CASES

DETERMINED BY THE

SUPREME COURT OF CANADA ON APPEAL

FROM

DOMINION AND PROVINCIAL COURTS

WILLIAM FRASER AND OTHERS.....APPELLANTS; 1936

AND * Jan. 24.

HIS MAJESTY THE KING.....RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

Appeal—Leave to appeal to Supreme Court of Canada—Criminal law—Conflict of judgments—Circumstantial evidence—Rule as to inference of guilt—Section 1025 Cr. C.

When the conviction of an accused is grounded exclusively on circumstantial evidence, the rule acted upon by the decisions of several courts of appeal throughout Canada has been that "in order to "justify the inference of guilt, the inculpatory facts must be incom- "patible with the innocence of the accused and incapable of any "other reasonable hypothesis than that of his guilt"; and when that principle is compared with the principle expounded in this case by the reasons of judgment of the appellate court, it must be *held* that there exists, between the above decisions and the judgment appealed from, the conflict required by section 1025 of the Criminal Code; and, therefore, leave to appeal to this Court should be granted, as such rule of law is of sufficiently general importance to justify such leave.

MOTION under section 1025 of the Criminal Code for leave to appeal to this Court from the judgment of the Court of King's Bench, appeal side, province of Quebec, upholding the conviction of the appellants. Leave to appeal was granted by the judgment now reported

Aimé Geoffrion K.C. and *Lucien Gendron K.C.* for the appellants.

Charles Laurendeau K.C. and *James Crankshaw K.C. contra.*

* PRESENT:—Rinfret J. in chambers.

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RINFRET J.—Counsel for the appellants have moved for leave to appeal from the judgment of the Court of King's Bench (appeal side), upholding the verdict against the appellants in this matter.

My duty is to decide whether the judgment appealed from conflicts with the judgment of any other court of appeal in a like case in Canada; and, if so, whether the importance of the case justifies the granting of leave to appeal to the Supreme Court of Canada.

It is common ground that the conviction of the appellants was grounded exclusively on circumstantial evidence. In such cases, the rule laid down by Baron Alderson in *Hodge's* case (1) may be said to have been generally adopted that

> the jury must be satisfied not only that (the) circumstances were consistent with his (the prisoner) having committed the act, but they must also be satisfied that the facts were such as to be inconsistent with any other rational conclusion than that the prisoner was the guilty person.

Counsel for the appellants referred me to at least four judgments of other courts of appeal in like cases, where the rule so laid down was accepted and applied. They are: *The King* v. *Jenkins* (Court of Appeal for British Columbia) (2); *Rex* v. *Hyslop* (Appellate Division of the Supreme Court of Alberta) (3); *Rex* v. *Yok Yuen* (Appellate Division of the Supreme Court of Ontario) (4); *Rex* v. *Demetrio* (Appellate Division of the Supreme Court of Ontario) (5).

It may be added that this Court has also adopted the rule, amongst other instances, in the cases of *McLean* v. *The King* (6) and *Reinblatt* v. *The King* (7).

The result of that rule and of the decisions where it was applied is that

> in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of any other reasonable hypothesis than that of his guilt. (Wills, On Circumstantial Evidence, at p. 262).

Now, if we take the principle thus enunciated and acted upon by the several courts of appeal throughout Canada

(1) (1838) 2 Lewin's Crown's Cas. 227.
(2) (1908) 14 Can. Cr. Cases, 221.
(3) (1925) 43 Can. Cr. Cases, 384.
(4) (1929) 52 Can. Cr. Cases, 300.
(5) (1926) 46 Can. Cr. Cases 133.
(6) [1933] S.C.R. 688.
(7) [1933] S.C.R. 694.

in the cases referred to, and if we compare it with the principle expounded in the present case by the Court of King's Bench (appeal side), as it must be gathered from the reasons of judgment, it is difficult not to come to the conclusion that there exists between the two the conflict required by section 1025 of the Criminal Code.

The learned judge who gave the reasons for the Court expressed himself in the following way:

Aussi bien, les procureurs des appelants se sont-ils appliqués à mettre de l'avant, pour le cas où le dossier montrerait encore que leurs clients ont été mêlés à l'affaire, cette règle de droit bien connue qu'une preuve circonstantielle ne doit conduire à un verdict de culpabilité que si les circonstances entrevues ne s'adaptent pas de façon plausible à une autre hypothèse raisonnable.

As I read this sentence, I do not feel that it lays down the rule in the way in which it has been interpreted by the other courts of appeal in the judgments already mentioned. I think it was put down in a much stronger way than the words of the learned judge convey. The statement

qu'une preuve circonstantielle ne doit conduire à un verdict de culpabilité que si les circonstances entrevues ne s'adaptent pas de façon plausible à une autre hypothèse raisonnable

is not as favourable to the prisoner as the principle laid down by Baron Alderson (1) that the facts must be

such as to be inconsistent with any other rational conclusion than that the prisoner was the guilty person,

which, by the other courts, have been understood and interpreted to mean that there should be

no other possible explanation consistent with the evidence, except the guilt of the accused,

or that the evidence believed by the jury

must exclude every reasonable hypothesis of innocence and justify the verdict.

But, if I read further in the reasons of the Court of King's Bench, my conviction is strengthened that the principle whereby the Court measured the validity of the jury's verdict in the present case was different from that laid down by Baron Alderson and accepted by the other courts of appeal, for the learned judge says:

Je veux tenir compte de cette règle bien juste et bien logique, mais peut-on s'y attarder encore, s'il surgit un fait décisif et qui soit de nature à dissiper tout doute quant à la connaissance du but poursuivi et de

(1) (1838) 2 Lewin's Crown Cas. 227.

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l'intention de l'inculpé, et ainsi rendre incompatible l'hypothèse d'innocence.

What the learned judge says there is that one fact in a chain of circumstances may be found conclusive of a man's guilt, which is directly contrary to *The King* v. *Jenkins* (1).

The difference between the two is made still wider when one reads the sentence immediately following, in the reasons of the Court of King's Bench:

> On conviendra, je crois, qu'un tel fait, lorsqu'il se produit, doive mettre en *échec* la règle de droit susmentionnée.

To which may be added the following further statement in the reasons:

> Il est facile de dire qu'il faut, pour convaincre de culpabilité à raison d'une preuve circonstancielle, écarter d'abord toute autre hypothèse raisonnable * * * mais si la défense—pas plus au procès qu'en appel—n'a pu en imaginer, comment peut-elle se plaindre que le jury n'en ait vu aucune;

which apparently suggests that it was for the appellants to establish their innocence, and not for the Crown to prove their guilt.

Under the circumstances, I am respectfully of opinion that the appellants have proven the existence of the conflict; and the rule itself is of sufficiently general importance to justify me in granting leave to appeal.

Motion granted.