion to this Court were given by each of them.

We do not propose to deal with the case as one requiring either a detailed examination of evidence or discussion of any legal proposition, because we think that within the principles on which special leave to appeal is granted or refused this is certainly a case in which special leave should be refused.

We do not entertain any real doubt about the substantial justice of the convictions or of the manner in which they were dealt with in the Full Court of the Supreme Court where they received very full consideration.

As to the ground taken, that evidence was admitted as ostensibly bearing on the motive of the accused which related to transactions that considered alone would have a prejudicial effect against some of the accused, we think we ought not to treat that as a ground for intervening. There was ample evidence of motive, quite apart from those transactions, and for that reason it may be wrong to describe the admission of these additional matters as simply piling Pelion on Ossa because,

when they were all added together, they would not have the weight of Pelion. But even if the evidence of these transactions were strictly inadmissible, and we are not prepared to say it was, the effect produced on the minds of the jury would not be so prejudicial as to justify our giving special leave, and in any case the judge made a definite attempt to see that the jury did not attach an improper value to that evidence or turn it to an erroneous use.

The other matters that have been mentioned are really covered by the general observation which I have already made, that the convictions appear to have been sustained by evidence and to be just.

I do not wish to add anything as to the matter I myself mentioned except to say that whatever may be the state of the law (and it was not investigated) this is a case in which on the facts an extremely dangerous act was done after preconcert as it must be inferred, and it was an act which in the circumstances was likely actually to jeopardise life.

For those reasons I think the applications for special leave should be refused.

McTIERNAN J.: I agree.

OWEN J.: I agree that the application should be refused.