

1961
Dec. 7, 19
DERVISH HALIL
v.
THE REPUBLIC

[O' BRIAIN, P., ZEKIA, VASSILIADIS and JOSEPHIDES, JJ.]

DERVISH HALIL,

Appellant,

v.

THE REPUBLIC,

Respondent.

(Criminal Appeal No. 2438).

Criminal law—Murder—The Criminal Code, Cap. 154, sections 204 and 205 as they stood prior to the amending law No. 3/62—Capital murder or “premeditated murder” or “premeditated homicide”—Article 7, paragraph 2, of the Constitution—Premeditation within the meaning of paragraph 2 of Article 7 of the Constitution as laid down in the decision of the Supreme Constitutional Court The Republic and Loftis 1 R.S.C.C. 30—No presumption of law in cases of premeditation—Premeditation must be inferred as a fact in each particular case from the surrounding circumstances—Unlike “malice aforethought” under section 207 of the Criminal Code, the phrase “premeditated homicide or murder” is not a term of art.

Provocation—It has to be supported by evidence or reasonable inference from the evidence—Speculation as to provocative incidents of which there is no evidence not permissible—Criminal Code, Cap. 154, section 208.

The deceased who was the wife of the appellant, was a prostitute to his knowledge and with his consent. One day prior to the crime the accused visited his wife and asked her for money but she refused to give him any. An argument ensued and he said to her: “Wait you will see what I will do”. On the next day the accused visited again the deceased and was seen stabbing her. The deceased managed to get up and staggered towards the door. The accused went after her and stabbed her once more. The accused and the deceased were picked up by the police who happened to be passing by and while in the police car the accused asked the driver not to drive fast so that the deceased might die. Later in the hospital when the doctor was about to attend the deceased he (the accused) told him: “Let her die, it is better”.

The wounds were inflicted on a region of the body which was dangerous. One of the wounds inflicted on the neck severed the carotic artery and larynx. The accused made a

statement to the police saying that he stabbed the deceased after some provocative words had been uttered by her but did not produce evidence to substantiate his allegation.

The accused was found guilty of premeditated murder and sentenced to death. On appeal:-

Held: (1) The phrase "premeditated murder" or "premeditated homicide", unlike the phrase "malice aforethought", is not a term of art and it has to be taken in its ordinary meaning.

(2) When a person makes up his mind either by an act or omission to cause the death of another person and notwithstanding that he has time to reflect on such decision and desists from it, if he so desires, goes on and puts into effect his intent and deprives another of his life that person commits a premeditated homicide or murder which entails capital punishment.

(3) There is no presumption of law in the case of premeditation but this has to be inferred in each particular case from the surrounding circumstances.

(4) The cumulative effect of the facts in this case warrants a conviction of premeditated murder.

(5) The Court cannot be invited to speculate as to provocative incidents of which there is no evidence and which cannot be reasonably inferred from the evidence.

Principle in *Mancini v. D.P.P.* 28 Criminal Appeal Reports 65, at p. 77, *applied*.

Appeal dismissed.

Cases referred to:

Mancini v. D.P.P. 28 Cr. App. R. 65.

Appeal against conviction and sentence.

The appellant was convicted on the 26th October, 1961, at the Assize Court of Famagusta (Criminal Case No. 2846/61) on one count of the offence of premeditated murder contrary to sections 204 and 205 of the Criminal Code Cap. 154 and Article 7(2) of the Constitution, and was sentenced by Dervish, P.D.C., Ekrem and Avni, D.JJ. to death.

M. Fvad Bey for the appellant.

E. Mumir for the respondent.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court read by:

ZEKIA, J.: The appellant in this case killed his wife by stabbing. The issue is whether the killing amounted to premeditated murder or not. The trial Court found that the prisoner was guilty of premeditated murder and sentenced him to death. The phrase premeditated homicide or murder, unlike the phrase 'malice aforethought' is not a term of art and it has to be taken in its ordinary meaning. When a person makes up his mind either by an act or omission to cause the death of another person and notwithstanding that he has time to reflect on such decision and desist from it, if he so desires, goes on and puts into effect his intent and deprives another of his life that person commits a premeditated homicide or murder which entails capital punishment.

There is no presumption of law in the case of premeditation but this has to be inferred in each particular case from the surrounding circumstances.

