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Case Comment: Regina vs Dudley and Stephens - A Judicial Valour or a Blunder

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INTRODUCTION

The case of *Regina v Dudley and Stephens*¹ is a very celebrated case under the doctrine of necessity. Although it is a ruling of the English common law system, it has permeated many criminal legal Systems around the globe and has explicated the scope of the doctrine of necessity as a justifiable defence and its limitations in the case of Murder. Although the case is one of the most taught case laws in law schools around the globe, it's ruling several times creates an ethical dilemma. Its isolated reading gives a myopic view that “The justifiable defence of necessity doesn't apply in Murder” which is disastrous.

FACTS OF THE CASE

On May 19, 1884; Captain Tom Dudley (31 years)² undertook the perilous task of transporting a

¹ *Regina v Dudley & Stephens* [1884] 14 QBD 273 (DC)

² AWB Simpson, *Cannibalism and the common law: the story of the tragic last voyage of the Mignonette and the strange legal proceedings to which it gave rise* (University of Chicago Press 1984) 296

British inshore yacht of 52 feet built in 1867 named “Mignonette”³ from Southampton (England) to Sydney (Australia) (24000 km) for an Australian lawyer Jack Want who purchased it in 1883⁴. Since Dudley was paid a full and final lumpsum amount of 200 pounds for this task, he decided to sail the yacht to Sydney for saving his profit, despite knowing that it was an inshore yacht not made for long voyages. He even spent the least possible time and money on its repair. On this voyage, he took Edwin Stephens (37 years)⁵, Edmund Brooks (39 years)⁶, and Richard Parker, an orphan cabin boy with a three brothers family, aged 17 years⁷ as his crew on the voyage on the allurement of leisure life in Australia and job prospect on a British vessel.

On the 5th of July, near Cape of Good Hope, the vessel lost its bulwark while struggling with a heavy sea storm and started to sink, the crew of the yacht then shifted to the only 13-foot dinghy abandoning the yacht with no fresh water and only two tins of turnips. Their dinghy was around 700 miles from Saint Helena⁸ which was unreachable due to shallow dinghy with no sails. The two boxes of turnips along with a caught sea turtle lasted only for 12 days. Since with no sources of fresh water, they started drinking their urine with Parker drinking sea water due to which parker’s health worsened on 20th July⁹. Due to intense hunger, thirst, and fatal circumstances, on 16th or 17th July, captain Dudley for the first time proposed the idea of drawing lots to select the person, among them, who must be sacrificed so that the others can feed on his flesh and blood and be saved because the fatal circumstances would not permit otherwise. Brooks rejected the idea. Simultaneously, Parker’s condition severed and he probably ran into a coma. The debate continued till 24th July with no resolution until on that fateful day, Captain Dudley and Stephens resolved, for Dudley had a family of a wife and three children and Stephens had a wife and five children, to kill Parker for he was probably dying. On the next day, Dudley and Stephen killed Parker with a pen knife¹⁰ and Dudley prayed upon his body and they, including Brooks who had not assented to the killing, feasted on the body and blood till the 29th of July when a

³ *Ibid* 18

⁴ *Ibid*

⁵ *Ibid* 290

⁶ *Ibid* 289

⁷ *Ibid* 37-40

⁸ *Ibid* 50-53

⁹ *Ibid* 57-60

¹⁰ *Ibid*

German vessel saved them and returned them to Falmouth¹¹. On their arrival, the trio was arrested by the police on the grounds of their depositions under which they claimed such killing.¹² They were presented before the Magistrate's Court on 18th Sept. where William Otto Danckwerts, from the prosecution, raised no charges against Brooks so that he could be used as the sole eye-witness for the prosecution. Brooks was discharged. The case was then referred to winter assizes in Exeter¹³.

THE LEGAL BATTLE

On November 3rd, the trial was conducted before the assizes were presided over by Baron Huddleston J. The trial only resulted in a special verdict (official findings of facts in the case by the jury) without any conviction. This was probably done because Huddleston had decided to settle the legal question through a ruling by a larger bench.¹⁴ The Queen's Bench Division sat on 4th December consisting of Lord Coleridge C.J., Grove J., Denman J., Lord Pollock J., and Lord Huddleston J. The Bench framed three questions for consideration on the findings of the Jury-

ISSUES INVOLVED

- Whether the killing of Parker was murder considering the circumstances of the case.
- Whether necessity can be claimed as a defence for murder and whether can it make the act permissible.
- Whether the killing of Parker to save one's own life, in this case, be termed an act of self-defence.

