

1962  
Mar. 22,  
April 9  
MUSTAFA  
HALIL  
v.  
THE REPUBLIC

[WILSON, P., ZEKIA, VASSILIADIS and JOSEPHIDES, JJ.]

MUSTAFA HALIL,

*Appellant,*

v.

THE REPUBLIC,

*Respondent.*

*(Criminal Appeal No. 2462).*

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*Criminal Law—Premeditated murder—Criminal Code, sections 204, 205 and 207 as they stood prior to their replacement by virtue of the Criminal Code (Amendment) Law, 1962 (Law of the Republic No. 3 of 1962)—Article 7.2 of the Constitution—Premeditation—Required elements—Once the prisoner formed the intention to kill the victim, it is immaterial whether the carrying out of this intention depended on an answer to be given subsequently by the victim—Intervening cause.*

The appellant, Mustafa Halil of Melounda, was convicted on the 21st December 1961 by the Assize Court of Famagusta of the premeditated murder of a certain Nehibe Mehmed Ali of Melounda and was sentenced to death. The victim, Nehibe was an unmarried girl of 22, and the prisoner was married to her aunt. The victim was eight months pregnant when stabbed to death by the prisoner. Rumours floated in the village that the prisoner was the father of the child. The prisoner unable to bear the burden of these rumours shortly before sunrise of the 7th October 1961, called on the house of the victim and killed her.

On the submission by counsel for the appellant that his intention to kill depended on the answer of the victim when asked by the prisoner whether she still maintains that he is the father of the child, and that, therefore, there was an intervening cause between his entering the room and delivering the stab wounds, the High Court, rejecting the submission on behalf of the appellant :—

*Held* : (1) There is no doubt and it was not disputed that the prisoner intended to kill the woman in question. The only point for consideration was when it was that he made up his mind to kill her. If a person on the spur of the moment without adequate provocation kills another with a lethal weapon no doubt this would amount to unpremeditated murder.

(2) In the circumstances of the case, the material time for deciding for the presence or absence of the premeditation as a required element in a capital murder — viz. premeditated murder — is the time when the prisoner stepped into the bedroom of the victim. If the prisoner had made up his mind to kill Nehibe at the time he entered the victim's bedroom the killing which followed amounted to premeditated murder.

(3) It is essential, therefore, to ascertain the intention of the prisoner at this material moment. It is important in this respect to find out whether there was an intervening cause between his entering the room and delivering the stab wounds which prompted the prisoner to commit the crime.

(4) The inmates of the house have given their evidence which evidence was accepted by the trial court. That evidence leaves no room for a finding that some incident for a fresh cause might have taken place after his entering into the bedroom, which incident led him there and then to form the intention to kill. It is in evidence that almost immediately after the man entered the house in question the cries of the inmates were heard. In other words, the time which elapsed between the entry and the stabbing incident was very short.

(5) The evidence having positively established that there was no intervening cause inside the house the only reasonable inference to be drawn is that the prisoner at the time he entered the bedroom had made up his mind to kill the victim who was expected to be in the said bedroom early in the morning and this clearly amounts to premeditation. Whether his intention to kill depended on the nature of the answer to be given makes, in our view, no difference.

(6) The case does not rest only on this evidence. We have the evidence going to the motive and the statements made by the prisoner before and after the crime. Acts or statements at the time, prior and subsequent to the offence, all indicate to one conclusion that the prisoner had made up his mind to kill the unfortunate woman before he entered into her bedroom. After careful consideration, we are satisfied that on the evidence before them the trial court had come to the right conclusion.

*Appeal dismissed.*

**Appeal against conviction and sentence.**

The appellant was convicted on the 21.12.61 at the Assize

Court of Famagusta (Cr. Case No. 5718/61) on one count of the offence of premeditated murder contrary to ss. 204 and 205 of the Criminal Code, Cap. 154 and article 7(2) of the Constitution and was sentenced by Dervish, P.D.C., Emin and Zihni, D.J.J. to death.

*Cur. adv. vult.*

*Fuad Bey* for the appellant.

*E. Munir* for the respondent.

The judgment of the Court was delivered by ZEKIA, J.

ZEKIA, J. : The appellant, Mustafa Halil of Melounda, was convicted on the 21st December, 1961, by the Assize Court of Famagusta of the premeditated murder of a certain Nehibe Mehmed Ali of Melounda and sentenced to death. The appeal in this case has already been dismissed by this Court and the reasons for such dismissal were left to be given later.

The facts of the case briefly are : The prisoner in this case is a young man of 27, married to the aunt of the victim Nehibe. The victim was an unmarried girl of 22 and at the time she was stabbed to death by the prisoner she was in an advanced stage of pregnancy expecting a child in a month or so. In fact when the *post mortem* was held the *foetus* of eight months old male child was extracted from the body.