The facts relevant to the point in issue in this case are the following : The wife, the victim in this case, was with the knowledge and consent of the prisoner living in a brothel at Famagusta kept by a certain Diamantou. The appellant was living at all material times in Nicosia and occasionally visited his wife in the said brothel and obtained some money from her who earned it by leading an immoral life. On the 11th May last in the evening he paid a visit to the pension where the victim lived and demanded money. This time he was refused. The victim said that she had debts to pay. An argument ensued during which he was heard to say, "Wait, you will see what I will do" (Dur ne yapayım göresin sen). He then left for Nicosia. The following day, at noon, in the company of Raif Houssein, a friend of his, leaves again Nicosia and goes first to Larnaca where with his companion takes his lunch and about half an oke of brandy. From Larnaca they reach Famagusta at about 2 p.m. Some time after his arrival at Famagusta he is seen going up the stairs of Diamantou's pension where the deceased was living. He was seen walking along the corridor leading to the verandah where the victim was combing her hair at the time. Diamantou, the housekeeper, together with certain Eroulla, Panayiota and Anna were together in a room adjoining the said verandah. Shortly after the appellant was seen in the corridor a

scream was heard coming from the verandah; Diamantou and Anna went to the verandah door; they saw the deceased on the ground with the accused astride her and stabbing her. The deceased got up, staggering, walked out of the house. The accused followed her and stabbed her once more on the shoulder, then both got out into the street. The deceased was bleeding profusely ; she asked for a doctor, walked a few paces and then collapsed; accused went up to his motor-cycle tried to start its engine but failed. Then Inspector Andreas Mountis and P.C. Andreas Miltiadous happened to be passing by in a Land Rover, saw the deceased lying, stopped and placed her into the vehicle. The accused was also arrested by the said Inspector who was taken into the same vehicle. P.C. Andreas was the driver. The prisoner appeared to be possessed and calm and on the way he asked the driver not to drive fast so that the deceased might die. Later in the hospital when the doctor was about to attend the deceased he told him. "Let her die, it is better".

The wounds inflicted on the victim were caused by a sharp and pointed knife with a fixed blade of 3 3/4 inches long. The wounds inflicted were:

1. One wound on the neck, right side, below the right jaw, 1 inch long. Direction of the wound was from outside to inside. Internally the right carotic artery and the upper part of the larynx were cut.
2. One wound on the lower part of the right ear 1 1/4 inches long and 1 1/2 inches deep. Direction of the wound was from upwards and down to the right jaw.
3. One wound on the right arm 1 inch long and 2 inches deep with direction from outside to inside towards the right shoulder.
4. A superficial wound on the right shoulder.

The knife in question was found in the house of Diamantou behind one of the doors of the corridor, and the sheath of the knife in the trouser pocket of the accused when he was searched.

On this evidence the trial Court found the appellant guilty of premeditated murder. The circumstances which led the majority of the Court to arrive at this conclusion were the following:

1. The fact that the prisoner carried unlawfully a lethal weapon.

2. Infliction of wounds on a region of the body which was dangerous. One of the wounds inflicted on the neck severed the carotic artery and the larynx.

3. The fact that the deceased when she got up and staggered towards the door the accused went after her and stabbed her once more.

4. That the previous day while he and the deceased were arguing over her refusal to give him money accused said to her, "Wait, you will see what I will do".

5. The words used by the prisoner in the car while he together with the victim were taken to the hospital and also the words spoken by him to Dr. Lagoudes when he was engaged for the treatment of the victim, namely, "Do not drive fast let her die" in the first instance and, "Let her die, it is better" in the second instance.

The prisoner did not give evidence and did not make a statement from the dock. We have only the statement made by the prisoner to P.C. Atalai who had informed him of the death of his wife. That statement was put in as exhibit 10. He said this : "Alright, I admit having stabbed her. I did not intend to stab her. I came to take her to Nicosia so that we may divorce. She said to me, "I won't go". I said to her, "Will you stay here at Diamantou's pension to live with other men?" She said to me, "I do not want you, I will live with Stassis". Upon this I got angry - I had been drinking from 5.30 a.m. - in this anger and drunkenness I stabbed her.

The Court did not accept this statement as being true and they found that prior to the stabbing no conversation had taken place between him and the deceased.

