

CANADA / JUDGMENT

Paradis v. The Queen

[1978] 1 SCR 264

COURT

Supreme Court of Canada

DECIDED

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Paradis v. The Queen

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Report

[1978] 1 SCR 264

Judges

Laskin, Bora; Martland, Ronald; Ritchie, Roland Almon; Spence, Wishart Flett; Pigeon, Louis-Philippe; Beetz, Jean; de Grandpré, Louis-Philippe

On appeal from

Quebec

Subjects

Criminal law

Decision Content

Supreme Court of Canada

Paradis v. The Queen, [1978] 1 S.C.R. 264

Date: 1977-02-08

Jeannette Paradis Appellant;

and

Her Majesty The Queen Respondent.

1976: October 28; 1977: February 8.

Present: Laskin C.J. and Martland, Ritchie, Spence, Pigeon, Beetz and de Grandpré JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Criminal law —Evidence —Accomplice —Corroboration—Accomplice and accessory after the fact.

On a charge of attempted murder appellant was acquitted by a jury verdict. On appeal by the Crown, a majority decision of the Court of Appeal ordered a new trial on the grounds that although the trial judge had properly left it to the jury to decide whether a witness should be considered an accomplice, he had erred in law in his instructions to the jury by not distinguishing between an accomplice and an accessory after the fact with respect to the danger of convicting without corroboration, leading the jury to believe that the testimony of an accessory after the fact also required corroboration.

Held: The appeal should be allowed.

Per Laskin C.J. and Martland, Ritchie and Beetz JJ.: They disagree with the view expressed by the Court of Appeal on the issue, and hold that the same rule of caution that must be applied to the testimony of an accomplice must also be applied to the testimony of an accessory after the fact. The verdict of acquittal should therefore be reinstated.

Per Pigeon, Spence and de Grandpré JJ.: The rule of caution should not be applied in the case of an accessory after the fact. In the case at bar, however, the jury could not conclude, on the basis of the evidence presented, that the witness was an accessory after the fact without concluding that he was also an accomplice. The trial judge was therefore bound in any case to apply the rule of caution and warn the jury regarding the uncorroborated testimony of an accomplice.

R. v. Riezebos (1975), 26 C.C.C. (2d) 1, followed; Davies v. Director of Public Prosecutions, [1954] A.C. 378; Horsburgh v. The Queen, [1967] S.C.R. 746, [1968] 2 C.C.C. 288, 63 D.L.R. (2d) 699, rev'g. [1966] 1 O.R. 739, Vêzeau v. The Queen, [1977] 2 S.C.R. 277, referred to; R. v. Gratton (1971), 5 C.C.C. (2d) 150, not followed. APPEAL from a decision of the Court of Appeal of Quebec[1] setting aside a verdict of acquittal of attempted murder and ordering a new trial. Appeal allowed: acquittal reinstated.

Alain Brabant, for the appellant.

Fernand Côté, for the respondent.

The judgment of Laskin C.J. and Martland, Ritchie and Beetz JJ. was delivered by

MARTLAND J.—I am in agreement with the disposition of this appeal as proposed by my brother Pigeon. I agree that, on the facts of this case, the jury could not have come to the conclusion that St-Onge was an accessory after the fact but not otherwise an accomplice. This conclusion makes it unnecessary to decide whether the Court of Appeal was right in reaching the decision that the trial judge had erred in law in instructing the jury as he did on the matter of corroboration of the evidence of an accessory after the fact.

I am not, however, prepared to accept the view expressed by the Court of Appeal on that issue. The Court approved the judgment of the Court of Appeal for New Brunswick in *R. v. Gratton*[2]. In the later case of *R. v. Riezebos*[3], the Court of Appeal for Ontario did not agree with the conclusion reached in the Gratton case, and preferred to adopt the definition of the term “accomplice” stated by Lord Simonds, L.C., in *Davies v. Director of Public Prosecutions*[4], at p. 400, which was accepted by my brother Ritchie and by me in *Horsburgh v. The Queen*[5], at pp. 768 and 756. I am not persuaded that we were wrong in so doing.

