IN THE SUPREME COURT OF NEW ZEALAND

SC 65/2011
[2011] NZSC 136

AUGUSTUS AH-CHONG

v

THE QUEEN

SC 66/2011

KUNAL NAND REDDY

v

THE QUEEN

Court: Tipping, McGrath and William Young JJ

Counsel: H D M Lawry for Applicant Ah-Chong
L C Preston for Crown

Judgment: 11 November 2011

JUDGMENT OF THE COURT

Both applications for leave to appeal are dismissed.

REASONS

[1] These two related applications for leave to appeal are being dealt with together. Mr Ah-Chong was found guilty on counts of causing grievous bodily harm with intent to do so, and aggravated robbery. He was sentenced to seven years six months' imprisonment. His appeal to the Court of Appeal was partially successful in that the conviction for aggravated robbery was quashed.[1] The appeal was, in other respects, dismissed.

[2] He seeks leave to appeal to this Court on two grounds. The first concerns the directions given by the trial Judge to the jury on the liability of parties to a joint enterprise. The second concerns the way in which the verdicts were delivered.

[3] Mr Reddy was convicted of being an accessory after the fact to causing grievous bodily harm and sentenced to eight months' imprisonment. His appeal to the Court of Appeal against conviction was dismissed.[2] His appeal against sentence was allowed and the term of eight months' imprisonment was quashed and replaced with one of two months' imprisonment. This level of sentence was designed to allow for Mr Reddy's immediate release.

[4] His application for leave raises issues concerning the way in which the verdict of the jury was delivered and points concerning the Judge's summing-up, an alleged failure of trial counsel to adduce good character evidence, and a contention that the Court of Appeal misread the relevant provisions of s 71(1) of the Crimes Act 1961.

[5] In Mr Ah-Chong's case the issue concerning the jury directions focuses on the meaning of the expression "probable consequence" in s 66(2) of the Crimes Act. The Court of Appeal held that, for the purposes of s 66(2), a consequence was probable if it could well happen and the consequence did not have to be more probable than not. We do not consider it reasonably arguable that the Court of Appeal erred in this respect. Furthermore, as the Crown suggests, against the facts

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1 *Reddy v R* [2011] NZCA 184, [2011] 3 NZLR 22.
2 Ibid.

of the present case it seems unlikely that the jury would have come to any different view on the alternative test propounded by the applicant.

[6] It is not necessary for us to recount the precise sequence of events which occurred in relation to the taking of the verdict. We are satisfied that the Court of Appeal was correct in the view it took of that process and in its conclusion that no miscarriage of justice arose from the need for the jury to correct what was an obvious slip made by the foreman when delivering the verdict. The jury had not been discharged at the time the slip was corrected.

[7] In Mr Reddy's case we do not consider that any of the matters which he seeks to raise involve matters of general or public importance. Nor do we consider that there is any risk that a substantial miscarriage of justice may occur if leave is not granted. As regards the s 71(1) point, we accept that in the abstract the point raised by Mr Reddy is capable of being one of general importance but we are satisfied, for the reasons given by the Crown in its submissions, that the point at issue was not capable of affecting the outcome in the light of the way the Judge directed the jury.

[8] For these various reasons we are not persuaded that it is in the interests of justice for leave to appeal to be given in either case. The applications must therefore be dismissed.

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