

IN THE HIGH COURT OF AUSTRALIA

TURNER

v.

THE QUEEN

REASONS FOR JUDGMENT

Oral

Judgment delivered at Sydney

on Thursday 30th April 1970

BRIAN RAYMOND TURNER

v.

THE QUEEN

ORDER

Application for special leave refused.

BRIAN RAYMOND TURNER

v.

THE QUEEN

JUDGMENT

(ORAL)

BARWICK C.J.

BRIAN RAYMOND TURNER

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The Court of Criminal Appeal in this case refused merely to quash the applicant's conviction for murder upon the ground that there was no evidence on which the jury could conclude that the fracture of the deceased's hip occurred on the night of the assault on him by the applicant in the course of or as the direct result of that assault. But the Court did quash the conviction and order a new trial because the trial judge had not given a direction as to the possibility of a verdict of manslaughter in conformity with the Supreme Court's decision in The King v. Stone 84 Weekly Notes, Part I, p. 361.

Since the decision of this case by the Court of Criminal Appeal, this Court has decided Gamage v. The Queen at present reported in 44 Australian Law Journal Reports p. 36.

I have considered the trial judge's summing-up from the point of view as expressed by this Court in Gamage v. The Queen (supra) and I am of opinion that what his Honour said at p.97, lines 1 to 13 of the transcript in this case:

"Gentlemen, in every charge of murder there is an unexpressed alternative charge of manslaughter available to you. It is not there on the charge but the law says it is unexpressed, and that means this - that you

are given the right by law, if you are not satisfied that the act causing the death amounted to murder but that it did amount to manslaughter, to find the accused not guilty of murder but guilty of manslaughter. That is your right and it is given to you by the law. But you should not make such a finding by way of compromise or by way of sympathy or, for example, in this case, because of the way he was informed upon. You should only do it if it is appropriate to the findings which you made on the facts, i.e., it was not murder."

At p. 99, line 18 of the transcript -

"What I said to you was this, in this case, that in every charge of murder the jury has the right if they think that the crime of murder has not been established but they think the crime amounts to manslaughter, to bring in such a verdict".

are in conformity with what this Court decided in the case of Gamage v. The Queen.

However, the propriety of the order for a new trial is not before us.

Mr. Roden for the applicant has placed before us, and fully developed, the submission that there was no evidence on which the jury were entitled to be satisfied beyond reasonable doubt that the death of the deceased was casually related to the assault by him of the applicant. tv

I am of opinion that there was evidence of this relationship which the jury were entitled to accept and to act upon. The critical question is whether there was evidence to support a finding that the fracture occurred on the night of the assault in the course of or as the direct result of it. For if it did, clearly the fracture caused the death.

In my opinion there was such evidence. Accordingly, in my opinion, the Court of Criminal Appeal was not in error in refusing to quash the appellant's conviction without qualification. I would refuse special leave.

TURNER

v.

THE QUEEN

JUDGMENT
(ORAL)

McTIERNAN J.

TURNER

v.

THE QUEEN

I agree.

TURNER

v.

THE QUEEN

JUDGMENT
(ORAL)

MENZIES J.

TURNER

v.

THE QUEEN

I agree.

TURNER

v.

THE QUEEN

JUDGMENT
(ORAL)

OWEN J.

TURNER

v.

THE QUEEN

I agree.

TURNER

v.

THE QUEEN

JUDGMENT

WALSH J.

TURNER

v.

THE QUEEN

I agree.