



Supreme Court of New Zealand

19 May 2011

MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**TABBASUM MAHOMED v THE QUEEN
(SC 97/2010)**

**AZEES MAHOMED v THE QUEEN
(SC 117/2010)**

[2011] NZSC 52

PRESS SUMMARY

Mr Azees and Mrs Tabbasum Mahomed were found guilty of failing to provide their eleven-week-old daughter with the necessaries of life. Mr Mahomed was also found guilty of murder, and of two counts of intentionally causing grievous bodily harm to the child. Their appeals against conviction and sentence were dismissed by the Court of Appeal.

At trial evidence was led of an incident which had occurred a fortnight before the child's death. Mr and Mrs Mahomed had left the child alone in their parked van on a warm day for a period of time. The trial Judge allowed this evidence to be admitted generally. He directed the jury that it was for them to decide whether and how it was relevant to the charges.

The Supreme Court has found unanimously that this evidence was “propensity evidence” within the definition in s 40(1) of the Evidence Act 2006.

The majority of the Court (Elias CJ, Blanchard and Tipping JJ) held that the evidence was insufficiently probative of the states of mind necessary to establish the charges of causing grievous bodily harm and murder to outweigh the unfair prejudice caused by admitting the evidence. It should have been excluded in relation to those charges. Furthermore, the directions given to the jury gave insufficient guidance on the proper use of the evidence. However, due to the nature of the child's injuries and other admissible evidence, the majority concluded that the guilty verdicts were inevitable. Accordingly, and applying the proviso to s 385(1) of the Crimes Act 1961, there was no substantial miscarriage of justice.

McGrath and William Young JJ were of the view that the evidence was admissible in relation to all the charges and that the Judge provided adequate assistance to the jury.

The Court is therefore unanimous in the result that the appeals should be dismissed.

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

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