

CANADA / JUDGMENT

R. v. Laberge

[1978] 1 SCR 1007

COURT

Supreme Court of Canada

DECIDED

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Date

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Report

[1978] 1 SCR 1007

Judges

Laskin, Bora; Martland, Ronald; Spence, Wishart Flett; Pigeon, Louis-Philippe; Dickson, Robert George Brian; Beetz, Jean; Pratte, Yves

On appeal from

Quebec

Subjects

Criminal law

Decision Content

Supreme Court of Canada

R. v. Laberge, [1978] 1 S.C.R. 1007

Date: 1977-12-20

Her Majesty The Queen Appellant;

and

Louis Laberge Respondent.

1977: October 31 and November 1; 1977: December 20.

Present: Laskin C.J. and Martland, Spence, Pigeon, Dickson, Beetz and Pratte JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Criminal law—Evidence—Testimony of accomplices—Other witnesses not accomplices—Judge's duty to warn jury.

Respondent, who is president of the Quebec Federation of Labour, was charged with mischief for remarks he made during a union meeting. The Crown claims that respondent suggested acts of sabotage and vandalism for the purpose of making a slowdown effective. The day after the meeting such acts were in fact committed.

The prosecution's evidence was given entirely by members of the local union, most of whom had been apprehended for the activities that took place the day after the meeting. The trial judge did not warn against the danger of convicting respondent on the uncorroborated evidence of accomplices. Respondent was convicted by the jury and appealed his conviction. Two of the three judges who heard the appeal held that the trial judge had erred in failing to give the warning to the jury and ordered a new trial. The third member of the Court did not deal with this issue, but would have allowed the appeal on another ground, which was not raised in this Court. This Court has only to resolve the issue of law upon which leave to appeal was granted, namely, whether the Court of Appeal erred in holding that where the majority but not all of the witnesses of a fact are accomplices, the trial judge is required to warn the jury against the danger of accepting their testimony.

Held: The appeal should be dismissed.

This Court recognized in *Horsburgh*, [1967] S.C.R. 747, and it is now settled law that in a criminal trial, where a person who is an accomplice gives evidence on behalf of the Crown, it is the duty of the judge to warn the jury that, although they may convict upon his evidence, it is dangerous to do so unless it is corroborated.

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Without disputing the validity of this rule, appellant contends that it applies only if the Crown's case depends solely upon the evidence of one or more accomplices, and that if there are other witnesses, not accomplices, who give like evidence, the evidence of the accomplice or accomplices is corroborated and the warning becomes unnecessary. The authorities cited by appellant do not support this contention. Whenever the Crown tenders as a part of its case against the accused the evidence of a person who is an accomplice, it becomes the duty of the trial judge to warn the jury that it is dangerous to convict upon uncorroborated evidence. This the trial judge failed to do in the case at bar.

Horsburgh v. The Queen, [1967] S.C.R. 747, followed; Brunet v. The King, [1928] S.C.R. 375; Vigeant v. The King, [1930] S.C.R. 396; Lopatinsky v. The King, [1948] S.C.R. 220, distinguished; Boulianne v. The King, [1931] S.C.R. 621, referred to.

APPEAL from a decision of the Court of Appeal of Quebec^[1] setting aside the conviction of the accused and ordering a new trial. Appeal dismissed.

Gérard Girouard, for the appellant.

Philip Cutler, Q.C, and Jacques Fortin, for the respondent.

The judgment of the Court was delivered by

MARTLAND J.—This appeal is brought, with leave of this Court, upon the following question of law:

Did the Court of Appeal err in holding that where the majority but not all of the witnesses of a fact are accomplices, the trial judge is required to warn the jury against the danger of accepting their testimony?

The respondent was at all material times president of the Quebec Federation of Labour (Fédération des travailleurs du Québec). On the evening of 29th May, 1974, he was in l'Assomption to attend a meeting of a local of the International Association of Machinists and Aerospace Workers, a union affiliated with his federation. This meeting had been called to give him an opportunity to explain the advantages of affiliation with the federation and the use to which the dues paid to it

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were put. The meeting became, however, confused with one called to consider a dispute between Hupp Canada Ltd. and its employees, members of the local union, arising from the refusal of the company to raise wages to compensate for the increase in the cost of living.

