R. v. Canhoto (1999):

Background:

This tragic and bizarre case involves the death of two-year-old Kira Canhoto. Kira’s grandmother believed that Kira was possessed by evil spirits transmitted to her by her mother’s boyfriend. The grandmother also believed that she could exorcise those spirits.

On the day she died, Kira, her mother Maria, and her grandmother were are the home of the Aguiars, friends who shared the grandmother’s beliefs that she could communicate with angels and exorcise demons. The grandmother decided to expel Kira’s evil spirits. The exorcism involved a combination of prayer and forced ingestion of water until the child vomited, thereby “expelling” the spirits. Kira was taken into the kitchen and water was forced down her throat. She resisted strenuously, screaming and kicking. In response, Daniel Agular held her legs until she eventually fell silent and died. Her inability to breathe combined with aspiration of the water caused Kira’s death.

Maria Canhoto, who was present during part of the attempted exorcism and in the adjacent room the rest of the time, was charged with manslaughter on the basis of criminal negligence. The Crown argued that Maria was under a legal obligation to come to her daughter’s aid and that her failure to do so had demonstrated a wanton disregard for the child’s life and safety. The trail Judge found that Maria knew or ought to have known that the child’s life or security was at risk and that Maria was capable of distinguishing between cries of discomfort and cries of a child fighting for her life. The trail Judge added:

What is clear to be on the evidence is that Maria was so convinced that her child was possessed by evil spirits, of her mother’s ability to rid the child’s body of those spirits by forced feeding, and of the critical importance of doing so that her concern for Kira’s health or safety was secondary.

Maria was convicted of manslaughter. After serving a one-year sentence, she appealed the conviction. The legal argument offered by the appellant was that the Court should distinguish between crimes of criminal negligence arising out of acts and crimes of criminal negligence based on a failure to act where it is their duty to do so.

Legal Question:

Is a person who fails to act to avert harm less culpable than the person whose actions cause the risk of harm?

Decision:

On the basis of facts, the trial Judge found that Maria had participated to some degree in the activity that caused Kira’s death, so her liability was not limited to her failure to act. On this basis, the Court of Appeal found that this legal argument failed.

Moreover, section 219 of the *Criminal Code* denies that distinction between acts and omissions. It provides that *either* actions *or* omissions constitute criminal negligence where they show a wanton or reckless disregard for the lives or safety of others. The appeal was dismissed.

Legal Significance:

In Canada, statute law and common law coexist, but statute law always overrides common law; therefore, the *Criminal Code* shows no distinction between the fault element of criminally negligent conduct and the fault element of a criminally negligent failure to act where there is a duty to do so.

Analysis Questions:

1. What was Maria Canhoto’s *actus reus*?
2. What was her *mens rea*?
3. Do you think that the appeal would have been allowed if Maria had stayed in the adjacent room throughout the attempted exorcism? Explain.