

CANADA / JUDGMENT

R. v. Ménard

2005 SCC 4

COURT

Supreme Court of Canada

DECIDED

27 January 2005

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R. v. Ménard Collection Supreme Court Judgments Date 2005-01-27 Neutral citation 2005 SCC 4 Report

[2005] 1 SCR 24 Case number 30089 Judges McLachlin, Beverley; Major, John C.; Bastarache, Michel; Binnie, William Ian Corneil; LeBel, Louis; Deschamps, Marie; Fish, Morris J.; Abella, Rosalie Silberman; Charron, Louise On appeal from Quebec Subjects Criminal law Notes SCC Case Information: 30089 Decision Content SUPREME COURT OF CANADA Citation: R. v. Ménard, [2005] 1 S.C.R. 24, 2005 SCC 4 Date: 20050127 Docket: 30089 Between: Daniel Ménard Appellant / Respondent on cross-appeal v. Her Majesty the Queen Respondent / Appellant on cross-appeal Coram: McLachlin C.J. and Major, Bastarache, Binnie, LeBel, Deschamps, Fish, Abella and Charron JJ. Reasons for judgment: (paras. 1 to 7) Fish J. (McLachlin C.J. and Major, Bastarache, Binnie, LeBel, Deschamps, Abella and Charron JJ. concurring)

R. v. Ménard, [2005] 1 S.C.R. 24, 2005 SCC 4 Daniel Ménard Appellant/respondent on cross-appeal v. Her Majesty The Queen Respondent/appellant on cross-appeal Indexed as: R. v. Ménard Neutral citation: 2005 SCC 4. File No.: 30089. 2004: December 17; 2005: January 27. Present: McLachlin C.J. and Major, Bastarache, Binnie, LeBel, Deschamps, Fish, Abella and Charron JJ. on appeal from the court of appeal for quebec Criminal law — Appeal — Conviction — Jury returning verdict of first degree murder at trial — Charge to jury fatally flawed — Court of Appeal correct in setting aside conviction for first degree murder but wrong in substituting conviction for second degree murder where another verdict might be reasonable — New trial ordered on original indictment — Criminal Code, R.S.C. 1985, c. C-46, s. 686(3) . Criminal law — Murder — Charge to jury — Errors in trial judge's instructions concerning causation requirement — Criminal Code, R.S.C. 1985, c. C-46, s. 231(5) . Cases Cited Referred to: R. v. Harbottle, [1993] 3 S.C.R. 306. Statutes and Regulations Cited Criminal Code, R.S.C. 1985, c. C-46, ss. 231(5) , 686(3) . APPEAL and CROSS-APPEAL from a judgment of the Quebec Court of Appeal (Proulx, Otis and Rochon JJ.A.), [2003] Q.J. No. 14846 (QL), setting aside a conviction for first degree murder and substituting a conviction for second degree murder. Appeal and cross-appeal allowed in part. Daniel Royer and Martin Latour, for the appellant/respondent on cross-appeal. Raynald Savage, Denis Pilon and

Jean-Pierre Proulx, for the respondent/appellant on cross-appeal. The judgment of the Court was delivered by 1 Fish J. — The appellant was convicted at trial of first degree murder. We agree with the Court of Appeal that this verdict cannot stand since the charge to the jury was fatally flawed. 2 The reasons given by the Court of Appeal in its brief judgment delivered orally would alone require that the appellant's conviction by the jury be set aside: [2003] Q.J. No. 14846 (QL). This should not be taken as a rejection by the Court of Appeal of the other grounds raised by the appellant in that Court, and again here. 3 In particular, we agree with the appellant that the trial judge erred in his instructions concerning the causation requirement set out in s. 231(5) of the Criminal Code, R.S.C. 1985, c. C-46 . Speaking for the Court in R. v. Harbottle, [1993] 3 S.C.R. 306, Cory J. stated (at pp. 323-24): The consequences of a conviction for first degree murder and the wording of the section are such that the test of causation for s. 214(5) [now s. 231(5)] must be a strict one. In my view, an accused may only be convicted under the subsection if the Crown establishes that the accused has committed an act or series of acts which are of such a nature that they must be regarded as a substantial and integral cause of the death. 4 This requirement was not made clear to the jury. Having concluded that the appellant's conviction for first degree murder could not stand for the reasons mentioned in its judgment, the Court of Appeal evidently found it unnecessary to add that the verdict could not stand for this reason as well. 5 The Court of Appeal set aside the appellant's conviction for first degree murder and, by virtue of s. 686(3) of the Code, substituted a conviction for second degree murder. 6 A properly instructed jury, acting reasonably, could certainly have returned a verdict of second degree murder in this case. We are unable to say, however, that no other verdict would be reasonable on the facts as we have them. Taking into account all of the circumstances, we therefore think it preferable to order a fresh trial on the original indictment, leaving it open to the Crown to exercise its discretion in this regard. 7 Accordingly, the appeal and cross-appeal are both allowed in part and a new trial is ordered on a charge of first degree murder. Appeal and cross-appeal allowed in part. Solicitors for the appellant/respondent on cross-appeal: Labelle, Boudrault, Côté & Associés, Montréal. Solicitor for the respondent/appellant on cross-appeal: Attorney General's Prosecutor, Salaberry-de-Valleyfield, Quebec.

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