

1954
July 23

COSTIS
DEMETRI
KELBERIS
v.
REGINA.

[HALLINAN, C.J., AND ZEKIA, J.]
(July 23, 1954)

COSTIS DEMETRI KELBERIS, *Appellant,*

v.

REGINA, *Respondent.*

(*Criminal Appeal No. 1974*)

Manslaughter—Sentence—Provocation when drunk—Standard of the reasonable man not the drunken man—Excessive sentence.

The appellant inflicted fatal injuries on a man in the course of a quarrel in a brothel. He was convicted of manslaughter and sentenced to imprisonment for life. He appealed against sentence.

Upon appeal,

Held: (1) The control over his reason of a drunken man should not be considered as less than that of a reasonable man; upon the issue of provocation, in considering both conviction and sentence, the standard of conduct is that of a reasonable man.

(2) Considering the youth and character of the appellant, and the nature of the provocation, sentence excessive and reduced to 12 years imprisonment.

Appeal by the accused from the judgment of the Assize Court of Nicosia (Case No. 855/54).

Stelios Parlides, Q.C., with *M. A. Triantafyllides* for the appellant.

R. R. Denktash, Crown Counsel, for the respondent.

Judgment was delivered by :

HALLINAN, C.J. : In this case the accused was charged with the murder of the deceased by inflicting fatal injuries on him during a quarrel in a brothel. The trial Court found that the provocation was sufficient to reduce the charge from murder to manslaughter, and having been convicted of manslaughter the accused was sentenced to imprisonment for life. This is an appeal against sentence.

The trial Court accepted the evidence of Kyriakides whose deposition was put in, but who, owing to absence, did not give evidence at the trial. It is clear from his evidence that there was a prolonged quarrel and struggle between Sofocles and the deceased on the one hand and the accused on the other, before the accused produced a knife from his pocket and inflicted the fatal injuries. It has been submitted for the Crown that Sofocles and the deceased were acting lawfully in seeking to remove the accused from the brothel

without using unnecessary force. This submission depends on the proposition that Sofocles and the deceased were acting as the agents of the girls who occupied the rooms in the brothel.

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Now, it is in evidence that the accused, although he may not have been drunk, was at any rate excited by drink. We do not consider that the evidence is sufficient to find that this young man Sofocles and the deceased were acting as the agents of the girls or that the appellant might reasonably, in his excited state, have inferred that they were so acting. In our view this quarrel and struggle was a matter of common assault being inflicted by each party on the other. In the circumstances which the witness Kyriakides describes and which the trial Court accepted, clearly there was sufficient evidence of provocation to reduce this crime to manslaughter.

It has been argued for the appellant that his drunkenness should be taken into account in mitigating sentence. We are unable to accept this submission. First, we are not satisfied that the evidence shows that the accused was really drunk, and even if he was, we cannot subscribe to a proposition that the control over his reason of a drunken man should be considered to be less than that of a reasonable man. In considering whether provocation is or is not sufficient, the standard is the reasonable man ; it would be dangerous for us to substitute the standard of the drunken man. Drunkenness as a defence or as a circumstance mitigating sentence arises not on the question as to whether a person because of his drunkenness is more likely to lose control of his reason, but on the question whether by reason of his drunkenness he has made a mistake as to fact or apprehended conduct which affects his intent when committing the act the subject-matter of the charge.

However, even if one takes the ordinary reasonable man as the standard, in the circumstances of this quarrel we consider that there was ample evidence of provocation. We do not fully understand why the Court should have thought that this case was so near to the frontier of murder, for it seems to us well within the territory of manslaughter. The one element in the case, which is very serious, is that the appellant went to a brothel excited by drink and in possession of a knife.

We take into consideration the youth of the accused and his hitherto unblemished character. Considering the nature of the provocation and the other mitigating circumstances of youth and good character, we consider that the sentence was excessive.

We reduce the sentence from imprisonment for life to imprisonment for 12 years from the date of conviction.