



Supreme Court's JUDGMENT

delivered in Stockholm on 20 December 2024

Case no.
B 6951-23

PARTIES

Appellant

IA

Counsel and Public Defender: Attorney SG

Respondents

1 Prosecutor General

Box 5553

114 85 Stockholm

2. MA

Special representative: Attorney LU

Legal guardians: KA and HB

THE MATTER

Causing bodily injury, etc.

RULING APPEALED

Judgment of the Svea Court of Appeal of 13 September 2023 in case B 5422-23.

JUDGMENT

The Supreme Court modifies the judgment of the Court of Appeal in that the Supreme Court acquits IA of the charges of causing bodily injury and occasioning danger to another, rejects MA's claim for damages and relieves IA of the obligation to pay a contribution pursuant to the Fund for Victims of Crime Act (SFS 1994:419).

SG shall receive compensation from public funds for the defence of IA in the Supreme Court of – correctly calculated – SEK 5,741. Of the amount, SEK 4,593 relates to work and SEK 1,148.25 relates to value added tax. The State shall bear the cost.

LU shall receive compensation from public funds for the representation of MA in the Supreme Court in the amount of SEK 2,871. Of the amount, SEK 2,296.50 relates to work and SEK 574.13 relates to value added tax. The State shall bear the cost.

CLAIMS IN THE SUPREME COURT

IA has claimed that the Supreme Court shall dismiss the charges as well as MA's claim for damages. He has also requested to be relieved of the obligation to pay a contribution to the Fund for Victims of Crime.

The Prosecutor General and MA, who became a party to the prosecution, have opposed modification of the judgment of the Court of Appeal.

REASONS FOR THE JUDGMENT

Background

1. On 20 July 2022, an incident involving a near-drowning occurred at Hökmosse Beach in Nykvarn. Three-year-old M was found unconscious in the water. His older brother IA, who was twenty years old at the time, was at Hökmosse Beach with three other younger siblings, his father and other swimmers. Bystanders removed M from the water; CPR was commenced, and the emergency services were called. His condition was critical. He was taken to hospital. He was hypothermic and showed signs of central nervous system hypoxia. He later contracted pneumonia, but his life was saved and he was able to return home after a few days in hospital.

2. IA was charged with causing bodily injury, a gross offence, or, in the alternative, occasioning danger to another, according to the following statement of the criminal acts as charged.

IA has caused MA, born in 2019, bodily harm in the form of loss of consciousness due to cardiac arrest, seizures and cerebral hypoxia as well as pneumonia. This occurred on 20 July 2022 at Hökmosse Beach, Hökmossevägen 42, Nykvarn, Nykvarn municipality.

IA committed the offence through negligence. This negligence consisted of leaving the injured party, MA, unattended and unsupervised on a crowded beach on the day in question, despite being aware that MA was not a good swimmer.

The offence should be considered gross as it involved deliberate risk-taking of a serious kind and/or negligence of a serious nature where special attention was required.

Section of law: Chapter 3, Section 8, second paragraph, Swedish Criminal Code

In any event, by the abovementioned act, IA has with gross negligence endangered MA, putting him at risk of death, severe bodily injury or serious illness.

Section of law: Chapter 3, Section 9, Swedish Criminal Code

3. The District Court convicted IA of causing bodily harm, a non-aggravated offence, and sentenced IA to day fines for 50 days. He was also ordered to pay M SEK 5,000 in damages for pain and suffering. The Court of Appeal upheld the District Court's conviction.

What is at issue in the Supreme Court

4. The main issue before the Supreme Court is what is required for someone to be considered to have undertaken to supervise a child, with the effect that criminal liability may arise in the event of failure to fulfil that undertaking.

The offence in question

5. A person who causes another person bodily injury that is not minor through negligence is guilty of causing bodily injury (Chapter 3, Section 8, first paragraph of the Swedish Criminal Code). A person who, through gross negligence, exposes another person to a danger to their life or a danger of severe bodily injury or serious illness is guilty of occasioning danger to another (Chapter 3, Section 9).

