

## R. v. Ryan, 2013 SCC 3 – duress defence

### Facts:

Nicole Ryan was in a controlling, abusive marriage. Her husband regularly had violent outbursts. He threw objects at her head, physically assaulted her, and threatened to kill her. He told her he would burn the house down with her and their daughter inside if she ever tried to leave him. Ryan became afraid for her safety and her daughter's safety. The abuse affected her physical and mental health.

In September of 2007, Ryan began to consider having her husband killed. Over the next several months, she spoke to at least three men about having him killed. One of these men was an undercover RCMP officer posing as a hitman. They agreed on a price of \$25,000, and she paid him \$2,000 that same day. Later that night, she sent the undercover officer a picture of her husband to identify him. She was arrested and charged with counselling the commission of an offence.

At trial, Ryan did not dispute the facts of the offence. However, she claimed a defence of duress. She said she had been driven to her actions by her husband's constantly abusive and threatening behaviour toward her. The trial judge agreed and acquitted her. The Court of Appeal upheld the acquittal. The Crown appealed to the Supreme Court.

### The Decision:

The Supreme Court found that the duress defence did not apply to Ryan.

The defence of duress is related to the defence of self-defence. Both involve situations where a person is subjected to an external danger, and commits an act that would otherwise be criminal as a way of avoiding harm. However, there are some important differences:

- With self-defence, an accused person acts to stop a threat. The reason the threat was made is irrelevant. With duress, the threat is made specifically to compel the accused person to commit a criminal act. The accused person then commits the act out of fear or for self-preservation.
- An act of self-defence is directed at the person putting the accused in danger. An act of duress is usually directed at an innocent third party.
- Self-defence justifies the behavior. Duress is an excuse. In other words, normally criminal behaviour done out of self-defence is allowed by law. Criminal behaviour done under duress is still criminal, but it will not result in punishment.
- Self-defence exists only in the *Criminal Code* (section 34). Duress exists in the *Criminal Code* (section 17) and at common-law. Therefore, the parameters of duress are not as clearly defined.

To clarify things, the Court indicated the following features for duress:

- 1) There is an implicit or explicit threat of death or bodily harm,

### Discussion Questions:

1) Do you think Ryan had better legal standing to argue self-defence instead of necessity? What do you think might have prevented her from claiming self-defence?

### Relevant Law:

*The Criminal Code of Canada*, sections 17 and 464(a).

### Resources:

You can read the entire case at:

<https://www.canlii.org/en/ca/scc/doc/2013/2013scc3/2013scc3.html>

You can find the *Criminal Code* at:

<https://laws-lois.justice.gc.ca/eng/acts/c-46/>

- directed at the accused or a third party,
- 2) The accused reasonably believes the threat,
  - 3) The threat and the harm threatened are close in time,
  - 4) There is no safe way to escape the threat,
  - 5) The accused person's actions are proportionate to the threat, and
  - 6) The accused is not part of a conspiracy or criminal association.

Duress cannot be used to “fill the gaps” in the law of self-defence. It only applies in situations where the accused has been pushed to commit an offence under threats of death or bodily harm. If an accused person has been threatened with death or bodily harm, but has not been forced by the person making the threat to commit a specific offence, the only defence the accused person can rely on is self-defence. On the facts in this case, Ryan was not able to claim duress.

Even though they decided that the duress defence did not apply to Ryan, the majority of the justices decided not to convict her. The abuse Ryan had suffered had taken a huge toll on her, as had the fact that this matter had been dragging on through the courts for nearly five years. The law on duress was not clear, and the Crown had even changed their position on the law between trial and the first appeal. Because of all of these circumstances, the majority of the justices felt it would not be fair to Ryan for the matter to carry on any longer. They entered a stay of proceedings.

## **Relevant Law:**

### *The Criminal Code of Canada:*

#### **Compulsion by threats**

**17.** A person who commits an offence under compulsion by threats of immediate death or bodily harm from a person who is present when the offence is committed is excused for committing the offence if the person believes that the threats will be carried out and if the person is not a party to a conspiracy or association whereby the person is subject to compulsion, but this section does not apply where the offence that is committed is high treason or treason, murder, piracy, attempted murder, sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm, aggravated sexual assault, forcible abduction, hostage taking, robbery, assault with a weapon or causing bodily harm, aggravated assault, unlawfully causing bodily harm, arson or an offence under sections 280 to 283 (abduction and detention of young persons).

#### **Counselling offence that is not committed**

**464.** Except where otherwise expressly provided by law, the following provisions apply in respect of persons who counsel other persons to commit offences, namely,

- (a) every one who counsels another person to commit an indictable offence is, if the offence is not committed, guilty of an indictable offence and liable to the same punishment to which a person who attempts to commit that offence is liable[.]