

In the House of Lords

R -v- Ola James

Early in the morning of the 15 September 1999, Ola James, a committed environmentalist campaigner, entered a farm belonging to Jeff Archer. She had discovered that Jeff Archer was one of the farmers participating in country wide experiments to discover whether genetically modified crops (GM crops) were safe, and she was determined to destroy as much of the crop being grown on his farm as she could. As it had not rained for over 2 weeks and the crop was dry, she decided to set fire to the crop and carried with her a can of petrol and a box of matches.

At first her plan seemed to succeed. She managed to set fire to a substantial part of the crop. However, the fire went out of control and spread to a number of farm sheds and from there spread to the farmhouse where Jeff and his family lived. Ola was by this time terrified of what she had done and got into her car and drove off.

Jeff, who had woken early to milk the cows, came rushing back to the farmhouse. He tried to rescue his wife and small son from the burning building but it was too late and both died in the fire.

Ola James was arrested and charged with:

(a) One count of arson in relation to the GM crop under s.1(1) and one count of arson in relation to the sheds and farmhouse under s.1(1), read together with s.(3) of the Criminal Damage Act 1971, and

(b) The murder of Jeff Archer's wife and son.

(For a number of reasons that are of no concern here, the prosecution elected not to bring charges under s.1(2) of the 1971 Act for manslaughter).

At her trial, Harshly J directed the jury as follows (assume that other parts of his directions are accurate):

As far as the damage to the crop is concerned, the defendant has tried to justify her actions by relying on the defence of lawful excuse contained in s.5 of the 1971 Act. The law, as I understand it, is clear on this point. There is no scientific evidence to indicate that GM crops are a danger to the public. Accordingly, you do not need to concern yourself with lawful excuse. In relation to the burning down of the sheds and farmhouse, you must ask yourself whether that would be a natural and probable consequence following from the defendant's actions in setting fire to the crop. If you are of the opinion that it was, then you are entitled to come to the conclusion that it was the defendant's intention to burn down these buildings, just as it was her intention to set fire to the crop.

Turning to the counts of murder, I must tell you that, here again, the law is clear. A defendant need not have a direct intention of killing her victims. But if her actions are such that there is a high degree of probability that death or serious bodily harm will result, this may be sufficient to merit a guilty verdict. Accordingly, it is for you to decide whether you consider that the defendant's actions gave rise to such a high degree of probability that

death or serious bodily harm would result.

The jury convicted Ola James on all counts. Her appeal to the Court of Appeal was dismissed but she obtained leave to appeal to the House of Lords. The agreed grounds of appeal are as follows:

1. The trial judge misdirected the jury in relation to criminal damage by arson in that the defence of lawful excuse should have been left to the jury to decide. Moreover, the direction on the necessary mens rea was manifestly incorrect.
2. The necessary test for determining intention on a charge of murder was now contained in the case of *R v Woolin* [1999] AC 82. The trial judge had erred in law in not applying this test.

This problem is taken from the Weekly Law Reports Competition 2001, was set by Edward Phillips of University of Greenwich and is provided courtesy of ICLR.