

13/83

IN THE PRIVY COUNCIL

No. ⁵²~~25~~ of 1982.

ON APPEAL FROM

THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN

BRIAN RONALD McDONALD

Appellant

AND

THE QUEEN

Respondent

10.

CASE OF THE APPELLANT PURSUANT TO RULE 63

"THE CIRCUMSTANCES OUT OF WHICH THE
APPEAL ARISES."

RECORD

20.

1. This is an appeal from a judgement of the Court of Appeal of New Zealand (Richmond P., Woodhouse and Quilliam J.J.) delivered on the 9th day of October, 1980 dismissing an appeal brought by the Appellant against conviction in respect of one charge of murder laid by indictment pursuant to Section 172 of the Crimes Act 1961.

28.

2. The Appellant was tried before a Judge and Jury of 12 in the Supreme Court of New Zealand at Auckland between 21st April 1980 and 6th May, 1980. The Jury found the Appellant guilty "as a participant with others".

RECORD

3. At the Appellant's trial, two of his alleged accomplices gave evidence. In order to facilitate the admission of their evidence, the Solicitor-General signed a declaration in respect of each man to the effect that he would stay any prosecutions which may be brought against them in the future in respect of the crimes specified in the undertaking. Prior to the Solicitor-General giving his undertaking certain members of the Police force had promised the alleged accomplices that they would not be prosecuted if they gave evidence and provided they "did not pull the trigger".
10. Part II
pp 1 - 2
- Part I
pp 16 - 17
18 - 19
37 - 38
148
149 - 150
151
20. 4. On appeal to the Court of Appeal, the issues before the Court were, inter alia :
- (a) The Solicitor-General was incompetent to grant immunity in the form in which he did ;
- (b) The actions of the Police in offering inducements to alleged accomplices so that they gave evidence for the Crown amounted to an abuse of the Court's process ;
30. (c) Having regard to points (a) and (b) above or in any case, in the exercise of his direction, the Trial Judge ought to have refused to admit the evidence of the accomplices ;
40. (d) Even if the evidence was properly admitted the Trial Judge had misinterpreted the Solicitor-General's undertaking and consequently misdirected the jury ;

in each case, the Court of Appeal ruled against the Appellant.

5. As a consequence of the Court of Appeal's decision, the Appellant petitioned Her Majesty in Council for special leave to appeal against that decision. The Petition for special leave to appeal was heard on the 26th May, 1982 and the Appellant was granted special leave to appeal.

10. CONTENTIONS TO BE URGED BY THE APPELLANT

6. The Appellant contends that the Solicitor-General has no power to give would-be witnesses an undertaking that he would stay future criminal proceedings against them.

7. The Appellant contends that members of the Police force have no authority to make promises or offer inducements to would-be witnesses.

20. 8. The Appellant contends that in the particular circumstances of his case the evidence of the alleged accomplices ought not to have been admitted at the hearing of his trial.

9. The Appellant contends that the Jury at his trial was not correctly or adequately directed on the question of the accomplices' evidence in that :

Part 1
pp 265 - 267

30. (a) The learned Trial Judge failed to distinguish between the "immunities" promised by the Police on the one hand and by the Solicitor-General on the other ; and

40. (b) In the peculiar circumstances of the present case His Honour failed to give the Jury a sufficient warning as to the dangers of convicting the Appellant on the evidence of the two accomplices.

RECORD

10. The Appellant contends that the judgement of the Court of Appeal is erroneous and ought to be overturned by the Board for the following, amongst other, reasons :

R E A S O N S .

10. 1. The power to stay criminal proceedings is vested in the Attorney-General by virtue of the Summary Proceedings Act 1957 and the Crimes Act 1961. Each of these Acts authorises a stay of a criminal proceeding which has already commenced. There is no provision in either of the enactments to promise a stay of future proceedings. The Attorney-General's prior common law powers have now been codified and he cannot act outside the scope of the codifying Acts.
20. 2. The Police have no authority either in common law or by Statute to make promises to would-be Crown witnesses that they could not be prosecuted if they gave evidence for the Crown. Such promises when made by the Police amount to inducements and in the circumstances of this case the inducements offered to the witnesses were so gross that the witnesses could not be relied upon thereafter to give credible evidence. It was, therefore, necessary for the sake of justice and a fair trial that their evidence be excluded.
30. 3. The learned Trial Judge's direction must have misled the Jury as to the correct interpretation of the immunity granted to the two accomplices and in consequence the jury could not correctly decide whether to accept or reject the evidence of the accomplices and secondly, if they decided to accept the evidence they would have been misled as to the weight to be given to the evidence in question.
- 40.

BJ. HARTMI. KOYA

IN THE PRIVY COUNCIL

No. 25 of 1982

ON APPEAL FROM

THE COURT OF APPEAL OF NEW ZEALAND

BETWEEN BRIAN RONALD McDONALD

APPELLANT

A N D THE QUEEN

RESPONDENT

CASE OF THE APPELLANT
PURSUANT TO RULE 63
