REGINA v. MACHEKEQUONABE

(1897), 28 O.R. 309

Ontario Divisional Court, Armour C.J., Falconbridge and Street JJ., 8 February 1897

Criminal law--Manslaughter--Pagan Indian--Evil Spirit--Delusion.

A pagan Indian who believing in an evil spirit in human shape called a Wendigo shot and killed another Indian under the impression that he was the Wendigo was held properly convicted of manslaughter.

THIS was a case reserved under the Criminal Code 1892 [Statement.] and amending Act 58 & 59 Vict. ch.40 (D.) as to whether the prisoner was properly convicted of manslaughter.
The trial took place at Rat Portage on the 3rd of December, 1896, before ROSE, J., and a jury.

Langford, for the Crown.
Wink, for the prisoner.

It appeared from the evidence that the prisoner was a member of a tribe of pagan Indians who believed in the existence of an evil spirit clothed in human flesh, or in human form called a Wendigo which would eat a human being.

That it was reported that a Wendigo had been seen and it was supposed was in the neighbourhood of their camp desiring to do them harm. That among other precautions to protect themselves, guards and sentries, the prisoner being one, were placed out in pairs armed with firearms (the prisoner having a rifle); that the prisoner saw what appeared to be a tall human being running in the distance, which he supposed was the Wendigo; that he and another Indian gave chase, and after challenging three times and receiving no answer fired and shot the object, when it was discovered to be his own father, who died soon afterward.

The jury found affirmative answers to the following questions:
Are you satisfied the prisoner did kill the Indian?
[Statement.] Did the prisoner believe the object he shot at to be a Wendigo or spirit?
Did he believe the spirit to be embodied in human flesh?
Was it the prisoner's belief that the Wendigo could be killed by a bullet shot from a rifle?
Was the prisoner sane apart from the delusion or belief the existence of a Wendigo?

The learned trial Judge then proceeded with his charge as follows:--"Assuming these facts to be found by you, I think I must direct you as a matter of law that there is no justification here for the killing; and culpable homicide without justification is manslaughter, so that unless you can suggest to yourselves something stated in the evidence, or drawn from the evidence to warrant a different conclusion, I think it will be your duty to return a verdict of manslaughter. You may confer among yourselves if you please, and if you take that view, I will reserve a case for consideration by the Court of Appeal as to whether he was properly convicted upon this evidence."

The jury found the prisoner guilty of manslaughter recommending him to mercy, and the learned Judge reserved a case for consideration whether upon the findings of the jury in answer to the questions he had submitted and upon his direction to them and upon the evidence the prisoner was properly found guilty of manslaughter.

The case was argued on February 8th, 1897, before a Divisional Court composed of ARMOUR, C.J., and FALCON- BRIDGE, and STREET, JJ.

***J. K. Kerr*, Q.C**., for the prisoner. The evidence shews the Indian tribe were pagans, and believed in an evil spirit clothed in human form which they called a Wendigo, and which attacked, killed and ate human beings. The man that was shot was thought to be a Wendigo, a spirit as distinguished from a human being. It is true there was a mistake, but there was no intention even to harm a [Argument.] human being much less to kill. The evidence shews the mistake was not unreasonable. At common law the following of a religious belief would be an excuse. The trial Judge wrongly directed the jury to find the prisoner guilty. There should be a new trial at least. I refer to *Levet's Case*, 1 Hale 474; 1 Bishop on Criminal Law, 7th ed., sec. 305 and note; *Territory v. Fish*, cited in note p. 185, is almost a parallel case; *Plummer v. The State*, 4 Texas App. 310; *Regina v. Rose*, 15 Cox C. C. 540; *Regina v. Wagstaffe*, 10 Cox C. C. 530; *State v. Nash*, 88 N. Car. 618; *Regina v. Mawgridge*, Kelyng's C. C. 167 [119]. *John Cartwright*, Q.C., Deputy Attorney-General was not called on.

The judgment of the Court was delivered by

ARMOUR, C. J.:--
Upon the case reserved if there was evidence upon which the jury could find the prisoner guilty of manslaughter it is not open to us to reverse that finding, and the question we have to decide is whether there was such evidence.

We think there was, and therefore do not see how we can say that the prisoner was not properly convicted of manslaughter.