The able counsel for the appellant urged this Court to find that there was a dispute or at least a conversation between the deceased and the prisoner prior to the stabbing and it was after some provocative words uttered by the deceased that the prisoner got angry and assaulted her with the knife, not necessarily intending to kill her but the intention might have been to injure her or even disfigure her. That the nature of the wounds indicated this and indeed had he intended to

kill her after placing the victim on the ground might as well slaughter her right away.

The Court was invited not to give full credence to the evidence of Diamantou and the other witnesses who were staying at the adjoining room next to the verandah at the material time.

Bearing in mind the fact that between the time the prisoner was first seen entering into the house and the screams of the victim 5 minutes elapsed according to the evidence of Diamantou and 15-30 minutes according to the evidence of Shailos, and that no evidence on the part of the prosecution to account as to what happened in this interval the Court was urged to accept the version of the prisoner that there was a discussion between him and the victim before the attack.

The attention of this Court was also drawn to the fact that the Court ought not to attach weight to the expressions loosely used prior and after the commission of the offence and whatever angry words are uttered after the commission of the offence such words should not affect the nature of the offence committed earlier. Slippers, pants, skirts and towels scattered and found on the floor in the hall were signs of struggle, it was submitted, not accounted for by the prosecution witnesses. Learned counsel also dwelt on the lack of motive which is a main figure in premeditated murders.

This is an attempt to summarise the submissions of the able counsel on the point in issue.

Now the trial Court having taken into account all the accompanying circumstances they were satisfied beyond reasonable doubt that the prisoner in this case caused the death of the victim after having designed to do so and convicted him accordingly.

Facts which led the trial Court to the conclusion that the offence committed was a premeditated murder were expressly stated in their judgment. Indeed each fact, if taken in isolation, might not suffice to carry a conviction on a charge of premeditated murder but when put together, in other words, the cumulative effect of these facts, in my opinion, warrant a conviction on such an offence. This is a case where there were eye-witnesses to the commission of the offence. The evidence of these witnesses were accepted by the trial Court. The version of the prisoner as to the conversation preceding

1961
Dec. 7, 19
DERVISH HALIL
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the act of stabbing was rejected by the Court. On the other hand both Diamantou and Shailos when speaking of the time that elapsed between the appearance of the prisoner in the house and the time the screams were heard they were very uncertain about it. In re-examination Diamantou says, "I heard the shouts of the deceased calling for help very soon after I saw the accused coming into the house. When I say five minutes I mean very soon after". Shailos on the other hand stated : "I saw the accused going up the pension and within a quarter of an hour or half an hour I heard shouts. I have no watch. I do not know how long after it was, not immediately afterwards that he went upstairs I heard shouts". Assuming that there was some time between the prisoner's entry into the house and the victim's screams there is nothing to suggest that that time passed after the prisoner approached the deceased at the verandah. Diamantou is definite about this. She said in her evidence that she actually saw the accused coming and getting on to the verandah and that on going on to the verandah rushed at the deceased, got hold of her, placed her on the ground, drew a black-handled knife from his pocket and started stabbing her. She is certain that no conversation took place between his appearance on the corridor leading to the verandah and the stabbing. This evidence was accepted by the trial Court.

In the circumstances the submission of the defence that there is room for a reasonable doubt as to the alleged provocative words having been uttered by the deceased prior to the stabbing cannot stand. Of course the learned counsel for the defence stressed here this point not because the provocative words might reduce the crime to manslaughter, according to the law as it stands or as it stood before the Constitution, but in order to rebut a design on the part of the prisoner to kill his wife. But as there is no evidence to support such an intervening incident - the alleged conversation between the prisoner and the victim - on the contrary the evidence being to exclude any such conversation at or immediately before the commission of the offence, we are bound to assume that nothing of the kind has taken place. In *Mancini v. The Director of Public Prosecutions* 28 Cr. App. R. 65, at p.77 it was stated: "Taking for example, a case in which no evidence has been given which would raise the issue of provocation, it is not the duty of the judge to invite the jury to speculate as to provocative incidents, of which there is no evidence and which cannot be reasonably inferred from the evidence.

The duty of the jury to give the accused the benefit of the doubt is a duty which they should discharge having regard to the material before them, for it is on the evidence, and the evidence alone, that the prisoner is being tried, and it would only lead to confusion and possible injustice if either judge or jury went outside it”.

On the facts of this case I am of the opinion that the trial Court was justified in convicting the prisoner of premeditated murder and I should, therefore, dismiss the appeal.

Appeal dismissed.

Conviction and sentence affirmed.