**IN THE SUPREME COURT OF NEW ZEALAND**

**SC 71/2015**
**[2015] NZSC 156**

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| BETWEEN | DINESH KUMAR MANOHARAN<br>Applicant |
| AND | THE QUEEN<br>Respondent |

Court: Elias CJ, William Young and Arnold JJ

Counsel: C W J Stevenson for Applicant
A Markham for Respondent

Judgment: 28 October 2015

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**JUDGMENT OF THE COURT**

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**The application for leave to appeal is dismissed.**

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**REASONS**

[1] The applicant, Mr Manoharan, and an associate, Mr Gorinski, were convicted following a jury trial before Judge Davidson of aggravated robbery in relation to an armed invasion of an elderly couple's home. Mr Manoharan was sentenced to imprisonment for 11 years.[1] His appeal against conviction was unsuccessful.[2] He now seeks leave to appeal to this Court.

[2] The evidence against Mr Manoharan included a partial DNA profile, obtained by way of low copy number (LCN) analysis. Swabs were taken from one of the plastic cable ties which had been used to restrain the elderly couple. These swabs were subjected initially to standard DNA testing, and when that was inconclusive, to LCN analysis. The LCN testing gave a partial DNA profile, with results being obtained from four of the 10 sites tested. As one of the four DNA components

1 *R v Gorinski* DC Wellington CRI-2011-032-2155, 27 November 2012 (Judge Davidson).
2 *Manoharan v R* [2015] NZCA 237 (French, Asher and Williams JJ).

present in the profile corresponded with one of the victims, it was removed from the sample, leaving three components.

[3] The Crown's expert witness gave evidence that the resulting DNA profile was 20 times more likely to have come from Mr Manoharan than from someone unrelated to him and selected at random from the New Zealand population. The expert witness said that this provided "moderate" scientific support for the proposition that the DNA originated from Mr Manoharan.

[4] For Mr Manoharan, Mr Stevenson advances three grounds of appeal:

(a) The DNA evidence should not have been admitted as its prejudicial effect outweighed its probative value.[3]

(b) The Crown's expert witness wrongly refused to accept in cross-examination any alternative way of expressing the likelihood ratio associated with the DNA profile (such as "many other New Zealanders would share [the DNA profile]") and accordingly misled the jury.

(c) The verdict of the jury was unreasonable and could not be supported having regard to the evidence.

[5] Dealing with the first two grounds, Mr Stevenson did not argue that LCN DNA evidence generally was so unreliable that it should never be admitted in evidence. Rather, he challenged the use that could be made of the evidence in the present case, arguing in particular that the likelihood ratio of 20 was too low to be meaningful and that the Crown's expert did not acknowledge this appropriately.

[6] Given that the challenge is to the significance of the LCN DNA evidence in this particular case, rather than more generally, we do not see the proposed ground of appeal as raising any issue of public or general importance.

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[3] Mr Stevenson had objected to the admissibility of the evidence at trial, but Judge Davidson ruled it admissible: see *R v Manoharan* DC Wellington CRI-2011-032-2216, 3 October 2012.

[7] As to the concerns about the use of the evidence in this particular case, they were fully ventilated before the Court of Appeal. It concluded that the jury could not have been misled by the DNA evidence or by the refusal of the Crown's expert to accept an alternative characterisation of the likelihood ratio. The Court noted that defence counsel elicited much that was helpful to the defence in cross-examination of the Crown's expert and exploited this effectively in his closing address. Further, the prosecutor made it clear to the jury that the DNA analysis had limited weight, and was simply one strand in a circumstantial case. Most importantly, though, the Court of Appeal emphasised that the trial Judge had made considerable efforts, both when the Crown expert gave evidence and in his instructions to the jury, to emphasise the limits of the DNA evidence and to warn against the "CSI effect", as he had foreshadowed in his admissibility ruling.[4] In the circumstances the Court was satisfied that there was no miscarriage of justice. We see no basis to indicate that this analysis is wrong.

[8] Similarly in relation to the contention that the verdict of the jury was unreasonable and could not be supported having regard to the evidence. The case against Mr Manoharan was a circumstantial one. Although the Court of Appeal considered that the Crown case "was not particularly strong",[5] it concluded that when all the evidence was considered in combination, "the jury could reasonably have been satisfied beyond reasonable doubt that Mr Manoharan was guilty of the crime charged".[6] We see no arguable error in the Court's analysis.

[9] Accordingly, the application for leave to appeal is dismissed.

Solicitors:
Crown Law Office, Wellington for Respondent

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4 At [13].
5 *Manoharan v R*, above n 2, at [70].
6 At [73]. The Court identified the evidence underlying its assessment at [72].