DECISION

For the first question, there was no contestation between the prosecution and the defendants as it was proved beyond reasonable doubt by the depositions of the accused and the prayer of Dudley. The accused, in their account of the scene and by submission of a penknife to the police,

¹¹ *Ibid* 69-70

¹² *Ibid* 3-11

¹³ *Ibid* 89-92

¹⁴ *Ibid* 206-210

accepted the murder. To the third question, the bench rejected the defence of self-defence as Parker was not posing any immediate threat to the accused.

The only question left was the second one. The Court adopted an amalgamation of law, morality, and ethics to hold that **necessity is not a defence in Murder**. The Court rejected the justification of necessity due to the lack of any precedent. Secondly, the court examined the Pagan and Christian morality and ethics ranging from Horace, and Juvenal to Cicero and Euripides and Jesus Christ respectively. The Court held...

“To preserve one's life is generally speaking a duty, but it may be the plainest and the highest duty to sacrifice it. War is full of instances in which it is a man's duty not to live, but to die. The duty, in case of shipwreck, of a captain to his crew, of the crew to the passengers, of soldiers to women and children, as in the noble cause of the Birkenhead; these duties impose on men the moral necessity, not of the preservation, but of the sacrifice of their lives for others, It is not correct, therefore, to say that there is any absolute or unqualified necessity to preserve one's life.”¹⁵

The Court upheld the conviction and inflicted the statutory death penalty upon the accused but with the recommendation of the crown's clemency.

POST-TRIAL

Queen Victoria upon the advice of Home Secretary William Harcourt commuted their sentence to six months imprisonment. The logic behind the sentence was that if the partial defence of necessity is allowed as per the public will then the sentence would be three months imprisonment for manslaughter but mercy would be the mockery of law so double the imprisonment was prescribed by Harcourt.¹⁶

ANALYSIS

The analysis of the case brings before us two important questions:

¹⁵ *Regina* (n 1)

¹⁶ AWB Simpson (n 2) 239-247

- Whether the justifiable defence of necessity should necessarily be made inapplicable to murder.
- Whether the conviction of the accused is right.

Whether the justifiable defence of necessity should necessarily be made inapplicable to murder?

The first question demands a multi-dimensional analysis to answer. It has to be answered after examining it through the lens of morality, ethics, the legal definition of crime, public sentiments, the purpose of the legislation, etc. The Queen's Bench opted for an amalgamation of morality, ethics, and law to answer it. The Court ruled, from the Greek, Pagan, and Christian philosophies that sacrificing one's own life is of superior virtue to preserving it. This approach towards the glorification of sacrifice serves various social consolidation purposes. It strengthens the social thread among the members of the community. It strengthens solidarity by encouraging the masses to sacrifice themselves for some greater good of the community leaving the individualistic and selfish human tendency. The Court found Dudley guilty for he the captain was responsible towards his crew and he should have sacrificed his own life.

The Court by this philosophical ruling, very firmly, established that necessity can never be a justifiable defence in Murder. There can never be any necessity that justifies the deprivation of an innocent of his life. But this black-and-white classification deliberately overlooks the grey area. The grey area is the illustration provided under s.81 of the Indian Penal Code¹⁷ which reads as...

"A captain of a steam vessel, suddenly and without any fault or negligence on his part, finds himself in such a position that, before he can stop his vessel, he must inevitably run down boat B, with twenty or thirty passengers on board, unless he changes the course of his vessel, and that, by changing his course, he must incur a risk of running down a boat C with only two passengers on board, which he may clear. Here, if A alters his course without any intention to run down boat C and in good faith to avoid danger to the passengers in boat B, he is not guilty of an offence, though he may run down boat C by doing an act

¹⁷ Indian Penal Code 1860, s 81

that he knew was likely to cause that effect if it is found as a matter of fact that the danger which he intended to avoid was such as to excuse him in incurring the risk of running down the boat C."

