[HALLINAN, C. J. and ZEKIA, J.]
(April 2, 1955)

KADRI SALIH of Pelathousa, *Appellant,*

v.

THE QUEEN *Respondent.*

(Criminal Appeal No. 2001)

Criminal Law — Drunkenness negativing specific intent — Sec. 13 of Criminal Code—Statement of accused made while under influence of drink—Made in answer to questions—Murder reduced to manslaughter.

The appellant was convicted of murder having, while drunk, fatally stabbed the victim. A statement was made by the appellant to a police constable while in custody in circumstances indicating that the appellant was still under the influence of drink and that the statement was made in answer to questions. He made a similar statement the next day to an Inspector of Police. The appellant's defence in these statements was not that he did not intend to kill or grievously harm but that he had received provocation.

*Held:** (1) Section 13 of the Criminal Code does not preclude a person who was drunk from proving that he did not have a specific intent which is a necessary element in the offence. If the appellant had succeeded in raising a reasonable doubt as to whether his mind had been so affected by the drink he had taken that he was incapable of knowing that what he was doing was dangerous, then his offence should be reduced from murder to manslaughter.

R. v. *Panayis Demetri,* 18 C.L.R., 156 overruled.

(2) The manner in which the statements made by the appellant were taken strongly disapproved; such statements were of little or no evidential value and their admission may well have prejudiced the appellant in making his defence of lack of specific intent due to drunkenness.

Finding of manslaughter substituted for that for murder

Appeal allowed.

Appeal by accused from the judgment of the District Court of Paphos (Case No. 3225/54).

M. Fuad Bey for the appellant.

L. Loizou, Crown Counsel, for the respondent.

The facts of the case are set out in the judgment of the Court which was delivered by:

HALLINAN, C. J.: In this case the appellant killed Savvas Georghiou in November last by stabbing him in the back. His defence is that he was so drunk at the time he did this act that he was incapable of forming the intent which is necessary to convict a man of murder.

* Section 13 was repealed and substituted by section 2 of Law 20 of 1955

The killing occurred during a wedding in the Turkish village of Pelathousa near Polis. On the 31st October there had been feasting in the local coffee-shop of Hassan Mustafa; there the appellant had wrestled with a man called Veli, a contest which began in fun but ended with a quarrel. Later that afternoon in the same shop the appellant and the deceased, who is a Greek and a travelling tinker, exchanged some angry words over the wrestling incident. Next morning the festivities continued in the house of the bridegroom and both the appellant and the deceased danced together. Apart from certain statements made to the police by the appellant and contained in exhibits 4 and 5 there is no evidence that the appellant and the deceased quarrelled at the bridegroom's house. The party left the house at about 1 o'clock and proceeded to the coffee-shop. By this time the appellant was very drunk. On the way he drew a knife and fatally stabbled the deceased in the back.

At about 5 o'clock that evening P.C. Fikri Nedjat (17th prosecution witness) alleges that the appellant called him and that he made to him a voluntary statement which has been admitted as exhibit No. 4. This statement purports to narrate the incident at the coffee-shop on the 31st October and of the provocation received by the appellant from the deceased while drinking at the bridegroom's house and also of the abusive remarks made by the deceased to him immediately before he stabbed him. The Court also admitted as a voluntary statement (exhibit 5) a statement made by the appellant the following day to Inspector Kiazim Naim (19th prosecution witness) which repeats in substance what he already had stated to P.C. Fikri. At the trial objection was taken to the admission of both of these statements. There is a considerable substance in this objection. P.C. Fikri admitted that the accused was very drunk and the doctor who visited the appellant at about 3.30 on that afternoon of the 1st November confirmed that the appellant was very drunk. P.C. Fikri also said in cross-examination that the appellant was singing in the lock-up both before the doctor came and after he had gone. The cross-examination then continued: "Q. Did he continue singing for a considerable time after the doctor went away? A. He was singing at intervals not continuously. Q. Was it during these intervals that he sent for you to make a statement? A. He sent for me during that time." It is improbable that the appellant in his condition at 5 p.m. would have called P.C. Fikri to make a statement and, even if he did, that he could have made the statement, exhibit 4, without interrogation and guidance. It is apparent from a perusal of this document that it must have been made as a result of questions that had been put to him. Here, for example, is a paragraph which shows what happened: "To-day the 1st of November, 1954, I do not remember the hour well, we went to the house where the wedding had taken place.

There were many people there. I only remember that opposite the table at which I was sitting Savvas Mandi was sitting and we were all drinking. I did not say anything about the previous night event when Savvas was trying without any reason to behave like a bully. I do not remember how much we drank. Whenever Savvas Mandi was about to have a drink he used to say 'viva to you re pallikari'. I did not answer back". By a mere glance at this paragraph it becomes apparent that this statement was made in answer to questions that had been put to him; otherwise such phrases as "I do not remember the hour....", "I only remember", "I did not say anything", "I do not remember how much we drank", "I did not answer back" would not all occur in one short paragraph of uninterrupted narrative. Quite apart from the impropriety of taking a statement from a man who was in no condition to give it, it is contrary to the Judges Rules referred to in Archbold, 33rd Edition, p. 414, that prisoners in custody should be subjected to cross-examination even if cautioned.

