



## HIGH COURT OF AUSTRALIA

3 November 2010

THE QUEEN v NGUYEN  
[2010] HCA 38

The High Court of Australia today granted the prosecution special leave to appeal against the decision of the Court of Appeal of the Supreme Court of Victoria to quash Dang Quang Nguyen's jury convictions on one count of murder and one count of attempted murder. The High Court unanimously allowed the prosecution's appeal. The High Court also unanimously allowed a cross-appeal brought by Dang Quang Nguyen. The High Court found that the trial judge misdirected the jury on the charge of murder by failing to leave open the alternative verdict of manslaughter. The High Court ordered a new trial.

In the early hours of 8 November 2004, Dang Quang Nguyen went to a flat in Carlton, Victoria, with Dang Khoa Nguyen and Bill Ho, allegedly to collect a drug debt. Seven young people were in the flat. Dang Quang Nguyen waved a sword about in the lounge room of the flat, cutting two or three people. Bill Ho shot two men: one of those men survived, but the other died.

Dang Quang Nguyen, Dang Khoa Nguyen and Bill Ho were each charged with one count of murder and one count of attempted murder. Dang Quang Nguyen was charged on the basis that he had been complicit in crimes committed by Bill Ho. On 13 October 2007, after a Supreme Court trial that lasted several weeks, a jury found all three men guilty on both counts.

Dang Quang Nguyen appealed against his convictions. In December 2009, two years after the men had been sentenced, the Court of Appeal allowed Dang Quang Nguyen's appeal, quashed his convictions and directed that he be acquitted. In its reasons, published in February 2010, the Court of Appeal held that Dang Quang Nguyen's convictions could not be supported by the evidence, and were therefore unsafe or unsatisfactory.

The High Court today granted the prosecution special leave to appeal against the Court of Appeal's decision to quash Dang Quang Nguyen's convictions, and allowed that appeal. The Court held that, on the whole of the evidence presented at trial, it was open to the jury to be satisfied beyond reasonable doubt that Dang Quang Nguyen agreed in the use of deadly force, contemplated that it might be used, or encouraged its use. The Court of Appeal was therefore wrong to find that the verdicts of the jury in respect of Dang Quang Nguyen were unsafe or unsatisfactory.

The High Court also granted Dang Quang Nguyen's application for special leave to cross-appeal in relation to the sufficiency of the directions given by the trial judge to the jury, and allowed that appeal. The Court held that the trial judge's directions did not sufficiently leave manslaughter to the jury as an alternative verdict in respect of Dang Quang Nguyen's murder charge. The Court held that it was open to the jury to conclude that, even though the principal offender Bill Ho was

guilty of murder, Dang Quang Nguyen was guilty of the lesser crime of manslaughter because he agreed in, contemplated or encouraged only the infliction of some harm, and not the infliction of really serious injury or death. The Court held that the misdirection constituted a wrong decision on a question of law and that it could not be said that there was no substantial miscarriage of justice in the trial of Dang Quang Nguyen.

The Court held that, despite the undue protraction of Dang Quang Nguyen's case in the courts below, the orders of the Court of Appeal should be set aside, Dang Quang Nguyen's convictions quashed, and a new trial had.

- *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.*