The judgment of Spence, Pigeon and de Grandpré JJ. was delivered by

PIGEON J.—On a charge of attempted murder appellant was acquitted by a jury verdict. On appeal by the Crown, a majority decision ordered a new trial for the reason [TRANSLATION] “that there was an error of law in the instructions to the jury that the testimony of an accessory after the fact was subject to the rules of corroboration”.

Having stated the grounds of appeal, Dubé J.A. set out the facts as follows:

[TRANSLATION]... the trial judge is criticized for having left it to the jury to decide whether the witness St-Onge was an accomplice or an accessory after the fact, “when nothing in the evidence allowed the jury to make such a finding”.

The evidence revealed that St-Onge met the accused, Jeannette Paradis, on the evening of the crime, along with two other persons, Robert Toussaint and Joseph Gasparo, at the Café Belhumeur, in Montreal North. The four young people left the Café Belhumeur together, with the intention of going to eat; Michel St-Onge took Jeannette Paradis and Robert Toussaint in his car; Joseph Gasparo followed behind in his own car. The four young people stopped in front of a restaurant, and after some discussion Jeannette Paradis and Robert Toussaint got out of Michel St-Onge’s car.

At that point, the car driven by Gasparo went about two hundred feet away and stopped again so that Robert Toussaint could accost the victim Gérard Juteau, who was walking about in the area in a rather advanced state of inebriation; Juteau approached the car and Jeannette Paradis made certain indecent propositions to him, involving the payment of money; Robert Toussaint realized that Juteau had no money, and told him to get away; as he walked away from the car, Jeannette Paradis ran after him and stabbed him several times with a bayonet she had picked up from the floor of Gasparo’s car.

Michel St-Onge stated that seeing this crime being committed, he drove off and left the area, but after some time he returned to the Café Belhumeur; Jeannette Paradis was there; she asked him to drive her home, since she had no money, and he agreed to drive her.

It is possible that these facts, taken literally, could not serve as evidence that St-Onge was an accomplice: it would appear that the crime had in no way been discussed in his presence, and was committed after Jeannette Paradis and her two companions were separated from St-Onge; however, I am of the opinion that the trial judge was nevertheless correct in submitting the above facts to the jury, so that they could themselves decide whether St-Onge really participated in the crime. It is the responsibility of the jury to decide whether a witness is an accomplice, and the judge should limit himself to explaining the factors required by the law for a witness to be considered an accomplice; as a result, when a witness is intimately involved in the activities immediately preceding a crime, as in the case of St-Onge, it is preferable that the jury be informed of the possibility that this witness could be considered an accomplice.

This rule is even more applicable in the case at bar with respect to the possibility that St-Onge be considered an accessory after the fact...

I have underlined the opinion expressed by Dubé J.A. that the trial judge had properly left it to the jury to decide whether the witness St-Onge should be considered an accomplice. He held nevertheless, Crête J.A. concurring, that a new trial should be ordered, because the trial judge had erroneously instructed the jury that no distinction was to be made with respect to the danger of convicting without corroboration, between a witness who is an accomplice and one who is an accessory after the fact. In arriving at this conclusion, he relied primarily on a decision of the Court of Appeal of New Brunswick, *R. v. Gratton*[6], where one reads (at pp. 154 and 155):

There is no evidence nor argument advanced that LeBlanc was in any way involved in the commission of the actual murder charged. The contention of the appellant is that LeBlanc was, on his own story, an accessory after the fact of the alleged murder and therefore an accomplice.

English precedents typified by *Davies v. Director of Public Prosecutions*, [1954] A.C. 378 at p. 379, are to the effect that an accessory after the fact is an accomplice for the purpose of the rule of practice that a jury should be warned of the danger of convicting on the uncorroborated evidence of an accomplice.

These decisions advance no reasons as to why the rule should be extended to an accessory after the fact; they simply make the unsupported statement that an accessory after the fact is an accomplice. These statements are also in conflict with some Canadian decisions particularly with that of our own Court in *R. v. Robichaud*, 70 C.C.C. 365 at p. 373 et seq., (1938) 3 D.L.R. 768, 13 M.P.R. 23 (C.A.). *R. v. Kellen et al* (1927), 33 O.W.N. 153 (C.A.), also supports the same view.