Once the statement, exhibit 4, had been extracted from the appellant, his defence was inevitably prejudiced. He was committed to the untenable defence that he had received provocation from the deceased. Had no statement been taken from him, it is quite probable that his defence would have been, "I was blinded by drink and have no recollection of what occurred." That, in fact, was the gist of the statement that he made from the dock. "I do not remember stabbing Mandis, that is all." Not only is it unlikely that the appellant called Constable Fikri into his cell on the evening of the 1st November but we doubt whether, without any suggestion from the police, he requested Inspector Kiazim to take a statement from him the next day. It is but natural that having committed himself to the statement exhibit 4, that he should repeat the gist of it to the inspector in exhibit 5.

In English Law a man is taken to intend the natural consequences of his act, that is a presumption of fact which can be rebutted, as was stated by Darling, J. (as he then was) in *King* v. *Meade*, 1909, 1 K. B., p. 899:—

> "In the case of a man who is drunk, by shewing his mind to have been so affected by the drink he had taken that he was incapable of knowing that what he was doing was dangerous, i.e., likely to inflict serious injury. If this be proved, the presumption that he intended to do grievous bodily harm is rebutted."

There is a statutory provision in our Criminal Code regarding the effect of intoxication on criminal liability. Section 13 of the Code reads:

> "A person shall not on the ground of intoxication be deemed to have done any act involuntarily, or be

exempt from any liability to punishment for any act; and a person who does an act while in a state of intoxication shall be deemed to have intended to cause the natural and probable consequences of his act."

In the case of *R. v. Panayis Demetri* decided at Assizes and reported in the 18th Cyprus Law Reports, p. 156, the Court held that the provisions of section 13 on criminal responsibility of drunk persons was different to those of English Law. We have carefully considered this decision but are unable to accept it as correct. In our view, the effect of section 13 is merely to declare that the mere fact that an accused person proves that he was drunk at the time of the offence is no excuse; but this does not preclude a person who was drunk from proving that he did not have the specific intent if such intent is an element in the offence; nor does it preclude him from setting up the defences of mistake or insanity. The mere fact that the absence of specific intent or mistake or insanity was induced by drunkenness does not preclude an accused person from making these defences. Viewed in this light, section 13 does not materially differ from the English Law and in the present case we consider that if the appellant succeeded in raising a reasonable doubt as to whether his mind had been so affected by the drink he had taken that he was incapable of knowing that what he was doing was dangerous, then his offence should be reduced from murder to manslaughter.

The trial Court in its summing up has not indicated how much of the appellant's story it accepted in the statements exhibits 4 and 5. The Court found them to have been made voluntarily and without inducement and admitted them in evidence; and went on to say that "the accused admitted stabbing and did not allege any legal provocation." We are unable to say how far the Court, in finding that the appellant knew what he was doing and killed the deceased intentionally, was influenced by the detailed recollection of the events of 31st October and 1st November which the appellant appeared by his statements to have; and by the animosity which, in these statements, appeared to exist between the appellant and the deceased. The statements, if accepted, tended to show that his mind was not obscured by drink and that he had a motive for killing the deceased. Whereas, if these statements are disregarded, the rest of the evidence is that he was very drunk indeed, and that far from remembering the angry words exchanged, between the appellant and the deceased on the previous night, they had danced together on the morning of the 1st November at the bridegroom's house and no one heard them quarrel again; without the appellant's statements, the evidence of motive is negligible. While we do not go so far as to say that these statements were inadmissible, the circumstances and the manner in which they were taken are such as have been strongly condemned by the Court

of Criminal Appeal in England in the case of *R.* v. *Winkel*, 76 J. P., 191 and in several cases subsequently decided in that Court. There is nothing in the summing up of the trial Court to suggest that it considered (as we here consider) that these statements, even if admitted, are of little or no evidential value. Moreover, the taking and admission of the statements may well have prejudiced the appellant in making his defence of lack of specific intent due to his drunkenness. Had the Court not admitted these statements or had taken the view of them which we take, the appellant may well have had a chance of having his offence reduced from murder to manslaughter.

For these reasons we consider that this appeal should be allowed and the finding of manslaughter should be substituted for that of murder.

FUAD BEY addresses the Court on mitigation.

COURT: We consider that in a case of this sort the Court cannot impose anything but a severe sentence. This type of crime is not infrequent; young men go to weddings, get drunk and commit homicide. The accused not only got drunk but broke the law by taking a knife to a wedding which is a very serious offence in itself in this country. We impose a sentence of 15 years imprisonment.