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323 Interpretation

- (1) For the purposes of this Subdivision, a person is involved in the commission of an offence if the person—
 - (a) intentionally assists, encourages or directs the commission of the offence; or
 - (b) intentionally assists, encourages or directs the commission of another offence where the person was aware that it was probable that the offence charged would be committed in the course of carrying out the other offence; or
 - (c) enters into an agreement, arrangement or understanding with another person to commit the offence; or
 - (d) enters into an agreement, arrangement or understanding with another person to commit another offence where the person was aware that it was probable that the offence charged

would be committed in the course of carrying out the other offence.

- (2) In determining whether a person has encouraged the commission of an offence, it is irrelevant whether or not the person who committed the offence in fact was encouraged to commit the offence.

Note

A person who committed an offence may include 2 or more persons who entered into an agreement, arrangement or understanding to commit the offence.

- (3) A person may be involved in the commission of an offence, by act or omission—
- (a) even if the person is not physically present when the offence, or an element of the offence, is committed; and
 - (b) whether or not the person realises that the facts constitute an offence.

324 Person involved in commission of offence taken to have committed the offence

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- (1) Subject to subsection (3), if an offence (whether indictable or summary) is committed, a person who is involved in the commission of the offence is taken to have committed the offence and is liable to the maximum penalty for that offence.
- (2) Despite subsection (1), a person is not taken to have committed an offence if the person withdraws from the offence.

Note

The common law recognises that in certain circumstances a person may withdraw from an offence in which the person would otherwise be complicit: for example, *White v Ridley* [1978] HCA 38; (1978) 140 CLR 342; *R v Tietie, Tulele and Bolamatu* (1988) 34 A Crim R 438; *R v Jensen and Ward* [1980] VicRp 24; [1980] VR 194.

- (3) Nothing in this section imposes liability on a person for an offence that, as a matter of policy, is intended to benefit or protect that person.

324A Other offenders need not be prosecuted or found guilty

A person who is involved in the commission of an offence may be found guilty of the offence whether or not any other person is prosecuted for or found guilty of the offence.

324B Offender's role need not be determined

A person may be found guilty of an offence by virtue of section 324 if the trier of fact is satisfied that the person is guilty either as the person who committed the offence or as a person involved in the commission of the offence but is unable to determine which applies.

324C Abolition of certain aspects of complicity at common law

- (1) The law of complicity at common law in relation to aiding, abetting, counselling or procuring the commission of an offence is abolished.
- (2) The doctrines at common law of acting in concert, joint criminal enterprise and common purpose (including extended common purpose) are abolished.

Note

The common law concerning the circumstances in which a person may withdraw from an offence in which the person would otherwise be complicit is not abolished by this section.

Daniel Ryan:***DPP v Gebregiorgis [2023] VSCA 166*****Background:**

- Co-accused Gebregiorgis and Kassa are brothers.
- On 13 March 2022 the co-accused were present at the Watermark Hotel in Docklands.
- The deceased, Alier Riak, his brother Kuol Riak and other friends were also at the Hotel.
- After the event at the Hotel concluded the deceased, his brother and others were standing in Bourke Street when they were approached by the co-accused and their associates, who attacked the deceased's brother.
- The deceased intervened and was attacked by Gebregiorgis, who was armed with a knife. The deceased retreated into a park, and was stabbed once in the chest by Kassa, then once in the chest by Gebregiorgis.
- The deceased ran, tripped and fell to the ground. Kassa held the deceased down while Gebregiorgis stabbed the deceased a number of times.
- After the assault concluded, the deceased walked back towards the roadway before collapsing, and died while being transported to hospital.
- A forensic pathologist found two fatal wounds: one to the left femoral artery and one to the pericardial sac.

Issues

- The key issue for the prosecution was that they could not prove who inflicted the fatal wound.
- Questions were reserved by the trial judge, to determine if the prosecution needs to establish that the second party must either have intentionally encouraged the primary offender under s 323(1)(a), or entered an agreement under s 323(1)(c) to kill the deceased, as defence submitted intent to cause really serious injury was insufficient.

Ruling

- It was not necessary for the prosecution to establish who inflicted the fatal wound, by reference to s 324.

