



HIGH COURT OF AUSTRALIA

31 August 2016

THE QUEEN v BADEN-CLAY [2016] HCA 35

Today the High Court unanimously allowed an appeal from the Court of Appeal of the Supreme Court of Queensland. The High Court held that the Court of Appeal erred in concluding that the jury's verdict of guilty of murder was unreasonable on the basis that the prosecution had failed to exclude the hypothesis that the respondent unintentionally killed his wife.

On 15 July 2014, following a trial in the Supreme Court of Queensland before Byrne SJA and a jury, the respondent was found guilty of the murder of his wife. The respondent gave evidence that he, his wife and their three daughters were at home on the night of 19 April 2012. The respondent said that he went to bed at about 10 pm, leaving his wife in the living room; the next morning, she was not at home. He said that his wife often went for an early morning walk. He said that after a period of time, he attempted to contact his wife, went driving around the suburb looking for her, and finally called 000 to report her missing. On 30 April 2012, the deceased's body was found under a bridge on a bank of Kholo Creek.

The respondent had been involved in a sexual relationship with another woman, Ms Toni McHugh, since August 2008. His wife believed that the affair had ended in 2011. On 16 April 2012, on the advice of a counsellor, the respondent's wife spent some time "venting and grilling" the respondent about his affair with Ms McHugh. On the day before the deceased's disappearance, Ms McHugh told the respondent that she would be attending a conference that the deceased was also planning to attend. The respondent had told Ms McHugh that he would be out of his marriage by 1 July. Following the deceased's disappearance, injuries to the respondent's right cheek were examined. He said he cut himself shaving. Three experts gave evidence that one set of scratches was most likely caused by fingernails.

The respondent appealed against his conviction to the Court of Appeal on the ground that the jury's verdict was unreasonable. The Court of Appeal upheld the appeal, set aside the respondent's conviction on the charge of murder, and substituted a verdict of manslaughter. The Court held that, although it was open to the jury to find that the respondent had killed his wife, the evidence did not allow the jury to be satisfied beyond reasonable doubt that the respondent intended to kill her, or to cause her grievous bodily harm. In particular, the Court accepted the respondent's submission, made for the first time on appeal, that the prosecution had not excluded the hypothesis that there was a physical confrontation between the appellant and his wife in which he delivered a blow which killed her (for example, by the effects of a fall hitting her head against a hard surface) without intending to cause serious harm.

By grant of special leave, the Crown appealed to the High Court. It was common ground on the appeal that the respondent killed his wife. The High Court held that the hypothesis on which the Court of Appeal acted was not available on the evidence. At the trial, the respondent denied that he had fought with his wife, killed her and disposed of her body. His evidence, being the evidence of the only person who could give evidence on the issue, was inconsistent with that hypothesis. Further, the jury were entitled to regard the whole of the evidence as satisfying them beyond reasonable doubt that the respondent acted with intent to kill or cause grievous bodily harm when he killed his wife. The Court ordered that the respondent's conviction for murder be restored.

- *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.*