

REGINA v. DUDLEY AND STEPHENS

14 Q.B.D. 273 (1884)

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FACTS: In July 1884 four British sailors were cast away in a storm 1,600 miles from the Cape of Good Hope in an open lifeboat. The only food the crew found aboard the lifeboat was two one-pound tins of turnips. They were able to catch a turtle on their fourth day at sea, but had no other food beyond the turnips and the turtle through the 20th day. All four of the seamen were suffering from hunger and thirst by this time, and the youngest was delirious from drinking seawater. At that point in time, Dudley proposed that the other three should kill the youngest so that the other three would have food and liquid, and Stephens agreed. The next day, while Brooks was sleeping, Dudley killed the boy. While Brooks did not condone the act, he shared in the "bounty," and for the next four days the three men fed on the body and blood of the boy. They were rescued by a passing ship on the 29th day and taken to England, where they were arrested and charged with murder.

ISSUE: Was the killing of the boy an act of murder or an act of self defense?

HOLDING: It was an act of murder.

REASONING: The court granted "that if the men had not fed upon the body of the boy they would probably not have survived to be so picked up and rescued, but would within the four days have died of famine." It also agreed "that the boy, being in a much weaker condition, was likely to have died before them ... [t]hat under these circumstances there appeared to the prisoners every probability that unless they then fed or very soon fed upon the boy or one of themselves they would die of starvation. That there was no appreciable chance of saving life except by killing some one for the others to eat..."

The court addressed the self-defense issue by examining the words of Lord Hale. In the chapter in which he deals with the exemption to murder created by compulsion or necessity, he stated: "If a man be desperately assaulted and in peril of death, and cannot otherwise escape unless, to satisfy his assailant's fury, he will kill an innocent person then present, the fear and actual force will not acquit him of the crime and punishment of murder, for he ought rather to die himself than kill an innocent; but if he cannot otherwise save his own life the law permits him in his own defence to kill the assailant."

The court recognized the stress the sailors faced, and acknowledged that the temptations they faced were powerful, but denied that these things created a "necessity" justifying homicide. "Nor is this to be regretted. Though law and morality are not the same, and many things may be immoral which are not necessarily illegal, yet the absolute divorce of law from morality would be of fatal consequence; and such divorce would follow if the temptation to murder in this case were to be held by law an absolute defence of it. It is not so. To preserve one's life is generally speaking a duty, but it may be the plainest and the highest duty to sacrifice it... It is not needful to point out the awful danger of admitting the principle which has been contended for. Who is to be the judge of this sort of necessity? By what measure is the comparative value of lives to be measured? Is it to be strength, or intellect, or what? It is plain that the principle leaves to him who is to profit by it to determine the necessity which will justify him in deliberately taking another's life to save his own... [I]t is quite plain that such a principle once admitted might be made the legal cloak for unbridled passion and atrocious crime. There is no safe path for judges to tread but to ascertain the law to the best of their ability and to declare it according to their judgment; and if in any case the law appears to be too severe for individuals, to leave it to the Sovereign to exercise that prerogative of mercy

which the Constitution has intrusted to the hands fittest to dispense it. ... It is therefore our duty to declare that the prisoners' act in this case was willful murder, that the facts as stated in the verdict are no legal justification of the homicide; and to say that in our unanimous opinion the prisoners are upon this special verdict guilty of murder."

[The court then proceeded to pass a sentence of death on the prisoners. Queen Victoria subsequently commuted the sentences, setting the punishment to be served by Dudley and Stephens at six months imprisonment.]