R. v. Ryan: The Supreme Court Fails to Protect Abused Women and their Children

By Jessica Prince

In *R. v. Ryan*, 2013 SCC 3, the Supreme Court of Canada (the "Court") ruled that the defence of duress was not available to an abused woman ("Ms. Doucet") who - after suffering years of threats to kill her and her daughter - hired a hit man to kill her abusive husband ("Mr. Ryan"). Although the Court overturned Ms. Doucet's acquittal, which had been unanimously upheld by the Nova Scotia Court of Appeal, the Court held that the circumstances of the case were so exceptional as to warrant a stay and that Ms. Doucet should not be subject to further proceedings.

Facts

Ms. Doucet was abused by Mr. Ryan for more than a decade. He beat, strangled, sexually assaulted and threatened her with firearms. When Ms. Doucet mentioned divorce or leaving him, Mr. Ryan told her that he would kill her and their daughter and "burn the fucking house down" with them inside.[1] On other occasions, he told her that he would kill her and their daughter, dig a trench on a piece of land behind their house, dump their bodies there and pile garbage on top of their corpses.[2] Although Ms. Doucet repeatedly called the authorities, the evidence was that the police did not help her. The Court noted "the disquieting fact that... the authorities were much quicker to intervene to protect Mr. Ryan than they had been to respond to her request for help in dealing with his reign of terror over her."[3]

Ms. Doucet was approached by and hired what she thought was a hit man to kill her husband. She agreed to pay him $25,000, paid him $2,000 up front in cash, and gave him a picture of her husband as well as his address. That man turned out to be an undercover RCMP officer. Days before the planned killing, Ms. Doucet was arrested and charged with counselling the commission of an offence (murder) not committed contrary to s. 464(a) of the *Criminal Code*.

Duress is Unavailable

At trial, the elements of the offence were established beyond a reasonable doubt and the only issue was whether the defence of duress applied to absolve Ms. Doucet of criminal liability.

[1] *R. v. Ryan*, 2013 SCC 3 (S.C.C.), para. 7
[2] *R v. Ryan*, 2011 CarswellNS 177 (N.S.C.A.), para. 40
[3] *R. v. Ryan*, 2013 SCC 3 (S.C.C.), para. 35

The trial judge concluded that Ms. Doucet had an intense and reasonable fear of Mr. Ryan, and that she felt that she had lost control and felt threatened with annihilation. Although Ms. Doucet had contacted the police, the trial judge found that they treated her problem as a "civil matter". She felt so vulnerable that when the undercover officer posing as a hit man called her, she felt that this was the solution to all of her problems. Based on these facts, the trial judge found that the defence of duress applied and acquitted Ms. Doucet.[4]

The Nova Scotia Court of Appeal unanimously upheld the trial judge's verdict. For the first time, the Crown took the position on appeal that duress was unavailable to Ms. Doucet at law.[5] The court disagreed, finding that the defence of duress is meant to absolve an accused of criminal liability when his or her conduct is morally involuntary and that the focus should be on the accused's predicament, not on who did what to whom in who's presence. The Nova Scotia Court of Appeal concluded that Ms. Doucet should not be denied the defence of duress simply because the victim was the aggressor, and not a third party.[6]

The Court disagreed with the approach of the courts below and held that the defence of duress is only available when a person commits an offence while under compulsion of a threat made *for the purpose* of compelling him or her to commit the offence.[7] As the Court noted, if someone is threatened with death or bodily harm without any threat of compulsion (i.e. Mr. Ryan was threatening Ms. Doucet, but not for the purpose of compelling her to kill him), duress is unavailable and his or her only remedy is self-defence.[8]