The respondent was of the opinion that, in view of the terms of the collective agreement between the company and its employees, the refusal to increase wages was not a ground for a legal strike and so warned those at the meeting. It was suggested that, instead of a strike, there might be a slowdown. Questions were asked as to how a slowdown might be made effective, and it was in reply to these questions that the respondent was alleged to have suggested acts of sabotage and vandalism. The very next day, such acts were in fact committed. It is not suggested that the respondent personally took any part in these acts.

The evidence adduced by the Crown as to what was said by the respondent at the meeting was given entirely by members of the local union. Most, though not all of these, had been apprehended by the police as the result of the activities in the Hupp Canada plant the day following the meeting and had implicated the respondent as the result of questions put to them by the police.

The respondent, who alone testified for the defence, gave his own version of what happened at the meeting. He stated that he had advised the union members to attempt to negotiate with their employer on a reasonable basis and had suggested that it was only if negotiations should fail that they should try other means, such as a slowdown. He acknowledged that, in reply to questions put to him from the floor, he had made some suggestions as to how slowdowns were made effective but denied that he had at any time advocated damage to property.

In his charge to the jury the trial judge did not warn against the danger of convicting the respondent on the uncorroborated evidence of accomplices. The respondent was convicted.

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The respondent appealed his conviction to the Court of Appeal. Two of the three judges who heard the appeal held that the trial judge had erred in failing to give the warning to the jury and ordered a new trial. The third member of the Court did not deal with this issue. He would have allowed the appeal on another ground, but his view was not shared by the majority of the Court. We are concerned on this appeal only with the one issue of law upon which leave was granted.

Dealing with that issue, Montgomery J.A., who delivered the reasons of the majority, had this to say:

There remains the question as to whether the warning was required, in view of the fact that this testimony was not the only evidence against Appellant. I find nothing in the authorities to suggest that the application of the rule should be thus restricted. I can understand that, where the remaining evidence is sufficiently strong, it may be a matter of no particular consequence that the warning has not been given, but here the majority of those who testified as to what was said at the meeting were accomplices. The rule is stated by Martland J., in the Horsburgh case, in the following terms (at p. 754):

"It is now settled law that in a criminal trial, where a person who is an accomplice, gives evidence on behalf of the prosecution, it is the duty of the judge to warn the jury that, although they may convict upon his evidence, it is dangerous to do so unless it is corroborated."

Ritchie, J., for the minority, cited (at p. 767) the rule as given by Lord Abinger in *R. v. Farler* (1837), 8 Car. and P. 106, at p. 107:

"It is a practice which deserves all the reverence of law, that judges have uniformly told juries that they ought not to pay any respect to the testimony of an accomplice, unless the accomplice is corroborated in some material circumstance."

Further on (at p. 773), he put the rule as follows:

*“The well-known rule concerning the evidence of accomplices was stated in this Court by Anglin C.J.C. in *Vigeant v. The King*, [1930] S.C.R. 396, where it was recognized as a rule of law that where an accomplice has given evidence the Judge must first instruct the jury as to what in law constitutes an accomplice and then proceed to tell them that although they are at liberty to do so, it is dangerous to convict on the uncorroborated evidence of such witnesses.”*

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In my opinion, a substantial number of those witnesses who testified as to what was said at the meeting were accomplices and the trial Judge was required to warn the jury against the dangers of accepting their testimony. This he failed to do, and for this reason the conviction cannot stand. I express no opinion as to whether there was in fact corroboration; this will be a matter for a jury to decide.

I am in agreement with the conclusions of Montgomery J.A. In my opinion the issue before us is settled by the views stated in the *Horsburgh*[2] case, which, on this question, were unanimous.

The contention of the appellant is that, while recognizing the existence of the rule, it was not incumbent on the trial judge to give the warning to the jury because the Crown's case did not depend only upon the evidence of the accomplices, since there were other witnesses, who were not accomplices, who also testified as to the statements of the respondent at the meeting. In other words, it is submitted that the rule only applies if the Crown's case rests solely upon the evidence of one or more accomplices. If, it is said there are other witnesses, not accomplices, who give like evidence, the evidence of the accomplice is corroborated and the warning becomes unnecessary.

