

JOYCE

V.

THE QUEEN

REASONS FOR JUDGMENT

Oral

Judgment delivered at Sydney

on Friday 7th August 1970

JOYCE

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ORDER

Application for special leave refused.

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JUDGMENT

BARWICK C.J.

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In my opinion this is not a case for the grant of special leave to appeal. The applicant was convicted of the murder of a young woman with whom he had been associating. She died from stab wounds received at the hand of the applicant. The applicant raised the question at the trial whether the acts of stabbing were relevantly his acts so as to attract criminal responsibility in him for them. The applicant said he did not remember any of the events of the fatal day during that period of time in which the deceased was killed. He called a duly qualified medical practitioner practising as a psychiatrist for some twenty years. The psychiatrist, basing himself largely on the statements made by the applicant and the evidence given in the trial, expressed the opinion that at the time of the killing the applicant was not psychologically in a condition where his acts were voluntary in the sense that his conscious mind accompanied the physical performance of the acts of stabbing.

The psychiatrist's reasons for and explanation of his views are, to say the least, not easy of comprehension, but having regard to the opinion I have formed of the trial judge's summing up, I have no need to pursue those reasons or explanations in order to decide whether in totality the evidence

before the jury was such as could properly found a reasonable doubt in their minds as to whether the acts of stabbing were in truth and in law the conscious acts of the applicant.

I am prepared to deal with this application on the basis that there was evidence requiring the trial judge to deal with that specific issue in his summing up. In my opinion the trial judge did deal with that issue and did adequately direct the jury upon it.

I have read the summing up both as a whole and as an aggregation of specific passages to which the applicant's counsel has properly and emphatically called our attention. I am satisfied however that the trial judge did adequately instruct the jury on the necessary elements of the offence charged, including the voluntariness of the acts of stabbing attributed to the applicant.

No doubt there was evident difficulty in recounting to the jury the views of the psychiatrist, difficulties not made any the less by the judge's plainly evident lack of enthusiasm for them; but taking the summing up as a whole, in my opinion, the judge did leave to the jury for their decision the question of the applicant's responsibility for the acts of stabbing, and in relation to that matter, the acceptability or otherwise of the psychiatrist's views.

I do not accept the applicant's submission that the judge, either in terms or in substance, informed the jury that the applicant had not made any case on which they could reasonably doubt whether his mind went with his hand when he stabbed the deceased.

I would not be prepared to hold in this case that the trial had miscarried because of the terms in which the summing up was expressed. I would merely add that nothing I have said must be taken as expressing agreement on my part with all the reasons given by the Court of Criminal Appeal for dismissing the appeal to that Court.

I would dismiss the application.

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JUDGMENT
(ORAL)

McTIERNAN J.

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I agree that the application should be dismissed and find myself substantially in agreement with the reasons read by and prepared by his Honour the Chief Justice.

There is one fact that, perhaps, might be mentioned. It is not stated in the reasons of the Chief Justice. It is this: the accused person had attempted to kill himself on the occasion when this tragedy occurred.

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JUDGMENT
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MENZIES J.

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I agree that this application for special
leave should be refused.

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JUDGMENT
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WINDEYER J.

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I agree that the application should be refused.

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JUDGMENT
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WALSH J.

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I also agree that the application should be
refused.