It appears that rumours had spread in the village for some time before the killing that the appellant was the father of the expected child. This rumour, if not earlier, definitely reached the prisoner on the night preceding the killing, his wife having told him that Nehibe, the victim, was beaten by her father when he came to know Nehibe's condition, and that it was spread that Nehibe was pregnant by him. In fact the day before the killing the father of the victim together with one of his daughters and her fiance returned home from another district where they had worked for over a month.

The information passed to the appellant no doubt annoyed him. The prisoner early in the next morning, the 7th October, 1961, shortly before sunrise was seen approaching the house of the victim. The house in question consists of two storeys ; the ground floor — which consists of one room used as bedroom for the whole family — and an up-

stairs room. The family of the deceased consisted of her father, mother and four sisters besides her. The deceased with her two sisters were sleeping in a double bed, the parents in another bed and the remaining two sisters in another single bed. Remzie, one of the sisters, was the first to notice the approaching prisoner and drew the attention of her father to it. The prisoner entered the bedroom in question, holding a knife in his hand, went up to the single bed and pulled back the quilt from over Ayshe, one of the sisters, and then turned to the double bed, apparently, the occupant of the single bed not being the one he was looking for. Remzie and her mother becoming evidently apprehensive of the aggressive behaviour of the prisoner stood in his way with a view to preventing him from reaching the double bed where the deceased was lying. He pushed them aside and reached the

double bed. Holding the knife in his lifted right hand asked the deceased : "Is it me who did it (is it from me)?" The deceased replied : "Yes, you did it (it is from you)", or words to that effect. Upon this answer accused delivered several blows with the lethal weapon he was holding on Nehibe. Two of the stab wounds inflicted were fatal. The one severed completely the right carotid and the other destroyed the lobe of the right lung. Soon after the stabbing the deceased moved off from her bed to the next one and then fell to the floor. She died shortly after while lying on the floor in a pool of blood. The cause of death being the destruction of the carotid and the wound on the right lung and the haemorrhage caused.

These are briefly the facts found by the trial court on the evidence adduced.

There is no doubt and it was not disputed that the prisoner intended to kill the woman in question. The only point for consideration was when it was that he made up his mind to kill her. If a person on the spur of the moment without adequate provocation kills another with a lethal weapon no doubt this would amount to unpremeditated murder but not necessarily to a premeditated murder.

In the circumstances of the case, the material time for deciding for the presence or absence of the premeditation as a required element in a capital murder — I mean premeditated murder — is the time when the prisoner stepped into the bedroom of the victim. If the prisoner had made up his

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mind to kill Nehibe at the time he entered the victim's bedroom the killing which followed amounted to premeditated murder.

It is essential, therefore, to ascertain the intention of the prisoner at this material moment. It is important in this respect to find out whether there was an intervening cause between his entering the room and delivering the stab wounds which prompted the prisoner to commit the crime.

The inmates of the house have given their evidence which evidence was accepted by the trial court. That evidence leaves no room for a finding that some incident for a fresh cause might have taken place after his entering into the bedroom, which incident led him there and then to form the intention to kill. It is in evidence that almost immediately after the man entered the house in question the cries of the inmates were heard. In other words, the time which elapsed between the entry and the stabbing incident was very short. The sequence of events was very quick.

The evidence having positively established that there was no intervening cause inside the house the only reasonable inference to be drawn is that the prisoner at the time he entered the bedroom had made up his mind to kill the victim who was expected to be in the said bedroom early in the morning and this clearly amounts to premeditation. Whether his intention to kill depended on the nature of the answer to be given makes, in our view, no difference.

The case does not rest only on this evidence. We have the evidence going to the motive and the statements made by the prisoner before and after the crime. The prisoner after the commission of the crime in the morning of the same day spoke to witness Salih and told him that he was tired of the continued rumours spread about him and that he had enough and that he had to do what he had done. Even in his statement to the police on the day of his arrest he said : "In my pocket I had a knife ; I drew it and said : 'What is this which I have to put up with in your hands ? Have I not got my honour and every day you blacken my character?' I then thrust the knife into Nehibe. I do not know into what part of her body or how many times. I then left".

Acts or statements at the time, prior and subsequent to the offence, all indicate to one conclusion that the prisoner

had made up his intention to kill the unfortunate woman before he entered into her bedroom. The able counsel for the appellant went minutely through the evidence relating to what happened in the bedroom on that morning where the stabbing took place. After careful consideration, we are satisfied, however, that on the evidence before them the trial court had come to the right conclusion.

The appeal, therefore, is dismissed.

*Appeal dismissed.*

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