The reason for the origin of the rule of practice, which has obtained such universal acceptance that it is regarded as mandatory and of the same effect as if it was a rule of law and not of practice, is because of the danger, implicit in the evidence of an accomplice that he may try to fasten the blame on someone else to mitigate his own involvement. Such reasoning does not

apply to an accessory after the fact. By testifying against the perpetrator of the crime he is giving evidence against his own interest, he cannot be convicted as an accessory unless the person he aids or assists in escaping detection be found guilty.

The trial judge relied mainly on what was said in this Court in *Horsburgh v. The Queen*[7]. In my opinion, Dubé J.A. was correct in saying that this decision is not conclusive on the point, because it dealt with real accomplices of the offences charged. The Court did not have to decide whether the rule of caution in question applies also to accessories after the fact. It was said that it applies, citing what was said by Lord Simonds in *Davies v. Director of Public Prosecutions*[8], at p. 400. However, there again the point was not in issue, any more than in the decisions cited in that case.

Counsel for the accused relied primarily in support of his appeal on the decision of the Court of Appeal of Ontario in *R. v. Riezebos*[9]. In the reasons given by Lacourcière J.A., the conclusion on the point (at p. 11) is as follows:

Mr. Watt's submission was that although an accessory after the fact may technically be *particeps criminis*, he would be more likely to try to exculpate the accused than to try to exculpate himself at his expense. Thus the justification for the rule, said to be the danger of purchasing "impunity by falsely accusing others" (words of Wigmore on Evidence, 3rd ed., vol. VII (1940), s. 2057, p. 322, quoted by Ritchie, J., in *Davies*, *supra* at p. 310 C.C.C., p. 719 D.L.R.), does not exist and the maxim *cessante ratione legis, cessat ipsa lex* (Co. Litt. 70b) applies. With great respect, we are unable to agree with this submission or with the conclusion of the Court in *R. v. Gratton*, *supra*, and the other cases referred to. Logically, the evidence of an accessory after the fact should be regarded as untrustworthy because of his desire "to purchase lenient treatment for himself at the expense of the accused by co-operating with the authorities" per Ritchie, J. in *Horsburgh*, *supra*, at p. 310 C.C.C., p. 719 D.L.R. It seems to us that the question whether an accessory after the fact should be treated as an accomplice has been answered affirmatively by the highest Court in the land in the *Horsburgh* case, *supra*, so that it is concluded and may be regarded as settled law in Canada.

First, it must be noted that the passage quoted from the dissenting reasons of Ritchie J. is in no way related to an accessory after the fact. On the contrary, it comes (at S.C.R. p. 767, C.C.C. p. 310, D.L.R. p. 719) immediately after the following quotation from Cross on Evidence (2nd ed., at p. 172):

The danger the accomplice will minimize his role in the crime and exaggerate that of the accused is the usual justification for the requirement.

Only on the next page does Ritchie J. adopt the definition of "accomplice" given by Lord Simonds, quoted by Martland J. in the majority reasons. He then goes on to say that the witnesses in that case were not accessories after the fact. It is clear that the majority did not think otherwise. The *ratio decidendi* was stated by Martland J. (at S.C.R. p. 757, C.C.C. p. 299, D.L.R. p. 709) as follows:

In any event, the situation in this case is that all the material evidence tendered to establish that the appellant aided and abetted at the commission of delinquencies was given by persons who had knowingly and wilfully committed those very delinquencies, or, as in the case of Best, had been guilty of aiding and abetting. In the circumstances of this case, in my opinion they were *particeps criminis* and were accomplices.

I am persuaded that if it had been necessary in *Horsburgh* to consider the case of accessories after the fact, the Court would not have failed to take into consideration what appears in Tremeeear's Annotated Criminal Code, 6th ed. (1964), at p. 1020: The better opinion seems to be that an accessory after the fact is not an accomplice within the meaning of the rule as to corroboration: *R. v. Kellen*; *R. v. Goldhar*; *R. v. Goldman* (1927) 33 O.W.N. 153 (C.A.); *R. v. Robichaud*, 13 M.P.R. 23, 70 C.C.C. 365 (N.B. C.A.); see *R. v. Dumont* (1921) 49 O.L.R. 222, 37 C.C.C. 166, 64 D.L.R. 128 (C.A.); *R. v. George* (1935) 1 W.W.R. 145, 49 B.C.R. 345, 63 C.C.C. 225, (1935) 2 D.L.R. 516 (C.A.). In *R. v. Robichaud*, *supra*, it was pointed out that the rule was based upon the danger that an accomplice might himself have been guilty of the offence, and be trying to escape by fastening the guilt on another, and that this consideration was inapplicable in the case of an accessory after the fact, whose connection began only after the offence was complete. The case was therefore one for the application of the maxim *cessante ratione legis cessat ipsa lex*.

