

R v Johann Ernst Siegfried POHL 17.12.93

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IN THE COURT OF
CRIMINAL APPEAL

NOT FOR LOAN

60849/93



GLEESON CJ
JAMES J
DUNFORD J

Friday 17 December 1993

REGINA v Johann Ernst Siegfried POHL

CRIMINAL LAW - Crimes Act s474J

Following the appellant's conviction for the murder of his wife another man confessed and was later convicted of the same crime. Following an enquiry under s475 of the *Crimes Act* it was reported that there was doubt as to the appellant's guilt. **HELD** - on the new evidence, being the confession of the other man, which was credible, the appellant's conviction should be quashed.

ORDERS

- 1 Conviction quashed.
 - 2 Judgment of acquittal entered.
-

R

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Friday 17 December 1993

REGINA v Johann Ernst Siegfried POHL

JUDGMENT

GLEESON CJ: This is an application pursuant to the provisions of s474J of the *Crimes Act 1900* as amended by the *Crimes Legislation (Review of Convictions) Amended Act 1993*.

The provisions of the amending legislation became effective on 14 November of this year. They are applicable to the circumstances of the present case by reason of paragraph 12 of the 11th Schedule to the *Crimes Act* which was inserted as part of the 1993 amending legislation.

The application is not opposed by the Crown and it is necessary to make only very brief reference to the facts of the case.

Some years ago the applicant was convicted of the murder of his wife, Yum Yee Pohl, in 1973. That conviction was followed by an unsuccessful appeal against the conviction. The applicant spent a number of years in prison.

Many years after the conviction of the applicant a man named Roger Bawden came forward and confessed that he was the killer of Yum

Yee Pohl. As a result Mr Pohl make an application under s475 of the *Crimes Act* as it then stood. There was an inquiry which was conducted before McInerney J.

The report following that inquiry has been received in evidence in this application without objection pursuant to the provisions of s474K(1C). The Crown accepts that this Court may treat the matters set out in the report of McInerney J as evidence of the material facts.

McInerney J came to the following conclusion:

"Having examined all the material presented in this inquiry I have come to the conclusion that there must be a doubt about the conviction of Pohl for his wife's murder on 9 March 1973.

I am of the view that Bawden's confession is probably genuine. There is compelling evidence to substantiate this although I concede there are some inconsistent aspects in his accounts given over the period since his initial confession to police at Queanbeyan on 8 September 1990."

Following the report of McInerney J the applicant was granted a free pardon pursuant to the exercise of the Crown's prerogative of mercy. I should add that Mr Bawden himself was subsequently charged with the murder of Yum Yee Pohl; he pleaded guilty and was convicted of the murder on 30 October 1992.

There being an application by Mr Pohl to this Court for a quashing of his conviction, the Court has its own responsibility to consider the matter in the light of the evidence and information before it. Section 474J provides that:

"The mere fact that a free pardon has been granted does not entitle the person to whom the pardon has been granted to a quashing of the conviction."

However, having regard to the concession of the Crown that it is appropriate for us to treat the report of McInerney J as evidence of the facts stated in it and that it is appropriate for us to give due weight to the

assessment made by McInerney J of the reliability of Bawden's confession, this is a relatively clear case in which the applicant is entitled to have his conviction quashed on the basis of new evidence, the new evidence being, in substance, Mr Bawden's confession.

I would propose that the Court should order that the conviction of Johann Ernst Siegfried Pohl of the murder of Yum Yee Pohl be quashed and that a judgment of acquittal be entered.

JAMES J: I agree with the orders proposed by the Chief Justice for the reasons which his Honour has given.

DUNFORD J: I also agree.

GLEESON CJ: The orders of the Court are as stated above.

I certify that this and the *two* preceding pages are a true copy of the reasons for judgement herein of The Honourable The Chief Justice of New South Wales and of the Court.

Shirley Pearson
Associate

Dated 1 February 1994