



HIGH COURT OF AUSTRALIA

3 May 2017

RODNEY PETER PICKERING v THE QUEEN
[2017] HCA 17

Today the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of Queensland. The High Court held that a miscarriage of justice occurred in the trial of the appellant because the trial judge did not direct the jury on s 31(1)(c) of the *Criminal Code (Q)* ("the Code").

The appellant was tried before a judge and jury on a count of murder. The Crown alleged that the appellant had stabbed the deceased. The appellant was acquitted of murder but convicted of manslaughter, which was available as an alternative verdict under the Code.

The appellant appealed against his conviction to the Court of Appeal on the sole ground that a miscarriage of justice had occurred because s 31(1)(c) of the Code was not left to the jury. Under s 31(1)(c), a person is not criminally responsible for an act if the act is reasonably necessary in order to resist actual and unlawful violence threatened to the person. But under s 31(2), that protection does not extend, among other things, "to an act ... which would constitute the crime of murder, or an offence of which grievous bodily harm to the person of another, or an intention to cause such harm, is an element". Grievous bodily harm or an intention to cause such harm is not an element of the offence of manslaughter in Queensland.

It was not in dispute, and the Court of Appeal accepted, that s 31(1)(c) was fairly raised on the evidence at trial unless it was excluded by s 31(2). The Court of Appeal held that s 31(2) applied if, on the evidence, the act for which an accused seeks to avoid criminal responsibility would constitute an offence described in s 31(2), irrespective of whether such an offence had actually been charged. The Court of Appeal held that s 31(1)(c) did not avail the appellant, because his act of stabbing the deceased in the way he did was an act that would constitute the offence of unlawfully doing grievous bodily harm to another, that being an offence described in s 31(2). The Court of Appeal therefore dismissed the appellant's appeal.

By grant of special leave, the appellant appealed to the High Court. The High Court held that s 31(2) of the Code applies to an act only if the accused has been charged in relation to that act with an offence described in s 31(2) and seeks to invoke s 31(1) to deny criminal responsibility on that charge. Therefore, s 31(1) is not available to deny criminal responsibility on a charge of any of the offences described in s 31(2), but may be available in relation to any other offence that is charged or that is available as an alternative verdict. In this case, the protection afforded by s 31(1)(c) was available to the appellant in relation to the offence of manslaughter, which was not an offence described in s 31(2). The appellant's conviction was quashed and a new trial ordered.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*