



HIGH COURT OF AUSTRALIA

Public Information Officer

5 August, 2003

KAMALJEET DHANHOA v THE QUEEN

The convictions of the appellant, Mr Dhanhoa, for kidnapping and robbery in company with wounding were upheld by the High Court of Australia.

The victim, Anthony Herbert Schembri, invited four men with whom he had been playing pool at the Bridge Hotel, Rozelle, in Sydney, back to his flat to smoke marijuana on January 19, 1999. At the flat, he was head-butted, grabbed around the throat, kicked and punched, and stabbed in the liver and lungs, and his wallet was stolen. He escaped as his attackers tried to bundle him into their car at knifepoint to take him to an automatic teller machine. He later found he had also been stabbed in the back. Mr Schembri could not say with certainty who committed each assault but said all four men participated. Two neighbours said they glimpsed Mr Schembri scuffling with three men.

Mr Schembri identified Mr Dhanhoa from photographs as one of the four men. Mr Dhanhoa's fingerprints were found at the flat. He claimed in evidence at his trial in the New South Wales District Court that he had already left the flat and caught a taxi home before the attack took place. The principal question for the jury was whether Mr Dhanhoa was still at the flat when the attack occurred.

Mr Dhanhoa initially told police he had never been to either Mr Schembri's flat or the Bridge Hotel but at his trial admitted having been to both places. He also told police he knew nothing about the stabbing or the robbery. He appealed on the grounds that the trial judge's directions and warnings about identification evidence, and lies, were inadequate. His convictions were upheld by the NSW Court of Criminal Appeal.

The High Court, by a 4-1 majority, dismissed his appeal. The majority held that section 116 of the Evidence Act, which is concerned with warnings to juries about warning juries in relation to identification evidence, was not mandatory unless the reliability of the identification was disputed. Mr Dhanhoa's identification as one of the four men who went to the flat was not in dispute; only whether he was still present during the attack. On the issue of inconsistencies between what Mr Dhanhoa told police and his evidence at the trial, the prosecutor ran the case on the basis that such inconsistencies raised questions about his reliability. They were not relied upon as evidence of guilt. The Court held that there were no material misdirections.

- *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.*