In this illustration what 'A' did is strictly the murder of passengers on boat C and since necessity is no defence in murder (as per the ruling of Dudley's case), the defence of necessity will not be available to 'A'. But the placing of this illustration under s.81 itself elucidates the intention of the framers of IPC that they meant "Necessity can be a defence in case of Murder." Moreover, convicting 'A' would be unjust for his deed were necessitated by fateful circumstances. This obscures the position of law. A viable solution to this ambiguity created by Dudley's case can be the test prescribed in *U.S. v Holmes (1841)*¹⁸, in which the court laid down a three-fold test to justify even murder in Necessity-

- a. **Necessity must exist and be proven.**
- b. **The slayer must be faultless.**
- c. **The killer must owe no duty to the victim.**

The law should be that the full defence of necessity must be available in murder subject to the Holmes' test and since the very gist of necessity defence involves the incurring of lesser harm to avoid the greater harm this question of "Degree of Harm" must be decided by the court upon facts and circumstances of the case. Most importantly, it must be read with Dudley's ruling that "*Self-Preservation is in no case an Absolute necessity*".

This law justifies the presence of Illustration (1) under Sec. 81¹⁹ because in the illustration,

- The circumstances provided for the absolute necessity of running down boat 'C'.
- The circumstances occurred without any fault or negligence of 'A'.
- 'A' only owed a duty of care towards the passengers of his vessel and not that of 'C'.

¹⁸ *US v Holmes* [1820] 18 US 412

¹⁹ Indian Penal Code 1860, s 81

- 'A' incurred lesser harm i.e. death of 2 to avoid the greater one i.e. death of 20-30 passengers.

This test is also in harmony with the wider public-supported custom of the sea of "Drawing Lots" before cannibalism and hence justifies the rulings in the *Saint Christophers Case*²⁰, *Essex Case*, and suggests acquittal in *Euxine Case*.²¹

WAS THE CONVICTION RIGHT?

The Court's ruling in Dudley's case is consistent with the proposed test and hence right. Certainly, there was the necessity to kill but in no way there was any necessity to specifically kill Parker. Secondly, Dudley had already put them in peril by cost-cutting on repairing of "Mignonette", dingy, food provisions; took the inshore boat on the high seas; preferred expensive navigation equipment like a compass, sextant over food provisions while the yacht was sinking. And Thirdly, the accused being captain and senior sailor held the principal responsibility towards their crew especially toward Parker, for he was the youngest of all with no sea experience and was taken on the prospect of wealthy and literate life by Dudley. The Court rightly held that the utmost moral and ethical duty of the captain, in this case, would be that of sacrificing his own life to save the crew as in the Essex case. The accused were rightly convicted since they did not fulfill the test and the court rightly held that there was no absolute necessity to save one's own life at the cost of others in that case.

CONCLUSION

The ruling, in this case, is truly an exemplification of the might of law in reforming the individualistic tendencies of humans thus making them more accountable and responsible to society at large. The ruling strengthens the solidarity of man with his community by glorifying the moral and ethical idea of sacrificing one's life for others. It was certainly a Judicial Valour at that time when all public sentiments were in the favor of the accused,²² the Case widened the

²⁰ *State v St. Christopher* [1975] 232 NW 2d 798

²¹ *Regina v Archer & Muller* [1875] 17 ER 283

²² AWB Simpson (n 2) 78-80

gap between civilized man and barbarian animal. But its isolated and myopic reading that necessary is no defence in murder can be fatal to many innocents who may be compelled by circumstances to kill analogous to illustration (1).

There is a wide grey area like illustration (1) where necessity ought to serve as a good defence in Murder. The ruling in *U.S. v Holmes* provides law for this grey area by providing a test justifying the necessity of defence in a murder which is also harmonious with the illustration (1). The defence of necessity must be provided in Murder but only when the facts satisfy the Holmes test that there existed an absolute necessity, absence of any duty of care of the accused towards the victims, and his no fault in creating the circumstances and the Greater harm is avoided by incurring lesser harm, all of which must be satisfied in the opinion of Court, along with the philosophy of Dudley's case.