- **Liability under s 323(1)(a)** is derivative, by reference to s 324B.
- For Gebregiorgis or Kassa to be liable as a ‘secondary party’ under s 323(1)(a) for the murder committed by the ‘principal offender’, the prosecution must prove that the secondary party:
 - knew or believed that the principal offender was going to perform an act — with intent to kill or cause really serious injury;
 - intentionally encouraged the principal offender to perform that act with the intent necessary for murder; and,
 - that act caused Alier Riak’s death.
- **Complicity under s 323(1)(c)** is a form of primary liability arising from a type of agency.
- For Gebregiorgis or Kassa to be liable as a ‘secondary party’ under s 323(1)(c), the prosecution must prove that the secondary party:
 - entered into an agreement to commit the offence of murder — with intent to kill or cause really serious injury;
 - either party actually performed the act causing the death — with intent to kill or cause really serious injury.
- s 323(1)(a) and (c) would be unworkable if the requisite mens rea was different for the primary and secondary offender.

Megan Styles:

The King v Rohan (a pseudonym) [2024] HCA 3 (14 February 2024)

Facts

Rohan¹ and two co-accused (RR & NH) were charged with supplying drugs and committing sexual offences against minors for offending that occurred in December 2018. The offences concerned two young girls, Daisy and Katie² who were aged 11 and 12 at the time of the offending. The prosecution presented inferential evidence that the three co-accused had entered into an agreement to pick up the girls, supply them with alcohol and cannabis, and engage in sexual activity with them.

At the time of the offending, the complainants were in the care of the state and living in a residential unit in Western Melbourne. Katie had come into contact with RR through her father. On the night of the offending, Katie called RR and

¹ Initially publicised under this pseudonym, the applicant’s name, Mohammed Nuramin, has since been publicised.

² Pseudonyms.

arranged to meet. RR picked up the complainants at a service station and drove them to his house in Werribee. Alcohol and cannabis were consumed, and the offending subsequently occurred in a shed in RR's backyard, a van, and in the car on the way back to dropping the complainants home. Daisy made complaints to her carers and workers the following day and was taken to the Royal Children's Hospital for medical examination and forensic procedures.

Charges

The three co-accused were jointly charged, tried and convicted in the County Court of Victoria for the following eleven offences:

- Two charges of supplying a drug of dependence to a child - s 71B(1) of the *Drugs, Poisons & Controlled Substances Act 1981* (Vic) (in relation to Daisy and Katie);
- Seven charges of sexual penetration of a child under 12 – s 49A(1) of the *Crimes Act 1958* (Vic) ('*Crimes Act*') (in relation to Daisy);
- Two charges of sexual assault of a child under 16 – s 49D of the *Crimes Act* (in relation to Daisy).

The jury acquitted each of the co-accused in relation to other charges involving sexual acts against Katie.

Charges 1 to 3 and 7 to 9 involved offending conduct by the other two men in which Rohan was said to be complicit, by reason of an agreement, arrangement or understanding with them to commit the offences. In relation to charges 4, 5, 6, 13 and 14, Rohan was charged as principal offender.

Key issue

The key issue arising out of this case on appeal, was whether the prosecution needed to prove that the accused knew the victim's age to establish guilt under s 324(1) of the *Crimes Act* (in circumstances where it was not an element of the offence). The trial judge did not require proof that Rohan knew the victim's ages. On appeal to the Court of Appeal, it was ruled that the prosecution needed to prove that Rohan and his co-accused knew the complainants were under the specified ages and that there needed to be proof of knowledge of, or belief in, the facts that constituted the offence. In other words, the Court of Appeal ruled that the mens rea of the complicit/derivative offender needed to be higher than that of the primary offender – the prosecution needed to prove that he knew her age when for the primary offender the complainant's age was a matter of strict liability.

Ultimately, the High Court reversed this decision, stating that under s 324(1) of the *Crimes Act* the prosecution did not need to prove that at the time of entering into the agreement, an accused knew or believed, the essential facts that made the proposed conduct an offence, where that knowledge or belief was not an element of the offence itself.³

Questions?

³ *Gageler CJ, Gordon & Edelman JJ* [1].