

**SUPREME COURT OF CANADA**

|  |  |  |
| --- | --- | --- |
| **Citation:** R. *v.* Thanabalasingham, 2019 SCC 21, [2019] 2 R.C.S. 317 |  | **Appeal Heard:** April 17, 2019  **Judgment Rendered:** April 17, 2019  **Docket:** 37984 |

**Between:**

**Her Majesty The Queen**

Appellant

and

**Sivaloganathan Thanabalasingham**

Respondent

**Coram:** Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ.

|  |  |
| --- | --- |
| **Reasons for Judgment:**  (paras. 1 to 6) | Wagner C.J. (Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ. concurring) |

R.*v.*Thanabalasingham, 2019 SCC 21, [2019] 2 S.C.R. 317

Her Majesty The Queen Appellant

v.

Sivaloganathan Thanabalasingham Respondent

**Indexed as:** R. ***v.*** Thanabalasingham

**2019 SCC 21**

File No.: 37984.

2019: April 17.

Present: Wagner C.J. and Abella, Moldaver, Karakatsanis, Gascon, Côté, Brown, Rowe and Martin JJ.

on appeal from the court of appeal for quebec

*Criminal law — Appeals — Mootness — Accused charged with second degree murder in death of wife — Trial judge granting stay of proceedings to accused for unreasonable delay in bringing case to trial — Crown appealing stay — Accused deported prior to appeal hearing to country with which Canada does not have extradition treaty — Court of Appeal declining to adjudicate appeal on merits on ground of mootness — Court of Appeal erred in dismissing appeal as being moot because underlying basis for criminal proceedings has not disappeared and live controversy remains — Matter remitted to Court of Appeal for decision on merits.*

**Cases Cited**

**Applied:** *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342; *R. v. Smith*, 2004 SCC 14, [2004] 1 S.C.R. 385.

APPEAL from a judgment of the Quebec Court of Appeal (Duval Hesler C.J. and Morissette, Hilton, Gagnon and Vauclair JJ.A.), 2018 QCCA 197, 403 C.R.R. (2d) 349, [2018] AZ-51466552, [2018] Q.J. No. 784 (QL), 2018 CarswellQue 678 (WL Can.), dismissing on ground of mootness the appeal of Boucher J.’s decision to stay proceedings, 2017 QCCS 1271, [2017] AZ-51381182, [2017] Q.J. No. 3430 (QL), 2017 CarswellQue 2605 (WL Can.). Appeal allowed.

Christian Jarry, for the appellant.

No one appeared for the respondent.

Louis Belleau, as *amicus curiae*, and *Antoine Grondin-Couture.*

The judgment of the Court was delivered orally by

[1] The Chief Justice — The test to be applied in this case is a two-part test as stated in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, and *R. v. Smith*, 2004 SCC 14, [2004] 1 S.C.R. 385.

[2] The test requires the court to first determine whether the case is moot. If the matter is moot, the court may nevertheless choose to exercise its discretion to hear the case on the merits based on the factors set out in *Borowski* and *Smith*.

[3] In this case, the majority of the Court of Appeal erred at the first stage of the test because the case is clearly not moot. The mere fact that an individual has been deported, even if he has been deported to a country with which Canada does not have an extradition treaty, does not render a case moot.

[4] The underlying basis for the criminal proceedings has not disappeared and there remains a live controversy even if the accused’s return to Canada is unlikely.

[5] Justice Abella, concurring on the result, is of the view that the appeal is moot, but based on the factors set out in para. 50 of *Smith*, thinks that the Court of Appeal should have exercised its discretion to decide the merits having heard the full argument over two days.

[6] We would all therefore allow the appeal and remit the matter to the Quebec Court of Appeal for decision on the merits.

*Judgment accordingly.*

Solicitor for the appellant: Director of Criminal and Penal Prosecutions, Montréal.