

**SUPREME COURT OF CANADA**

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| **Citation:** R. *v.* Laliberté, 2016 SCC 17, [2016] 1 S.C.R. 270 | **Appeal heard:** April 29, 2016**Judgment rendered:** April 29, 2016**Docket:** 36712 |

Between:

Pierre-Olivier Laliberté

Appellant

and

Her Majesty The Queen

Respondent

**Official English Translation**

**Coram:** McLachlin C.J. and Cromwell, Wagner, Gascon and Brown JJ.

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| **Reasons for Judgment:**(paras. 1 to 6) | Wagner J. (McLachlin C.J. and Cromwell, Gascon and Brown JJ. concurring) |

R. *v.* Laliberté, 2016 SCC 17, [2016] 1 S.C.R. 270

Pierre-Olivier Laliberté Appellant

v.

Her Majesty The Queen Respondent

**Indexed as: R. *v.*** Laliberté

2016 SCC 17

File No.: 36712.

2016: April 29.

Present: McLachlin C.J. and Cromwell, Wagner, Gascon and Brown JJ.

on appeal from the court of appeal for quebec

 *Criminal law — Charge to jury — Defences — Alibi — Fabrication of alibi — Application of curative proviso — Trial judge’s instruction to jury with respect to fabrication of alibi was erroneous, but evidence is so overwhelming that trier of fact would inevitably have entered conviction against accused — Convictions for first degree murder and attempted murder upheld — Criminal Code, R.S.C. 1985, c. C-46, s. 686(1)(b)(iii).*

**Cases Cited**

 **Referred to:** *R. v. O’Connor* (2002), 62 O.R. (3d) 263; *R. v. Hibbert*, 2002 SCC 39, [2002] 2 S.C.R. 445; *R. v. Tessier* (1997), 113 C.C.C. (3d) 538; *R. v. Trochym*, 2007 SCC 6, [2007] 1 S.C.R. 239.

**Statutes and Regulations Cited**

*Criminal Code*, R.S.C. 1985, c. C-46, s. 686(1)(b)(iii).

 APPEAL from a judgment of the Quebec Court of Appeal (Chamberland, Hilton and Bélanger JJ.A.), 2015 QCCA 1633, [2015] AZ-51220898, [2015] J.Q. no 9961 (QL), 2015 CarswellQue 9461 (WL Can.), upholding the accused’s convictions for first degree murder and attempted murder entered by Grenier J. Appeal dismissed.

 Ariane Gagnon-Rocque and Carl Thibault, for the appellant.

 Régis Boisvert and Justin Tremblay, for the respondent.

 English version of the judgment of the Court delivered orally by

1. Wagner J. — This appeal as of right is based on the dissent of Hilton J.A. in the Quebec Court of Appeal. In Hilton J.A.’s view, the trial judge erred in not admitting in evidence out-of-court statements made by one of the victims and in giving the jury an instruction, the content of which was also erroneous, with respect to the fabrication of an alibi even though sufficient evidence had not been adduced to link the appellant to the fabrication of an alibi. The dissenting judge found that the trial judge’s instruction was so inappropriate and so seriously in error that the curative proviso of s. 686(1)(b)(iii) of the *Criminal Code*, R.S.C. 1985, c. C-46, was inapplicable.
2. The majority agreed with Hilton J.A.’s conclusion regarding the out-of-court statements of one of the victims and also agreed that the content of the instruction with respect to the fabrication of an alibi was erroneous. However, they found that deference was owed to the trial judge’s decision to give an instruction in that regard. Concluding that the case against the accused was overwhelming, they applied the curative proviso of s. 686(1)(b)(iii) of the *Criminal Code*.
3. We agree with the majority and with the dissenting judge that the instruction the trial judge gave with respect to the fabrication of an alibi was erroneous. A trial judge must specify in such an instruction that the fabrication of an alibi supports an inference of *consciousness* of guilt, but no more than that. The instruction in this case did not satisfy this requirement.
4. Moreover, there must be other evidence independent of the finding that the alibi is false on the basis of which a reasonable jury could conclude that the alibi was deliberately fabricated and that the accused was involved in that attempt to mislead the jury: *R. v. O’Connor* (2002), 62 O.R. (3d) 263 (C.A.); *R. v. Hibbert*, 2002 SCC 39, [2002] 2 S.C.R. 445; *R. v. Tessier* (1997), 113 C.C.C. (3d) 538 (B.C.C.A.) (per Ryan J.A.).
5. However, we are of the opinion that, despite the trial judge’s errors, the evidence in the case at bar is so overwhelming that the trier of fact would inevitably have entered a conviction against the accused: *R. v. Trochym*, 2007 SCC 6, [2007] 1 S.C.R. 239.
6. For these reasons, the appeal is dismissed.

 *Judgment accordingly.*

 Solicitors for the appellant: Thibault, Roy, Avocats, Québec.

 Solicitors for the respondent: Poursuites criminelles et pénales du Québec, Québec.