In support of this proposition the appellant relies upon quotations from reasons delivered in three cases in this Court. The first of these is *Brunet v. The King*[3], where Smith J., said at p. 381:

As stated, there seems to be no case in which it is explicitly laid down that the warning must be given where there is some corroborative evidence to go to the jury, but I think it necessarily follows from the principle laid down in the cases referred to, where the evidence of the accomplice is necessary to sustain the conviction and the corroborative evidence may or may not be accepted as sufficient by the jury.

This passage, cited in the appellant's factum, is an excerpt from a paragraph in which this quotation is preceded by these words:

It seems clear, therefore, that there was in fact no admissible corroborative evidence to be submitted to the

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jury, and that it was the undoubted duty of the learned judge to have given the warning. It is not, however, to be taken that the warning would have been unnecessary had there been some corroborative evidence proper to be submitted to the jury. It is for the jury to say whether or not the corroborative evidence is to be believed, and if it is not believed by the jury, and yet they convict, no warning having been given, they are convicting on the uncorroborated evidence of the accomplice without having been warned of the danger of doing so.

Read as a whole, the passage does not support the appellant's contention.

Reference was made to a statement of Anglin C.J.C., who delivered the judgment of the Court in *Vigeant v. The King*[4], at p. 400:

He should then proceed to instruct the jury that, if they concluded that the witness was, at any stage of the proceedings, an accomplice in the crime charged against the defendants, there would be danger in convicting them of that crime upon his evidence standing alone and uncorroborated; that the law does not preclude their doing so—indeed, they are at liberty to do so—but that there is danger in basing a conviction on such uncorroborated evidence. If, after this warning, the jury had faith enough in the evidence given by the accomplice to convict, their verdict will not be set aside. The jury should not be told to acquit the prisoner; but they should be warned of the danger of convicting. *Rex v. Boycal* (1920), 31 Que. K.B. 391. Where there has been failure so to charge a jury with regard to the uncorroborated evidence of an accomplice the conviction must be quashed. *Gouin v. The King*, [1926] Can. S.C.R. 539; *Brunet v. The King*, [1928] Can. S.C.R. 375.

The appellant stresses the use of the words “standing alone”, but Chief Justice Anglin was not discussing the circumstances in which the warning must be given. He was stating what the trial judge should tell the jury if a witness is an accomplice. The word “alone” is used in conjunction with the words “and uncorroborated”. He is referring to the evidence of an accomplice tendered without corroboration. He is not confining the application of the rule to a case in which the accomplice is the only witness.

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In this connection it may be noted that in the following year in *Boulianne v. The King*[5], a case involving the evidence of an accomplice, Chief Justice Anglin, at p. 623, said:

We should add that we entirely disagree with the view of Mr. Justice Hall that the rule requiring warning does not apply where there is, in fact, corroboration. The rule applies equally whether there be or be not corroborative evidence of the testimony of an accomplice.

The third case cited in support of the appellant's argument is *Lopatinsky v. The King*[6]. It was pointed out that in that case this Court sustained the conviction of the accused and that it was a case in which two other witnesses besides the accomplice had given evidence implicating the accused. The case is not of assistance to the appellant's submission. The trial had been by a judge alone, without a jury. The trial judge did not record his reasons for convicting the accused. Estey J., who delivered the reasons of the Court for refusing the appeal by the accused, based his

decision on the following grounds:

The learned trial Judge did not record his reasons upon which he founded his verdict of guilty and it may be that he did not direct himself upon the foregoing points with that precision which the law contemplates. However, the facts and circumstances of this case are such that no substantial wrong or miscarriage of justice has actually occurred within the meaning of section 1014 of the Criminal Code.

I do not regard the authorities cited on behalf of the appellant as supporting the proposition that the warning in respect of the evidence of an accomplice need not be given if there is other evidence apart from that of the accomplice which could support a conviction. In my opinion if the Crown in a criminal trial tenders as a part of its case against the accused the evidence of a person who is an accomplice, it becomes the duty of the trial judge to warn the jury that, although they may convict upon his evidence, it is dangerous to do so unless it is corroborated.

I would dismiss the appeal.

Appeal dismissed.

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Solicitor for the appellant: Gérard Girouard, Montreal.

Solicitor for the respondent: Philip Cutler, Montreal.

[1] [1976] C.A. 671.

[2] [1967] S.C.R. 747.

[3] [1928] S.C.R. 375.

[4] [1930] S.C.R. 396.

[5] [1931] S.C.R. 621.

[6] [1948] S.C.R. 220.

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