The *Horsburgh* record shows that nothing was said of all this in the parties' *factums* and there was no reference to accessories after the fact. It should be noted that in the dissenting reasons in the Court of Appeal of Ontario, the conclusion of which was later adopted by the majority of this Court, Laskin J.A. gave a definition of an accomplice which did not include accessories after the fact (*R. v. Horsburgh*[10], at p. 757):

On the first of the two issues detailed above, it is necessary to determine whether any of the Crown witnesses were accomplices upon whose evidence any of the convictions herein rested. An accomplice in a loose sense is a person who is *particeps criminis*, but the more ample definition generally given is that an accomplice is one who could himself have been convicted of the offence charged, either as a principal (including in this term an accessory at or before the fact) or an aider or abettor. This definition, in my opinion, is still deficient if it would, as in *Davies v. D.P.P.*, [1954] A.C. 378, exclude as accomplices persons who are parties to a crime arising out of the same transaction although not parties to the crime charged against the accused. The definition should be a reflection of the policy which underlies the vulnerability of an accomplice's evidence, and I prefer the view expressed in *R. v. Sneesby*, [1951] St. R. Qd. 26. I refer also to the broader view of accomplices, expressed by this Court in *R. v. Gauthier*, [1954] O.W.N. 428 at p. 429, 108 C.C.C. 390 at pp. 391-2, 18 C.R. 282, adopting the statement of Chisholm, J., in *R. v. Morrison* (1917), 29 C.C.C. 6, 38 D.L.R. 568, 51 N.S.R. 253, that "An accomplice is one who is concerned with another or others in committing or attempting to commit any criminal offence".

In my view, Crête J.A. was correct in saying:

[TRANSLATION] In the case at bar, I share the opinion of Dubé J. and I subscribe to the principles which this Court again stated in *Poupart v. The Queen*, [1969] Que. Q.B. 197, and *Moran v. The Queen*, [1969] Que. Q.B. 310, that the rules of caution required for the evaluation of the testimony of an accomplice do not apply to an accessory after the fact.

Moreover, apart from their divergent interest with relation to the guilt or innocence of the accused, the accomplice and the accessory after the fact are in totally different situations.

Pigeon J. of the Supreme Court of Canada appears to have expressed the doctrine in this manner, in *The Queen v. Vinette* (decision of May 27, 1974, as yet unreported) [since published, [1975] 2 S.C.R. 222], when he said, speaking for the majority:

The situation is quite different when a charge of having been an accessory after the fact is involved. In such a case the principal and the accessory are not charged with the same offence, the charge against the accessory being that of having assisted the other party to escape justice. This offence is therefore subsequent to the principal crime. By its very nature it is subject to special rules.

I think therefore that the Court of Appeal was not in error in regarding the decision of the Court of Appeal of New Brunswick in *Gratton* as correct. However, an important distinction must be made. As the passage which I have quoted from it shows, there was no question there of participants in the crime, but only of accessories after the fact. In the case at bar, on the contrary, Dubé J.A. came to the conclusion “that the trial judge was ...correct in submitting the ...facts to the jury, so that they could themselves decide whether St-Onge really participated in the crime”. This means that according to the view of the majority on appeal itself, there was evidence from which a jury could have found that the witness St-Onge was an accomplice. Therefore the trial judge was in any case bound to warn the jury, as required in the case of testimony of a person who is likely to be considered an accomplice in the crime. In such conditions, could the Court of Appeal find that the Crown had discharged the burden of showing that had the error in law not occurred, the verdict would not necessarily have been the same (*The Queen v. Vézeau*[11])? Dubé J.A.’s reasons on that point are as follows:

