



HIGH COURT OF AUSTRALIA

13 March 2013

HUYNH v THE QUEEN

DUONG v THE QUEEN

SEM v THE QUEEN

[2013] HCA 6

Today the High Court unanimously dismissed three appeals from a decision of the Full Court of the Supreme Court of South Australia ("the Full Court") which upheld the appellants' convictions for murder.

The appellants were convicted of murder in the Supreme Court of South Australia following a fight at a party in suburban Adelaide in which a young man was stabbed. The appellants were part of a group that had descended on an 18th birthday party after a dispute between one of the appellants and others attending the party. The appellants were convicted on the basis that they were participants in a joint criminal enterprise to kill or to cause really serious bodily harm to a person or persons at the party using a knife or similar bladed weapon.

The appellants appealed against their convictions to the Full Court, arguing that their trials had miscarried because the trial judge had not told the jury that it was necessary for the prosecution to prove that each appellant had participated in the joint criminal enterprise. The appellants also argued that their trial had miscarried because the trial judge had not addressed each appellant's case separately in his summing-up to the jury. The Full Court dismissed the appeal on both grounds. Huynh was granted special leave to appeal to the High Court, and the special leave applications of Duong and Sem were referred to an enlarged bench of the High Court to be heard at the same time as Huynh's case.

The High Court granted Duong and Sem leave to appeal, but unanimously dismissed all three appeals. The High Court held that, although participation in furtherance of an agreement to kill or to cause really serious bodily harm to a person was an element that had to be proved against each appellant, the trial judge had not erred because the appellants' participation was not a live issue at their trial. The appellants did not dispute that they were present when the crime was committed. Their presence pursuant to the agreement constituted participation in the joint criminal enterprise.

The High Court held that the trial judge had not erred in failing to address each appellant's case separately in his summing-up, because almost all the evidence in the trial was admissible against each appellant and his Honour had adequately identified the evidence relevant to the determination of the issues in each case and the criticisms each appellant had made of that evidence.

- *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.*