

APPLICATIONS GRANTED

Gise Dau v R

2 November 2003

A Darwin Supreme Court jury found the applicant guilty of committing an act of gross indecency. Leave to appeal was granted on the grounds that

- (1) The learned sentencing judge erred in failing to discharge a jury member who had met the complainant previously in circumstances where the objective facts dictated that his prior association with the complainant would give rise to a reasonable apprehension or suspicion on the part of a fair minded and informed member of the public that the juror would not discharge his task impartially.
- (2) That a miscarriage of justice occurred in this trial due to the intervention of the trial judge in the cross examination of a material Crown witness.
- (3) That a miscarriage of justice has occurred in that as a result of the trial judge's cross examination of the Crown witness, the Crown addressed the jury on the basis that the prosecution witness was essentially hostile.
- (4) That a miscarriage of justice occurred in the Judge's summing up to the jury in that the learned trial judge sought to invite the jury to closely scrutinize the prosecution witness evidence where it had not been demonstrated by the Crown that she was a hostile witness.
- (5) That the sentence was manifestly excessive in all circumstances of the case.

An additional ground of appeal involving a question of law and not requiring leave to appeal was

- (6) That a majority verdict delivered pursuant to s.368 of the *Criminal Code* is contrary to s.80 of the Constitution as the *Criminal Code* is the law of the Commonwealth as that phrase is used in s.80 of the Constitution.

The appeal had not been listed for hearing as at 30 June 2004.