

***R v Ahmed* [2019] NSWSC 55 (8 February 2019) – New South Wales Supreme Court**

‘Adverse media’ – ‘Fair trial’ – ‘People from culturally and linguistically diverse backgrounds’ – ‘Physical violence and harm’ – ‘Prejudice’ – ‘Social media’ – ‘Trial by jury’

Charges: Murder x 1.

Case type: Application for trial by judge alone.

Facts: Mr Ahmed allegedly murdered his wife (the victim) by inflicting 14 stab wounds. He called 000, and told the operator that he had stabbed and killed his wife. He told police that he assaulted and threatened to kill her if she did not give him access to her phone, and that it was only after he read her recent text messages, which confirmed the continuation of an affair she had with Mr Khan, that he lost control and stabbed her. He also said that he did not intend to kill her. When Mr Ahmed killed the victim, he was suffering a mental illness, which the experts agreed was likely to have been an adjustment disorder, that being a form of depressive illness. He pleaded not guilty to murder, but later offered to plead guilty to manslaughter, which was not accepted by the Crown. At his trial, Mr Ahmed advanced a partial defence of substantial impairment under section 23A of the *Crimes Act 1900* (NSW) which would, if established, reduce the conviction of murder to manslaughter.

Issue: A key issue was that a fair trial was unlikely before a jury because of the significant general and social media posts about the accused and the homicide. There was a risk of prejudice from the adverse media and social media commentary about his racial background and faith.

Held: Schmidt J dismissed the application for a trial by judge alone.

The killing attracted substantial social media coverage, with such coverage being shared on Facebook pages of media organisations and ‘professed anti-Islamic’ groups. Many Facebook users shared ‘negatively biased views against Mr Ahmed’ ([26]), and the majority of comments were either directly or indirectly racist ([27]). Some of this adverse coverage focused on his background as a Bangladeshi immigrant and presumed membership of the Muslim faith ([32]). However, as per the Court in *Hughes v R* [2015] NSWCCA 330, an offender who is subject to intense community interest may still be able to receive a fair trial ([33]). The Court in *Hughes v R* stated that the modern world is one of instant, largely unregulated communication of opinions, ranging from mild to extreme, which can be accessed and responded to by others. However, there is good reason to continue in the expectation that, notwithstanding advances in technology and what they permit, jurors will decide cases on the basis of evidence, the judge’s directions, and the submissions advanced at trial.

Schmidt J held that a jury would be required to be directed at trial to impartially approach the issue as to whether he has a partial defence, and to make its decision only on the evidence, the parties' submissions and the judge's directions, rather than on the basis of their own enquires on the internet ([35]). His Honour held that 'there is no question that there is a risk, which exists at every trial, that a member of the jury will not adhere to such directions, but will access prejudicial material of the kind on which Mr Ahmed relies, to advance this application' ([36]). Nevertheless, as observed in *Hughes v R*, it has been long settled that jurors will 'approach their tasks conscientiously'. In Schmidt J's view, the stereotypical opinions expressed on social media about Mr Ahmed would not necessarily deprive him of a fair trial before the jury, even though it may have to consider some distressing photographs of the victim's injuries ([38]). The issues for determination in relation to the domestic violence killing had nothing to do with his racial background or religion, but on his mental state and whether that entitles him to a partial defence ([37]).

Note: Schmidt J refused Mr Ahmed's application for a judge alone trial. However, only days before the trial was due to commence, a large volume of documents was served, which included internet searches by Mr Ahmed about punishing adulterous wives. The Crown consented to the offender being tried by a judge alone. Therefore, a trial by judge alone order was made under section 132(2) of the *Criminal Procedure Act 1986* (NSW). See *R v Ahmed (No 2)* [2019] NSWSC 517 (8 May 2019).