



HIGH COURT OF AUSTRALIA

Public Information Officer

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GAS v THE QUEEN
SJK v THE QUEEN

The High Court of Australia today upheld the increased sentences imposed by the Victorian Court of Appeal on two youths who pleaded guilty to the manslaughter of an elderly woman during a robbery of her home. It unanimously dismissed the youths' appeals against the new sentences.

The victim, aged 73, was found dead in her Seaford, Melbourne, home on 16 October 2000 where she lived with her brain-damaged son. GAS and SJK were aged 16 and 15 respectively. SJK knew the son and was friends with two of the victim's grandchildren. GAS and SJK knew the victim kept large amounts of cash for her son's shopping expeditions and knew the son left doors open at night. They had previously stolen her handbag from beside her bed during the night. SJK told police that on the later occasion the victim woke up and GAS attacked her, appearing to break her neck. GAS denied being at the house. The victim's death was caused by strangulation. She had also been beaten around the head and body, had three fractured ribs and had been sexually assaulted.

GAS and SJK both pleaded guilty when the original charge of murder was changed to manslaughter. The prosecutor told the Court it would be impossible to say which one killed the victim, so each should be sentenced as an aider and abettor rather than as a principal offender. Justice Bernard Bongiorno sentenced each to six years' jail with a four-year non-parole period.

The Director of Public Prosecutions appealed on the ground that the sentences were manifestly inadequate. The DPP argued that Justice Bongiorno had given undue weight to the offenders' youth and to the prospect of rehabilitation and fell into error by allowing too great a reduction in sentence for aiding and abetting. He argued that in manslaughter of this type little, if any, disparity between being a principal and being an aider and abettor was justified. The Court of Appeal upheld all the DPP's submissions and increased each sentence to nine years with a six-year non-parole period.

GAS and SJK appealed to the High Court on the ground that the Court of Appeal erred in allowing the DPP to conduct his appeal in a manner said to be contrary to a plea agreement between the Crown and the two offenders. They objected to the DPP arguing there was little difference between a principal offender and an aider and abettor in this case.

The High Court held that the Court of Appeal was right to accept that this was an extremely serious manslaughter case, occurring in circumstances of extreme aggravation, including night-time home invasion, taking advantage of knowledge from the handicapped son, robbery, and a vicious attack including sexual assault on an elderly woman. The Court held that it was not within the capacity of the parties to agree that each offender receive a substantially lesser sentence than a principal. It held that aiders and abettors were not always substantially less culpable than principal offenders and that the error was in their original sentencing.

- *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.*