

IN THE HIGH COURT OF AUSTRALIA

---

GUERIN

---

v.

THE QUEEN

---

---

## REASONS FOR JUDGMENT

---

Oral  
Judgment delivered at.....Sydney  
on.....Wednesday, 4th September, 1968

---

GUERIN

v.

THE QUEEN

ORDER

Application for special leave refused.

GUERIN

v.

THE QUEEN

JUDGMENT

(ORAL)

BARWICK C.J.

GUERIN

v.

THE QUEEN

The applicant has raised a number of matters as grounds for the grant of special leave and we have fully heard his counsel and considered his submissions.

To my mind none but one of the criticisms of the Trial Judge or of his summing up has any substance in relation to the grant of special leave: but one has troubled me, namely, the submission that there ought to have been a direction given to the jury that if they were prepared to believe the account given by the accused of the events as the result of which the deceased died, an account not given by the accused in court but only in statements made by him to police officers, they could find a verdict of manslaughter on the footing of provocation, assuming of course the presence of all the elements called for by sec. 23 of the Crimes Act, in respect of which no doubt in that event appropriate directions would have been given.

The Court of Criminal Appeal decided that there was in any case no material in these statements fit to be left to the jury as a basis for such a finding. I observe that to an extent this conclusion of the Court of Criminal Appeal derives from the views of its members upon some questions of fact which it might be said rather lay within the province of the jury, but otherwise it is not said that the Court of Criminal Appeal misdirected

itself as to any matter of law in respect to a verdict of manslaughter based on provocation.

Consequently the narrow question which in this respect the applicant's motion raised, is whether or not there was in this case evidence of all the elements of a defence of provocation proper to be submitted to the jury. No matter of general principle is involved in the resolution of that question in this case, it depends entirely upon the particular circumstances of the case.

Consequently I have come to the conclusion, without expressing any opinion myself as to the correct answer to the question, that in all the circumstances of the case no reason has been shown for the grant of special leave.

GUERIN v. REGINA

JUDGMENT  
(ORAL)

McTIERNAN J.

GUERIN v. REGINA

I am not prepared to disagree with the conclusion of the Court of Criminal Appeal that there was no evidence fit to be left to the jury on the question of provocation. It does not seem to me that the reasoning of their Honours on this question trespassed on the province of the jury. I think that the evidence is not so substantial that we should intervene in the exercise of our jurisdiction to grant special leave to appeal on that point. There are, I think, no special leave points raised by Mr. Sullivan's argument, admirable and clear though it certainly was.

GUERIN

v.

THE QUEEN

JUDGMENT

KITTO J.



GUERIN

v.

THE QUEEN

As to the question of provocation, I have come to the clear conclusion that on the evidence in this case a jury could not reasonably think that the strangulation of the deceased, if done by the accused, was at all proportionate to any provocation that on the evidence they might think she had given him. I would therefore hold that the trial Judge was right in refraining from dealing in his summing up with the topic of provocation. It does not appear to me that there is anything in the other objections which have been offered to the summing up and accordingly I would refuse the application.

TERRENCE LESLIE GUERIN

v.

THE QUEEN

JUDGMENT

MENZIES J.

TERRENCE LESLIE GUERIN

v.

THE QUEEN

I do not consider this a case for special leave.

GUERIN

v.

THE QUEEN

JUDGMENT  
(ORAL)

OWEN J.

GUERIN

v.

THE QUEEN

No reason has been shown in my opinion, which would justify this Court in granting special leave to appeal and I agree with my brother Kitto that the learned trial judge was right in refusing to leave to the jury a suggested defence of provocation.