

(ASSIZE COURT OF LIMASSOL.)

[TYSER, C.J., BERTRAM, J., STUART, P.D.C., ATTA BEY
AND OIKONOMIDES, JJ.]

REX

v.

TELEMACHOS AGATHOCLES.

ASSIZE
COURT
OF
LIMASSOL
1909

Feb. 24

CRIMINAL LAW—CONCOURSE OF CRIMES—HOMICIDE FOLLOWING ANOTHER
“JENAYET”—OTTOMAN PENAL CODE, ART. 174—HOMICIDE WITH PREME-
DITATION—CARRYING OF KNIFE EVIDENCE OF PREMEDITATION—GENERAL
PREMEDITATION.

The prisoner, having become engaged in a quarrel with a man at a wedding stabbed him with the intention of killing him. He then turned against the crowd of people there present and fatally stabbed a second person.

HELD: That he was guilty under Art. 174 of homicide committed after committing another *jenayet*, and was liable to the penalty of death.

If a person carries a lethal weapon to a wedding or other place of assembly and stabs a person there present, the carrying of the knife is evidence from which the Court may infer that he had formed the design to use the lethal weapon against any person with whom he might come into conflict.

A person who has formed a previous design to take life and takes life in consequence is subject to the death penalty, although he had no previous design against the life of the person killed.

The accused was charged, under Art. 174 of the Penal Code, with having killed without premeditation one Theophani Haji Stylliano after having committed another crime (*jenayet*), to wit, after having wounded one Athino Panaghi with intent to kill him.

The accused, having got into an altercation with Athino at a wedding, at which they were both dancing, and having said, “I will make you stink out a ravine,” was persuaded by a *zaptieh* to leave the wedding. The *zaptieh* searched him to see that he had no knife, conducted him home and left him. The accused thereupon immediately armed himself with a knife, returned to the wedding, renewed the quarrel with Athino, and stabbed him. A general *mélée* took place. The accused disengaged himself and attacked the crowd in the room, driving them towards the door and flourishing his knife. The deceased Theophani, either because he was himself hard pressed, or to save the others, seized him round the waist, and the accused thereupon plunged the knife into his neck, killing him instantaneously.

Bucknill, K.A., for the Crown.

Zeno, for the Accused.

The Court convicted the accused.

Judgment. THE CHIEF JUSTICE: Art. 174 declares that homicide, even when committed without premeditation, shall involve the penalty of death, if a man commits it, “while committing another *jenayet*, or before or after it, or with a view to the commission of a *junha*.”

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“*Jenayet*” is defined by Art. 3, and “*junha*” by Art. 4.

In this case the Court has come to the conclusion that when the accused, having returned to the wedding armed with a knife, stabbed Athino, he stabbed him with intent to kill him, and that he consequently committed an offence under Art. 180, that is to say, a *jenayet*.

The Court therefore finds that he is guilty of killing Theophani Haji Stylliano after committing another *jenayet*, within the meaning of Art. 174.*

The Chief Justice, in passing sentence of death, made the following observations:—

There is a class of men in Cyprus who are the cause of much of the serious crime in the Island and whose influence for evil has the worst possible effect amongst their co-villagers.

Some persons of this class are to be found in most villages and where the Mukhtar and the respectable part of the villagers have not themselves a high moral standard or where the respectable portion of the community is not sufficiently numerous to enforce order these people become a terror and scourge to the village and by their example lead the young boys into evil ways.

The methods employed by these people to establish their influence shew that they are utterly devoid of all fear of God and reckless in their disregard of the happiness or welfare of others.

It is their custom to carry arms and especially to be well armed when they attend any feast or wedding or other concourse of people where disputes may arise.

When they go to such places they are prepared to use the lethal weapons which they carry and to inflict a mortal wound in any person who may oppose their wishes or dispute their authority.

This is so well-known to their co-villagers that all fear them.

It is well that all should be warned of the fatal end to which these acts may lead.

The law says that where a man kills another having formed a design before doing the act he shall suffer the penalty of death.

When a person carries lethal arms for use against others and uses them with fatal result it is strong evidence that he carried those weapons after consideration and that he had formed a design to use them as he has used them and if the circumstances are not such as to justify their use in the manner they were used, his life will be demanded by the law for the life which he himself has taken.

* This article is given the same application in the Turkish Courts. Cf. the case of Miltiades Dimitri, *Annales Judiciaires*, 1881, p. 171. The accused was charged with having killed two men, one after the other, during a brawl in a café. The President of the Court, Christophorides Effendi, in passing sentence of death, said—

“Le premier paragraphe de l'article 174 dit que: *Quiconque aura commis un homicide sans préméditation sera puni de la peine des travaux forcés pour quinze ans, mais le même article, dans le paragraphe suivant, s'exprime ainsi: Neanmoins le crime emportera la peine de mort, lorsqu'il aura précédé, accompagné ou suivi un autre crime.* Votre cas est prévu par ce paragraphe. Vous avez blessé et tué deux hommes, l'un après l'autre, et par cela, vous avez mérité la peine capitale.”

It is clear that a person who has formed such a previous design to take life and takes life in consequence is subject to the death penalty although he had no previous design against the life of the person killed.

We cannot help feeling how important it is that people of this class should be checked, and in any case in which such people are convicted full information should be given by the police to the Court so that the Court may adopt measures for their reclamation or otherwise to check their career and the evil example which they set.

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(ASSIZE COURT OF NICOSIA.)

[TYSER, C.J., BERTRAM, J., HOLMES, P.D.C., IZZET EFFENDI
AND MITZIS, JJ.]

REX

v.

CHRISTODOULO SAVA.

ASSIZE
COURT
OF
NICOSIA
1909

March 5

CRIMINAL LAW—HOMICIDE—SELF DEFENCE—EXCESS OF SELF DEFENCE—
GENERAL PRINCIPLES—OTTOMAN PENAL CODE, ARTS. 186, 189, 190—
EXCUSABILITY—“BY WAY OF RETALIATION”—BIL MUKABELE (بيل موكابله).

A man is not justified in voluntarily killing another in self defence, unless in good faith he reasonably believes such killing to be necessary for the purpose of saving himself from death, or most serious bodily harm.

Nor is he justified, if in self defence, without the intention to cause death, he uses such violence as to kill his assailant, unless in good faith, he reasonably believes that such violence is necessary for the purpose of defending himself.

In determining whether in any case a man is justified in killing his assailant in self defence, the Court will take into consideration.

- (a) The nature of the violence threatened by the assailant,
- (b) The nature of the weapon used in self defence.

The general principles governing

- (1) The justification of homicide on the ground of defence of self or others under Art. 186,
- (2) Its excusability on the ground of retaliation under Arts. 189, 190, considered and explained.

The accused was charged with having killed one Kyriako Georgi without premeditation. He pleaded that he had done so in self defence.

It appeared that the accused, having had some words with the deceased earlier in the evening, returned to his house late at night and found the deceased in his yard shouting insulting observations to his wife and mother. Seeing the accused the deceased turned to flee, but finding his escape cut off he seems to have drawn a knife on the accused and wounded him in two places. The accused, who