



HIGH COURT OF AUSTRALIA

6 April 2016

ZABURONI v THE QUEEN

[2016] HCA 12

Today the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of Queensland. The High Court held that where proof of intention to produce a particular result is made an element of liability for an offence, the prosecution is required to establish that the accused meant to produce that result by his or her conduct. The majority reasoned that knowledge or foresight of result, whether possible, probable or certain, is not a substitute for proof of specific intent.

The appellant was convicted by a jury in the District Court of Queensland of unlawfully transmitting a serious disease to another with intent to do so under s 317(b) of the *Criminal Code* (Q). The serious disease that he transmitted to the complainant was the human immunodeficiency virus ("HIV"). The appellant was diagnosed with HIV in 1998 and was informed then that there was a risk of transmission of the disease through unprotected sexual intercourse. He commenced a relationship with the complainant in 2007 but did not disclose to her that he was HIV positive. They engaged in frequent unprotected sexual intercourse during their relationship, which lasted until September 2008. The complainant was diagnosed as HIV positive a year after their relationship ended. The appellant lied to the complainant about his HIV status several times during and after their relationship.

The appellant appealed against his conviction to the Court of Appeal contending, that the verdict was unreasonable as the evidence did not establish that he intended to transmit HIV to the complainant. The Court of Appeal dismissed the appeal. The majority held that it was open to the jury to be satisfied beyond reasonable doubt that the appellant intended to transmit HIV to the complainant, in circumstances in which he had engaged in frequent acts of unprotected sexual intercourse with her, knowing that he was HIV positive.

By grant of special leave, the appellant appealed to the High Court. The High Court held that where liability for an offence requires proof of intention to produce a particular result, the prosecution must establish that the accused had that result as his or her purpose or object at the time of engaging in the conduct. Purpose is not to be equated with motive and a person may engage in conduct having more than one purpose. A person's awareness of the risk that his or her conduct may result in harm does not, without more, support the inference that the person intended to produce the harm.

The High Court held that, apart from the evidence that the appellant engaged in frequent unprotected sexual intercourse with the complainant, there was no evidence to support the inference that the appellant had the intention to transmit HIV to her. It followed that the conviction must be quashed. The Court set aside the orders of the Court of Appeal and substituted for the verdict of the jury a verdict of guilty of unlawfully doing grievous bodily harm to the complainant, to which the appellant had pleaded guilty. The proceedings were remitted to the District Court of Queensland for sentence.

- *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.*