



HIGH COURT OF AUSTRALIA

20 March 2019

DIRECTOR OF PUBLIC PROSECUTIONS REFERENCE NO 1 OF 2017
[2019] HCA 9

Today the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of Victoria. The High Court held that a direction to a jury determining a criminal trial that it may bring in a verdict of not guilty at any time after the close of the Crown case, commonly known as a *Prasad* direction, is contrary to law and should not be administered.

On 15 November 2016, an accused person entered a plea of not guilty to a charge of murder. A jury of 13 persons was empanelled. The trial judge gave a *Prasad* direction over the Crown's objection. The direction included instruction on the elements of murder and manslaughter with particular reference to proof of the intent for murder, which was in issue, as well as instruction on self-defence in the context of family violence. A printed copy of the direction, which was at least 20 pages in length, was given to the jury.

Before the jury withdrew to consider its response to the direction, a ballot was conducted to reduce the jury to 12 jurors. After retiring to consider the direction, the 12 jurors advised that they wished to hear more. The juror who had been balloted off re-joined the jury, and the trial continued with all 13 jurors present. Following the close of the defence case, but before addresses, the trial judge reminded the jury of the continuing operation of the *Prasad* direction and gave it a further opportunity to consider whether it wished to hear more. By a second ballot, the jury was reduced to 12 before it withdrew to consider its response to the renewed *Prasad* direction. On its return to the court, the jury delivered verdicts of not guilty of murder and not guilty of manslaughter.

The Director of Public Prosecutions (Vic) ("the Director") referred a point of law to the Court of Appeal of the Supreme Court of Victoria, namely whether a *Prasad* direction is contrary to law and should not be administered to a jury determining a criminal trial. The reference did not affect the acquittal of the acquitted person. The majority of the Court of Appeal held that there was no reason in principle for holding that a trial judge should not give a *Prasad* direction in an appropriate case.

By grant of special leave, the Director appealed to the High Court. The Court unanimously allowed the appeal. The Court held that a jury does not have a common law right to return a verdict of not guilty at any time after the close of the Crown case. The exercise of the discretion to give a *Prasad* direction, based on the trial judge's assessment of the cogency of the evidence to support a conviction, was held to be inconsistent with the division of functions between judge and jury. The High Court held that, if the evidence at its highest is capable of sustaining a conviction, it is for the jury as the constitutional tribunal of fact to decide whether guilt has been proved beyond reasonable doubt. The Court answered the point of law to the effect that a *Prasad* direction is contrary to law and should not be administered to a jury determining a criminal trial between the Crown and an accused person.

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.