

IN THE HIGH COURT OF AUSTRALIA

MILETIC

v.

THE QUEEN

REASONS FOR JUDGMENT

Judgment delivered at SYDNEY
on MONDAY, 22nd DECEMBER 1969

MILETIC

v.

THE QUEEN

ORDER

Special leave to appeal refused.

MILETIC

v.

THE QUEEN

JUDGMENT

BARWICK C.J.

MILETIC

v.

THE QUEEN

For reasons which I have expressed in the application in Gammage v. The Queen I would grant special leave in this case and dismiss the appeal.

MILETIC

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THE QUEEN

JUDGMENT

KITTO J.

MILETIC

v.

THE QUEEN

I agree that special leave to appeal should be refused for reasons similar to those in Gammage v. The Queen.

MILETIC

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JUDGMENT

MENZIES J.

MILETIC

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This is an application for special leave to appeal against an order of the New South Wales Court of Criminal Appeal dismissing an appeal against the conviction of the applicant on a charge of murder.

The point to be decided is exactly the same as the point in Gammage v. The Queen, namely whether the learned trial judge's direction about the power of the jury to return a verdict of manslaughter was a misdirection. The direction given is as follows:

"The charge here, of course, is murder and there is no alternative charge of manslaughter but, notwithstanding that, the law provides that if you do not think that the act causing death amounts to murder but amounts to manslaughter, you may acquit him of murder but find him guilty of manslaughter. This may be done in cases where the act was done under what in law amounts to provocation, and I direct you that there is no such evidence in this case as would justify you in reducing murder to manslaughter, on the ground of provocation. The sanity of the accused man is not in question. There is no question here, on the evidence, of self-defence and it is difficult to envisage what findings of fact would justify you in taking the course of acquitting him of murder but finding him guilty of manslaughter.

If you are satisfied beyond reasonable doubt that the Crown has established the ingredients of the crime of murder, then you should not reduce it to manslaughter as a matter of sympathy or compassion or by way of compromise or because he has been previously of good character. Nevertheless, I wish you clearly to understand that such a verdict is within your province and, although the basis for it is hard for me to see, I am not telling you as a matter of law that you may not do so if you wish."

For the reasons which I have given in Gammage v. The Queen I consider the direction was correct in law and the Court of Appeal was right in dismissing the appeal.

Accordingly, I consider that the application for special leave to appeal should be refused.

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THE QUEEN

JUDGMENT

WINDEYER J.

MILETIC

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I consider that this application should be refused. Any error in the direction that the learned trial judge gave the jury was, I consider, in favour of the accused. Strictly speaking, there was I think an error, as the jury might conclude that, although they were "satisfied beyond reasonable doubt that the Crown had established the crime of murder", they might nevertheless find a verdict of manslaughter if they wished. It was, of course, perfectly proper to tell them that they could acquit of murder and convict of manslaughter, that such a verdict was one within their power to give; but it would have been more correct to make it clear that it was a verdict which was open to them only if they entertained a doubt whether the case really amounted to murder but had no doubt that it amounted to manslaughter.

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JUDGMENT

OWEN J.

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For the reasons given in Gammage
v. The Queen I am of opinion that special
leave to appeal should be granted and the
appeal dismissed.