IN THE SUPREME COURT OF NEW ZEALAND

SC 49/2013
[2013] NZSC 80

BETWEEN	SIUAKE LISIATE Applicant
AND	THE QUEEN Respondent

Court: Elias CJ, William Young and Glazebrook JJ

Counsel: G J X McCoy QC and Q Duff for Applicant
M J Inwood for Respondent

Judgment: 21 August 2013

JUDGMENT OF THE COURT

The application for leave to appeal is dismissed.

REASONS

[1] The applicant was one of three men who were found guilty of murder.[1] The case against the applicant was that he incited or procured one of the other men to kill the victim and thus invoked s 66(1)(d) of the Crimes Act 1961. Central to the Crown case were two texts which the Crown contended had been sent by the applicant on 28 February 2009, the day before the murder. Although the defence put the applicant's authorship of the texts in issue, the jury must have concluded that he sent them.

[2] The first of the two texts was in Tongan and the second was largely in Tongan.

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1 *R v Lisiate* HC Auckland CRI-2009-044-2878, 16 December 2011.

[3] There was a dispute at trial as to what the second text meant. On the basis of the Crown case, the second text referred to the killing of the victim whereas, on the defence case, the text envisaged the victim being "put out of action". This difference focused on the meaning to be attributed to the Tongan word, "mate'i".

[4] The grounds of the proposed appeal are addressed to the Judge's summing up as to s 66(1)(d) and the evidence from Tongan translators as to what the text messages meant.

[5] The Judge gave the jury a copy of s 66(1) along with a written questionnaire. In the context of the case as a whole, the allegation against the applicant was simple; that by his texts (and what the texts suggest he had earlier said) he had incited, counselled or procured one of his co-defendants to attack the deceased with murderous intent. The way the Judge summed up put that issue squarely before the jury.

[6] The second point rests on the view that the jury had to deal separately and sequentially with issues of attribution, interpretation and intent, that is: (a) did the applicant send the critical texts, (b) translation; essentially, did "mate'i" connote "killing" and (c) the applicant's intention/state of mind in sending the texts. The focus of the submissions for the applicant is on the translation issue and the argument is that the jury should have been told to focus in on that as a discrete question and to acquit unless satisfied beyond reasonable doubt that the Crown's translation was correct.

[7] The jury had to determine what the words used in the texts meant (and were intended to mean) as between the applicant and the recipient, an issue which did not fall to be determined solely by reference to the evidence of the expert translators. Indeed, as the Court of Appeal said, it would have been open to the jury to have convicted the applicant of murder on the basis of the defence translation.[2]

[8] The proposed appeal raises no point of law of general or public importance. The application thus turns on s 13(2)(b) of the Supreme Court Act 2003. The issues

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2 *Lisiate v R* [2013] NZCA 129 at [60].

for the jury in relation to the applicant were straightforward and were adequately identified in the summing up and associated material. The translation dispute was not a stand alone discrete point on which the Crown case stood or fell. More generally, the applicant's arguments in relation to these points were fully addressed in the Court of Appeal judgment. In the result we see no appearance of a substantial miscarriage of justice.

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