

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 59/2023
[2023] NZSC 169

BETWEEN MOETU KAITAI
Applicant

AND THE KING
Respondent

Court: Glazebrook, Williams and Kós JJ

Counsel: T Epati and J E Judge for Applicant
Z R Johnston and W J Harvey for Respondent

Judgment: 22 December 2023

JUDGMENT OF THE COURT

A The application for leave to appeal is granted in part (*Kaitai v R* [2023] NZCA 184). The approved question is whether the Court of Appeal was correct to dismiss the appeal against conviction, so far as it was based on defences of accident, involuntariness and lack of intent.

B The application for leave to appeal is otherwise dismissed.

REASONS

[1] Ms Kaitai presented a loaded gun in the course of an extended argument with Mr Kana. Some evidence given at trial suggested the gun had been directed away from Mr Kana, but that he had grabbed the barrel, drawing it towards him and causing it to discharge. Mr Kana died.

[2] Ms Kaitai was charged with murder under s 167(b) of the Crimes Act 1961: that she meant to cause a bodily injury known to her to be likely to cause death and was reckless about whether death ensued. The primary defence was one of involuntary

actus reus (accident) and lack of intent to injure. She was however convicted, and her conviction appeal to the Court of Appeal failed.¹

[3] We are satisfied that leave should be granted on Ms Kaitai's primary ground of appeal.

[4] We are not satisfied that the secondary ground advanced meets the leave criteria.² It concerns observations by the trial Judge about Ms Kaitai not having given evidence, made in the context of explaining how the jury should go about its task of determining Ms Kaitai's actual knowledge and intent. The directions concerned available sources of evidence from which to assess those matters. The Judge had emphasised there and elsewhere that no adverse inference was to be drawn from Ms Kaitai exercising her right not to give evidence. Although one direction was unaccompanied by that warning, we consider the jury would have been in no doubt about that matter, and there is no risk of a miscarriage of justice. Nor does it raise any matter of general or public importance.

Solicitors:
Crown Law Office | Te Tari Ture o te Karauna, Wellington for Respondent

¹ *Kaitai v R* [2023] NZCA 184.

² Senior Courts Act 2016, s 74(2)(a) and (b).