Self-Defence is Unavailable

Ms. Doucet only pleaded the defence of duress at trial. Nonetheless, the Nova Scotia Court of Appeal explained why the self-defence provisions in the *Criminal Code* did not apply in this case. Specifically, section 34(1) applies to situations in which death is not intended. Clearly, death was the aim in Ms. Doucet's matter. Section 34(2) is also inapplicable, because Ms. Doucet's plan did not transpire: she did not cause death or grievous bodily harm and, therefore, the section is unavailable to her.[9] Section 35 of the *Criminal Code* does not apply, since it covers situations in which, unlike Ms. Doucet's, the accused was the initial aggressor[10] (i.e. the bar-room brawl-type scenario). Finally, section 37 envisages a situation in which the accused applies direct force to the victim themselves. Because Ms. Doucet would not have been in the presence of her husband when the offence was to be committed, this defence does not apply either.[11]

As interveners at the Court, the Canadian Association of Elizabeth Fry Societies ("CAEFS") and the Women's Legal Education Action Fund ("LEAF") argued that women who take steps to use force against their abusers in order to protect their lives and their children's lives – as

[4] *R. v. Ryan*, 2013 SCC 3 (S.C.C.), para. 9
[5] At trial, the Crown had taken the position that the defence of duress was not made out on the facts, not that the defence was itself legally unavailable.
[6] *R. v. Ryan*, 2013 SCC 3 (S.C.C.), para. 10
[7] *R. v. Ryan*, 2013 SCC 3 (S.C.C.), para. 33
[8] *R. v. Ryan*, 2013 SCC 3 (S.C.C.), para. 30
[9] *R v. Ryan*, 2011 CarswellNS 177 (N.S.C.A.), para. 61
[10] *R v. Ryan*, 2011 CarswellNS 177 (N.S.C.A.), para. 62
[11] *R v. Ryan*, 2011 CarswellNS 177 (N.S.C.A.), para. 63

Ms. Doucet did – should be entitled to criminal law defences. Amongst other things, they argued there is no reason why a woman who kills her abusive husband herself should be entitled to the defence of self-defence, but one who hires a hitman should not. Put another way, there is no reason why taking steps to save your life in a way that does not involve physical contact with the abuser should not be covered by self-defence, whereas directly killing the abuser yourself is covered. CAEFS and LEAF also argued for a broader definition of duress that would apply to situations like Ms. Doucet's, in which the offence was directed at the threatener, and not at a third party.[12] Ultimately, these arguments were not adopted by the Court.

Where Do We Go From Here?

In granting a stay and preventing the Crown from commencing a new trial, the Court held that Ms. Doucet had suffered enough, both from Mr. Ryan's abuse and the years of court proceedings. Moreover, the Court granted the stay on the basis that Ms. Doucet's case "is an exceptional situation that warrants an exceptional remedy."[13] Unfortunately, Ms. Doucet's situation is not exceptional. As CAEFS and LEAF highlighted in their factum:

> A woman is killed by her current or former male intimate partners every 6 days in Canada. Intimate [female murders] most frequently occur within 2 years of separation. Sometimes children and other family members are also killed. In many cases, the woman is killed in spite of restraining orders and living in shelters and safe-houses...[14]

While the stay resolves Ms. Doucet's matter, it is a piecemeal solution. The Court did not tackle the broader reality that women who take steps to use force against their abusers in order to protect their lives and their children's lives should be entitled to criminal law defences. Until such defences change and evolve – either judicially or legislatively – in a way that captures the diversity of human experiences to which they need to be applied, abused women and their children will continue to fall through the cracks.

Jessica Prince serves on the executive of the Toronto chapter of the Women's Legal Education and Action Fund (LEAF) and is a litigator in Toronto.

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[12] See the Factum of the Interveners, Canadian Association of Elizabeth Fry Societies (CAEFS) and Women's Legal Education and Action Fund (LEAF) (http://leaf.ca/wordpress/wp-content/uploads/2013/02/LEAF-CAEFS-FACTUM.pdf), especially paragraphs 13-29

[13] *R. v. Ryan*, 2013 SCC 3 (S.C.C.), para. 35

[14] Factum of the Interveners, Canadian Association of Elizabeth Fry Societies (CAEFS) and Women's Legal Education and Action Fund (LEAF), para. 1