[TRANSLATION] ...I would therefore say that appellant properly complains that there was an error of law in the instructions to the jury that the testimony of an accessory after the fact was subject to the rules of corroboration; in a case such as this, the consequences are very serious: in view of the uncontradicted evidence submitted by the Crown that it was Jeannette Paradis who stabbed the victim, this question of corroboration was probably the stumbling-block of the verdict; if the jury found that St-Onge was an accessory after the fact, they were then bound to accept the instructions that it was not safe to return a verdict of guilty on the basis of the uncorroborated testimony of one witness. Accordingly, I am convinced that the verdict might have been different if the jury had been correctly instructed that the testimony of an accessory after the fact did not need corroboration, and that on the contrary this testimony could be used, moreover, to corroborate the testimony of the two other accomplice witnesses.

With respect, I must point out, that this was said as if the witness could only be an accessory after the fact. That is not the case. As Dubé J.A. noted in a passage quoted earlier, the witness St-Onge was “intimately involved in the activities immediately preceding the crime”. However, the only evidence tending to make him an accessory after the fact was that he drove the accused home, not right after the crime, but must later, when the café closed, and some time after the police officers had left. I cannot see how the weight of the warning could have depended on the instruction to put on the same footing an accomplice and an accessory after the fact.

With respect to the actions of the witness St-Onge before the crime, it should be noted that it was he who took the accused in his car when the group left the café. He related the conversation which took place when the accused was in his car before she went to Gasparo’s as follows:

[TRANSLATION] Q. What did she say, Miss Paradis, in her own words?

A. She said that she wanted to get someone for revenge, because she had just missed her chance with some man I didn’t know.

Q. She wanted to get someone, were those the words she used?

A. Yes.

Q. Do you know what that is, to get someone?

A. What I understood was that she wanted to rob someone or something like that.

In his instructions to the jury, the trial judge said:

[TRANSLATION] AS accomplices, you can ask yourselves whether Toussaint, and Gasparo primarily, and St-Onge, Toussaint and Gasparo were in the car, were aware of the crime which Jeannette Paradis was going to commit before she committed it, according to the evidence which is before you. Then, if these persons, in your view, were aware in advance and participated in the commission of the crime, then, at that time, you can decide whether they were accomplices.

As to what could make him an accessory after the fact, the instruction given regarding St-Onge was as follows:

[TRANSLATION] With respect to St-Onge, he said that after the evening, he drove Jeannette Paradis home, at St-Laurent and St-Viateur, because she allegedly said that she had no money for other means of transportation.

Again, you can examine s. 23 and ask yourselves whether Michel St-Onge can be considered an accessory after the fact, because he received, comforted or assisted her for the purpose of enabling her to escape. This is very important.

Being a witness to a crime is not everything: the fact of witnessing a crime does not automatically make a witness an accomplice or an accessory after the fact. The witness must come within the scope of s. 23; beyond knowing that someone committed a crime, he must have received or comforted or assisted that person for the purpose of enabling that person to escape. To escape, means to escape justice, not to escape by running or in some other way.

I do not see in this case how the jury could possibly have come to the conclusion that St-Onge was an accessory after the fact but not an accomplice. To set aside the acquittal, the Court of Appeal had to consider not only the importance of the warning, but also the possibility that the distinction between an accomplice and an accessory after the fact could, in the case at bar, have had a decisive practical result on the verdict. This is what I cannot see.

For this reason I would allow the appeal, set aside judgment of the Court of Appeal and restore the verdict of acquittal.

Appeal allowed, verdict of acquittal restored.

Solicitor for the appellant: Alain Brabant, Montreal.

Solicitor for the respondent: Fernand Côté, Montreal.

[1] [1975] C.A. 39.

[2] (1971), 5 C.C.C. (2d) 150.

[3] (1975), 26 C.C.C. (2d) 1.

[4] [1954] A.C. 378.

[5] [1967] S.C.R. 746.

[6] (1971), 5 C.C.C. (2d) 150.

[7] [1967] S.C.R. 746, [1968] 2 C.C.C. 288, 63 D.L.R. (2d) 699.

[8] [1954] A.C. 378.

[9] (1975), 26 C.C.C. (2d) 1.

[10] [1966] 1 O.R. 739.

[11] [1977] 2 S.C.R. 277.

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