



SUPREME COURT OF CANADA

CITATION: R. v. Alas, 2022 SCC 14

APPEAL HEARD: April 21, 2022

JUDGMENT RENDERED: April 21, 2022

DOCKET: 39654

BETWEEN:

Her Majesty The Queen
Appellant

and

Anthony Raul Alas
Respondent

CORAM: Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ.

UNANIMOUS Wagner C.J.

JUDGMENT READ

BY:

(paras. 1 to 6)

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Her Majesty The Queen

Appellant

v.

Anthony Raul Alas

Respondent

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Present: Wagner C.J. and Moldaver, Karakatsanis, Côté, Brown, Rowe, Martin, Kasirer and Jamal JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Criminal law — Defences — Provocation — Air of reality — Accused convicted of second degree murder by jury — Accused appealing conviction on basis that trial judge erred by failing to leave defence of provocation with jury — Majority of Court of Appeal holding that there was air of reality to defence of provocation and it should have been left with jury for their consideration — Majority setting aside conviction and ordering new trial — Dissenting judge finding that trial judge’s decision that there was no air of reality to defence of provocation and it should not be left with jury was correct — Conviction restored.

Cases Cited

Referred to: *R. v. Cinous*, 2002 SCC 29, [2002] 2 S.C.R. 3.

APPEAL from a judgment of the Ontario Court of Appeal (MacPherson, Tulloch and Lauwers JJ.A.), 2021 ONCA 224, 404 C.C.C. (3d) 50, [2021] O.J. No. 1859 (QL), 2021 CarswellOnt 4732 (WL), setting aside the conviction of the accused for second degree murder and ordering a new trial. Appeal allowed.

Kevin Rawluk and G. Karen Papadopoulos, for the appellant.

John Rosen, for the respondent.

The judgment of the Court was delivered orally by

[1] THE CHIEF JUSTICE — Mr. Alas was convicted at trial of second degree murder after he stabbed the deceased six times during an altercation at a bar. A majority of the Ontario Court of Appeal (MacPherson J.A. dissenting) overturned this verdict and ordered a new trial. The Crown appeals to this Court as of right. The sole issue is whether there was an air of reality to the defence of provocation, such that the trial judge erred in failing to put the defence to the jury. This offence pre-dated the amendment to the provocation provision, which applies to offences committed on or after July 17, 2015.

[2] We find no error in the trial judge’s determination that there was no air of reality to the defence of provocation.

[3] The standard of review for whether there is an air of reality to the defence of provocation is correctness (*R. v. Cinous*, 2002 SCC 29, [2002] 2 S.C.R. 3, at para. 55).

[4] The key issue here is whether there is sufficient evidential basis as to the fourth element of the provocation defence — that the accused acted on the sudden.

[5] Taking the evidence at its highest for the accused, for present purposes, the subjective element of the test for provocation has not been met. The accused did not react “on the sudden” before there was time for his passion to cool. It is beyond the range of reasonable inferences to say that Mr. Alas’ reaction to the deceased making a punching/lunging motion at the women was “on the sudden”; rather, it was the culmination of an altercation that Mr. Alas both instigated and anticipated. As he indicated in his statement to the police:

- a) Mr. Alas was aware that the deceased had an altercation with his friend earlier in the evening, during which the deceased closed a door on her head.
- b) Mr. Alas was so upset about the deceased’s conduct that he wanted to hit the deceased in the head with a pool cue. He cooled down and did not take this course of action.

- c) When his fiancée and friend went outside to smoke, he told them that he would follow if he saw the deceased go outside as well: “. . . if I see this guy get up and come out, I’m coming . . . I’ll be right behind him” (A.R., vol. II, at p. 103).
- d) Mr. Alas observed the deceased preparing to leave the bar. In anticipation, he went outside to join the two women.
- e) When the deceased came out of the bar, he looked at Mr. Alas’ friend. In response to this look, Mr. Alas responded: “. . . [w]hat the fuck is wrong with you? Do you have a problem”? A verbal altercation ensued involving Mr. Alas, the deceased, and the two women (A.R., vol. II, at p. 104).
- f) During the verbal altercation, Mr. Alas retrieved a knife from his pants pocket and moved it to his jacket pocket “just in case”. With the knife gripped in his hand, he stared at the deceased. At his police interview, Mr. Alas said that he stared at the deceased in this way in order to “le[t] him know like if you do anything, um, I would jump on you” (A.R., vol. II, at pp. 167-68).
- g) When Mr. Alas saw the deceased making a fist directed at the women, he immediately jumped in and stabbed him in the throat, although he said that he “wanted to stab him . . . in his chest” (A.R., vol. II, at p. 171). He stabbed the deceased five more times after that.

[6] Accordingly, the appeal is allowed and the conviction is restored.

Judgment accordingly.

Solicitor for the appellant: Attorney General of Ontario, Toronto.

Solicitors for the respondent: Rosen & Company, Toronto.