

Dunlop and Sylvester v. The Queen, [1979] 2 S.C.R. 881

This is the leading decision of the [Supreme Court of Canada](#) of the criminal offence of [aiding and abetting](#). The Court held that for a conviction for aiding and abetting the mere presence of the accused is not enough, there must be something more.

Facts

Two teenagers, Dunlop and Sylvester, were members of a motorcycle club. One evening they went to a party held by the club where other members were involved in a gang rape of a teenage girl.

Though not participating directly in the rape (now called sexual assault) Dunlop and Sylvester watched for a few minutes and then left. The victim testified at trial that the two teens had been present during the rape, and they were charged with being parties to the offence. The trial judge directed the jury to find whether the teens had participated enough to have aided or abetted the rape under section 21(1) of the *Criminal Code* or had a common intention to rape the victim under section 21(2) of the *Criminal Code*.

Issue

Were Dunlop and Sylvester guilty of rape as parties to the offence under Section 21 of the Criminal Code?

Relative Law

21. (1) Every one is a party to an offence who

- (a) actually commits it;
- (b) does or omits to do anything for the purpose of aiding any person to commit it; or
- (c) abets any person in committing it.

(2) Where two or more persons form an intention in common to carry out an unlawful purpose and to assist each other therein and any one of them, in carrying out the common purpose, commits an offence, each of them who knew or ought to have known that the commission of the offence would be a probable consequence of carrying out the common purpose is a party to that offence.

Ratio Dicidendi

Justice Dickson wrote the decision for the majority. He held that the trial judge had erred in instructing the jury to consider the "common intention" provision of the criminal code. The sole issue was whether the teens had aided and abetted the commission of the crime. In considering the provision he held that:

In the case at bar I have great difficulty in finding any evidence of anything more than mere presence and passive acquiescence. Presence at the commission of an offence can be evidence of aiding and abetting if accompanied by other factors, such as prior knowledge of the principal offender's intention to commit the offence or attendance for the purpose of encouragement. There was no evidence that while the crime was being committed either of the accused rendered aid, assistance or encouragement to the rape of Brenda Ross. There was no evidence of any positive act or omission to facilitate the unlawful purpose.^[1]

Holding

Accordingly, the two teens are acquitted.