



HIGH COURT OF AUSTRALIA

18 October 2017

CHRISTOPHER CHARLES KOANI v THE QUEEN

[2017] HCA 42

Today the High Court published its reasons for allowing an appeal from the Court of Appeal of the Supreme Court of Queensland on 17 August 2017. The High Court held unanimously that the Court of Appeal erred in concluding that a criminally negligent act or omission could found a conviction for the offence of murder under s 302(1)(a) of the *Criminal Code (Q)* ("the Code").

The appellant was charged with the murder of his de facto partner. The deceased's death was caused by a single gunshot wound to the head. The appellant had loaded a shotgun, presented it to the deceased and pulled the hammer back to be at least almost fully cocked at the time of discharge. The expert evidence was that the gun, which had been modified, might discharge when not fully cocked as the result of the shooter's finger slipping off the shortened hammer spur. The trial judge considered that, under the Code, the "act" causing death in a firearms case is the pulling of the trigger or another deliberate act causing the weapon to discharge. In these circumstances, the trial judge left the prosecution's alternative case to the jury: if the jury was not satisfied that the discharge of the gun was caused by a willed act, but was satisfied that the deceased's death was the result of the appellant's failure to use reasonable care in his management of the gun at a time at which he intended to kill or inflict grievous bodily harm on the deceased, he would be guilty of murder. The jury returned a verdict of guilty of murder and the appellant was later sentenced to life imprisonment. By majority, the Court of Appeal dismissed the appellant's appeal against his conviction. By grant of special leave, the appellant appealed to the High Court.

The High Court held that it was an error of law to leave the alternative case for the jury's consideration: the act causing death and the intention to kill or inflict grievous bodily harm must coincide for a person to be found guilty of murder under s 302(1)(a) of the Code. It is incongruous to attach a requirement of proof of intent to conduct that is made an offence because it falls short of an objectively determined standard of reasonableness. The High Court further held that the perceived need to leave the alternative case to the jury was based on a wrongly confined understanding of the "act" to which criminal responsibility attaches. Under the Code, as under the common law, it was open to the jury to find that the appellant's actions in loading the gun, presenting it to the deceased and pulling back the hammer were connected, willed, acts, which caused the death of the deceased. The appellant's conviction was quashed and a new trial was ordered.

- *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.*