6. The verbs “to cause” and “to expose” in this context must not be understood as necessarily requiring any kind of activity on the part of the offender. Even inactivity is considered sufficient to cause someone injury or

expose them to danger. In other words, had the person not been inactive, the injury or danger would not have arisen.

7. In order for inactivity to be criminally significant for the offence of causing bodily injury, the inactivity must have been negligent; for the offence of occasioning danger to another, the inactivity must have been grossly negligent. The negligence consists in the fact that the defendant could and should have been active in averting an injury or danger. A duty to act is therefore assumed that is sufficiently serious to be given criminal significance.

The scope of responsibility

8. In case law and literature, it is often said that a person who has a legal obligation to act or be active to protect someone or something serves as a guarantor. However, the so-called guarantor is not strictly liable for the occurrence of injury or danger, and a negligence assessment must always be made of inactivity with regard to a specific situation.

9. Difficulties arise in clearly delineating the scope of responsibility. Sometimes this must be done with reference to a protective circle. A delineation of the scope of responsibility should be based on practice and legal policy grounds for determining that inactivity in averting an injury or danger is as punishable as an activity that leads to injury or danger (cf. Petter Asp and Magnus Ulväng, *Kriminalrättens grunder*, 2nd ed. 2013, p. 111).

Specifically on responsibility for protection of a child

10. Children must be protected from injury and danger, and the child's legal guardian has a duty to act in relation to the child. A duty to act can also be justified for an individual whose close relationship to the child and position is such that he or she can be said to participate in and, in fact,

exercise an influence over the care and upbringing of the child (cf. “The Child’s Burns” NJA 2013 p. 588 para. 11).

11. Others who have been entrusted with and assumed responsibility for a child may also have a duty to act. At times when the legal guardian is, for example, practically incapable of ensuring the safety of the child, he or she can entrust the supervision of the child to another person, e.g., to school or childcare staff or to an elder sibling. The child may not be exposed to an increased risk of injury because someone else is given responsibility. It must therefore be ensured that the person undertaking supervision also has the capacity to take responsibility for the task. This can in many cases be assumed, such as when supervision is entrusted to childcare and school staff. Should this person have no or only limited experience in supervising children, a more concrete assessment must be made. The situation in which supervision is to be exercised, as well as the age and development of the child, are relevant in such an assessment.

12. For someone to undertake to assume responsibility for protecting a child from injury and danger, he or she must have clearly accepted such responsibility for a certain time or in a certain respect. It may need to be made clear who is to take on independent responsibility, so that no misunderstandings arise. Such misunderstandings can ultimately harm the child.

13. In order to impose criminal liability for inactivity on a person entrusted with supervision of a child, it should be required that the person assuming the responsibility has the capacity to fulfil the task and that he or she has understood the meaning of his or her undertaking in all relevant respects.

The assessment in this case

14. There is no indication that IA's relation to M was close to the extent that he had any real responsibility for the care and upbringing of his sibling and that thus, already on that basis, had a responsibility for M's safety to which criminal liability can be attached.

15. The facts in the case show that M's father left him alone on the dock in order to attend to a sibling nearby. This was done in the knowledge that M was accompanied by IA and several other siblings. IA's age suggests that he was capable of exercising a sufficient degree of supervision, had he been clearly instructed that he was solely responsible for M and not to take his eyes off him. Furthermore, there is no reason to doubt that he would have immediately intervened if he had observed M falling into the water.

16. Upon leaving IA with his siblings, the father instructed them to watch out for one another. This cannot be considered sufficient to find that it became clear to IA that he was being asked to assume sole responsibility for M and that he understood what was required of him in that regard. Nor are there any other circumstances that would lead to IA being considered to have assumed such responsibility.

17. IA should therefore be acquitted of liability for causing bodily injury and occasioning danger to another. M's claim for damages is therefore dismissed.

Justices of the Supreme Court Dag Mattsson, Malin Bonthron, Eric M. Runesson (reporting Justice), Jonas Malmberg and Anders Perklev participated in the ruling.
Judge referee: Matilda Willaume.