

**Lai v R**

**6, 14 November 2003**

**Angel ACJ, Riley J & Priestley AJ**

**[2003] NTCCA 1, 143 A Crim R 111**

A Darwin jury found the appellant guilty of the murder of his wife. The facts of the case appear in the 2000-2001 Annual Report at pages 166-167. Leave to appeal against conviction was granted by a single judge *on the papers* on 16 September 2002.

At the hearing of the appeal, the only ground argued by the appellant was that the trial judge had wrongly admitted into evidence a witness statement made by the appellant to the police on the night of his wife's death. In the statement which was totally exculpatory in nature, the appellant asserted that he had last seen his wife two weeks prior to her death and that he had not been to his wife's residence for a period of two weeks, and certainly not on the night of her death. In a later statement made to police the appellant said that he went to his wife's house on the night of her death, found her dead, took fright, took from her as a keepsake a gold necklace (which he had not given her – he had no idea who did) and decamped. The appellant's later statement left unexplained how his blood got onto the back of the deceased's T shirt and onto various other items found in the house.

The Crown relied upon the false denials as constituting “deliberate and material lies motivated by a realisation of his guilt and a fear of telling the truth”.

The issue on the *voir dire*, and again before the Court of Criminal Appeal was whether, at the time the appellant made his witness statement to police, he was “*a person suspected of having committed a relevant offence*” for the purposes of s.142 of the *Police Administration Act*. The trial judge found that the appellant was not a “suspect” at the time of the making of the statement.

In its joint judgment, the Court of Criminal Appeal briefly considered the cases of *R v Maratabanga* (1993) 3 NTLR 77 and *R v Grimley* (1994) 121 FLR 236 wherein differing views had been expressed by Mildren J (in the former) and Kearney J (in the latter) as to the nature of the belief the police officer must entertain at the time of questioning. In *R v Maratabanga*, Mildren J held that the police officer must believe that the person is *probably* guilty of the offence. In *R v Grimley*, Kearney J held that the police officer must believe that the person is *possibly* guilty of the offence.

The Court of Criminal Appeal expressed the view that the approach adopted by Kearney J was correct noting that it was similar to the approach adopted by Ormiston J in *R v Raso* (1993) 115 FLR 319 at 348-350 and by the Victorian Court of Appeal in *R v Heaney* (1992) 2 VR531 at 547-548. In the present case the trial judge was satisfied that the detective taking the statement from the appellant did not consider him to be a suspect under either approach. The Court of Criminal Appeal held that the trial judge had not erred in this regard.

The real issue for determination by the Court of Criminal Appeal was whether the appellant could show there was no evidence to support the challenged findings made by the trial judge or that the evidence in relation to those findings was all one way. The court held that the appellant had failed to do so and found that there was a clear evidentiary basis for the trial judge to reach the conclusions that he did and that no error had been identified.

The court unanimously dismissed the appeal.