

07/75

SUPREME COURT OF NEW SOUTH WALES — COURT OF APPEAL

R v CRUMP

Street CJ, McClemens and Begg JJA

7 February 1975

CRIMINAL LAW – MURDER – COMMON PURPOSE – MEANING OF.

Accused Crump (and Baker) were convicted of murder. Crump alleged that he merely carried the loaded rifle as a scare weapon, but that he jumped back in fright and the gun went off. The second ground of appeal was that the trial judge misdirected the jury on the relevant law as to common purpose.

HELD: Appeal refused.

Where two persons embark on a joint enterprise, each is liable for the acts done in pursuance of that joint enterprise, that that includes liability for unusual consequences if they arise from the execution of the agreed joint enterprise but that if one of the adventurers goes beyond what has been tacitly agreed as part of the common enterprise, his co-adventurer is not liable for the consequences of that unauthorised act.

R v Anderson [1966] 2 QB 110; [1966] 2 All ER 644; (1966) 50 Cr App R 216; 130 JP 318; (1966) 2 WLR 1195 at 1202, applied.

2. Whether or not the killing of Lamb by Baker was within the common enterprise as far as the appellant Crump was concerned was clearly put to the jury. It was denied by Crump in his statement in Court, but obviously the denial was not accepted by the jury – indeed it would be surprising if it had been.

STREET CJ, McCLEMENS and BEGG JJA: ... Dealing with the second ground, concerning alleged mis-direction in relation to common purpose, we have carefully read his Honour's summing-up on this subject and we have formed the opinion that the trial Judge correctly stated the law to the jury. Amongst other things his Honour used a number of statements of the relevant law contained in *R v Anderson* [1966] 2 QB 110; [1966] 2 All ER 644; (1966) 50 Cr App R 216; 130 JP 318; (1966) 2 WLR 1195 at 1202 namely,

'that where two persons embark on a joint enterprise, each is liable for the acts done in pursuance of that joint enterprise, that that includes liability for unusual consequences if they arise from the execution of the agreed joint enterprise but that, ... if one of the adventurers goes beyond what has been tacitly agreed as part of the common enterprise, his co-adventurer is not liable for the consequences of that unauthorised act.'

He told the jury that it was for them to say whether the act charged was part of the joint enterprise, and that if they were not satisfied beyond reasonable doubt with the Crown case then Crump (the present appellant) was entitled to be acquitted. Whether or not the killing of Lamb by Baker was within the common enterprise as far as Crump was concerned was clearly put to the jury. It was denied by Crump in his statement in Court, but obviously the denial was not accepted by them – indeed it would be surprising if it had been. We are therefore of the opinion that there was no misdirection by the trial Judge. The issue was clearly raised and decided adversely to the appellant, after the relevant principles of law had been explained to them. This ground of appeal therefore fails.