



HIGH COURT OF AUSTRALIA

14 February 2024

THE KING v ROHAN (A PSEUDONYM)
[2024] HCA 3

Today, the High Court unanimously allowed an appeal from a judgment of the Court of Appeal of the Supreme Court of Victoria. The appeal concerned what is necessary to prove that a person is "involved in the commission of an offence" under s 323(1)(c) of the *Crimes Act 1958* (Vic), being where the person "enters into an agreement, arrangement or understanding with another person to commit the offence".

The respondent was convicted of 11 offences in the County Court of Victoria. Six of those convictions – two convictions of supplying a drug of dependence to a child and four convictions of sexual penetration of a child under the age of 12 years – depended on the prosecution proving that the respondent had, within the meaning of s 323(1)(c), entered into an agreement, arrangement or understanding to commit the offence. The prosecution case was that the respondent and his two co-accused had reached an agreement to supply alcohol and cannabis to the two complainants (girls aged 11 and 12), and then engage in sexual activity, including sexual penetration, with both the complainants. On that basis, the prosecution case was that all three co-accused were guilty of all charges, irrespective of who carried out the actual acts.

The elements of each offence did not include proof of knowledge of the victim's age. The relevant provisions required only that the victim in fact be under 18 years of age for the supply offences, and under 12 years of age for the sexual penetration offences. The trial judge did not direct the jury that, for the "agreement ... to commit the offence" to be established beyond reasonable doubt, the prosecution was required to prove that the co-accused knew the ages of the complainants or that they were under a specified age.

Allowing the appeal, the Court of Appeal held that it was necessary to prove that, at the time the agreement was made, the accused knew of or believed in the essential facts that made the proposed conduct an offence. The Court of Appeal held that the prosecution was therefore required to prove beyond reasonable doubt that, when he entered into the agreement, the respondent *knew* that the relevant complainant was under 12 for the sexual penetration offences and *knew* that the complainants were both under 18 for the supply offences.

The Crown successfully appealed to the High Court. The High Court unanimously held that, under s 323(1)(c), it is not necessary for the prosecution to prove that an accused knew or believed, at the time of entering the agreement, the essential facts that made the proposed conduct an offence, where that knowledge or belief is not an element of the offence itself. Knowledge of age was not an element of either of the offences. Therefore it was not necessary for the prosecution to prove that the respondent knew the ages of the complainants at the time he entered into the agreement to commit the offences.

- *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.*