



HIGH COURT OF AUSTRALIA

Public Information Officer

10 December, 2003

NOEL JEBATHILAKAN ARULTHILAKAN v THE QUEEN
CHISEKO MARK MKOKA v THE QUEEN

The High Court of Australia, by a 4-1 majority, today dismissed appeals from two men convicted of murder, wounding with intent to grievous bodily harm and attempted armed robbery following a bungled bid to steal a mobile phone.

The men were convicted, along with a third man, Carlos Escalante, who pleaded guilty, in the South Australian Supreme Court, and appealed unsuccessfully to the SA Court of Criminal Appeal. They appealed to the High Court only on their murder convictions.

Five men in a stolen car driving through Stepney in Adelaide looked for someone to rob of a mobile phone. When they spotted Matthew Bourne and Colin Hugh Hillam, who was speaking on a mobile, Mr Arulthilakan, Mr Mkoka and Mr Escalante approached them. Mr Mkoka carried a cosh – a cue ball in a sock – and a knife passed to him by Mr Arulthilakan. Mr Escalante also carried a knife, which was used to stab Mr Hillam and Mr Bourne during the tussle over the phone. Mr Hillam was stabbed four times, receiving serious wounds to his chest and side. Mr Mkoka admitted attacking Mr Bourne with the cosh and kicking him as he lay on the ground. Mr Escalante allegedly stabbed Mr Bourne in the heart, and he died of rapid blood loss.

The central issue in the appeal concerned the complicity of Mr Arulthilakan and Mr Mkoka in Mr Escalante's stabbing of Mr Bourne. The defence case was that the stabbing of Mr Bourne was an independent act by Mr Escalante, done in the heat of an affray, and after any robbery attempt had ceased. The prosecution case was the use of the knife was part of the armed robbery, and resistance from the two victims was foreseeable, for which the men had armed themselves. Under the SA criminal code, a person intentionally committing a violent act while engaged in a major indictable offence – such as armed robbery – which results in another person's death is guilty of murder.

The High Court held that trial judge Justice Bruce DeBelle technically misdirected the jury in telling them that as a matter of law Mr Escalante producing the knife was an act of violence when it should have been left as a question of fact for the jury, but the majority held that it did not give rise to a miscarriage of justice, since no other view of the facts was reasonably open. The appellants also argued that Justice DeBelle's directions withdrew from the jury's consideration the issue of whether the production of the knife was a significant cause of Mr Bourne's death, but the majority rejected their argument. The majority held that, after Mr Escalante presented the knife, it was open to the jury to reason that the victims' resistance, the struggle and the fatal stabbing were all part of a brief sequence of events resulting from the act of violence.

- *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.*