

Loader v R

**28 October 2003, 12 November 2003
Angel and Mildren JJ, Priestley AJ
[2003] NTCCA 10**

The appellant was found guilty by a Darwin jury of one count of murder and sentenced to imprisonment for life.

The Crown case at trial was that the appellant and the deceased were known to each other and both lived in the Mandorah area. They were seen together on the afternoon of 5 July 2001. Late that evening the appellant went to the houses of two of the deceased's friends and told one that he had "*knocked old George*", and that his body was on the fire burning out the back of his place. He told the other that he was leaving town and that he had come to say goodbye. The appellant rambled incoherently and was obviously intoxicated. Over the next few days it was noticed that the deceased was missing and his remains were discovered nearly completely incinerated at the appellant's camp. The cause of death could not be determined due to the extent of the burning.

At the time of the discovery of the deceased's remains the appellant had left the Northern Territory. He was arrested at Mount Isa on 10 July 2001. He later participated in a record of interview in which he admitted putting the deceased's body on the fire and burning it. He stated that he could not remember the events of that afternoon. He said he remembered that he and the appellant had been drinking alcohol together at his camp, and had consumed beer and bourbon. He said he had blacked out and he came to his senses when he observed the deceased burning on the fire in his camp. He admitted to building the fire and assumed that he had placed the victim on it. He stated that he could not recall anything further and no admissions were made as to the circumstances of the cause of death.

The Crown also called evidence from a prison officer, who overheard an incriminating statement made by the appellant whilst in custody. The officer stated that he had heard the appellant saying words to the effect "*You should have seen his skull when I bashed it in.*" The appellant did not give evidence at trial.

The Crown was not able to positively establish the cause of death. The appellant may have been killed by being struck with a stick. Alternatively, the deceased may have been still alive when his body was placed on the fire. The nub of the defence submission to the jury was that as the Crown was unable to establish a cause of death, they were not able to show that at the time when the appellant killed the deceased, he intended to kill or cause grievous harm to the deceased.

On 5 February 2003, leave to appeal against conviction was granted by a single judge *upon the papers*.

At the hearing of the appeal, argument was directed at three grounds, namely,

1. The effect of the trial judge's directions to the jury were such as to remove the alternative verdict of manslaughter from the jury's deliberations, and as an alternative verdict open to be returned against the appellant.

2. The learned trial judge's summing up was inadequate in that he failed to explain the issue of intent in the context of the relevant factual considerations which arose from the evidence.
3. The learned trial judge's summing up was inadequate in that he failed to instruct the jury that an inference of an intent to kill, or cause grievous harm, might not be as readily drawn in the circumstances by reason of the appellant's intoxication.

The court unanimously allowed the appeal holding that although the trial judge directed the jury on the alternative verdicts of manslaughter and doing a dangerous act, he did not direct the jury's attention to how, on the evidence, they might have arrived at each of the alternative verdicts. The court also held that the trial judge was wrong in directing the jury not to consider certain arguments put to them by defence counsel as the arguments did not invite the jury to speculate (that being the view of the trial judge) but rather were illustrative of the submission that no one knew exactly what happened. The court was not convinced that the trial judge's directions on the issue of intoxication were inadequate and said that it would not have allowed the appeal on this ground.

The conviction was quashed and a retrial ordered.