

ASSIZE  
COURT  
OF  
LARNACA  
1908

Nov. 14

(ASSIZE COURT OF LARNACA.)

[TYSER, C.J., BERTRAM, J., HAYCRAFT, P.D.C., HILMI EFFENDI  
AND PALAEOLOGOS, JJ.]

REX

v.

HALIL SHABAN.

CRIMINAL LAW—HOMICIDE WITH PREMEDITATION—"AMD"—OTTOMAN PENAL  
CODE, ARTS. 169, 170 AND 174.

The question of premeditation is a question of fact.

A test often applicable in such cases is whether in all the circumstances of the case the accused had a sufficient opportunity after forming his intention, to reflect upon it and relinquish it.

A zaptieh riding along a road saw the prisoner near a river bed carrying a gun without a license. He rode towards him for the purpose of demanding his gun, or according to other evidence, his license. The accused shot the zaptieh. It was not clear whether he so shot him when parleying, or while being pursued, or while the zaptieh was attempting to cut off his retreat, across the river.

HELD: By the majority of the Court, that premeditation was not proved.

The prisoner was charged with having killed with premeditation one Nikola Haralambo Tremouri, a zaptieh, near the village of Agia Anna on July 12th, 1908.

It appeared that the prisoner was carrying a gun without a license. The zaptieh, who was passing through Agia Anna on his way to Larnaca seems to have seen from the road the prisoner near a river bed and to have ridden down towards him.

The prisoner shot the zaptieh, but the circumstances under which he did so were left in obscurity. The zaptieh's wound was received while in the saddle a little above the groin. Marks of a galloping horse were traced from the road to the river, and then along the river—stopping at a point five yards from that at which the body was found. About five to ten yards further on was a point at which a path, impassable to a horse descended into the river, and from the medical evidence, it appeared that the prisoner must when he fired have been standing at or near this point. The zaptieh's wound was towards his left side, and when he was shot the river was on his right. From the height of the wound, it would seem that the prisoner either stooped to fire, or that he fired the gun without raising it to his shoulder.

The zaptieh made a series of dying declarations, which (it being clear that he realised that he was on the point of death), were admitted in evidence. The material part of these declarations was as follows:—

1. "I asked him to give me his gun, because he had no license and he shot me."

The witness, who reported this declaration, said in answer to the Court. "The zaptieh told me he asked the accused for his license and he shot him."

2. "I found him watching sheep. At the same time he was carrying a gun. I wanted (*ἠθέλησα*) to take it from him, and then he shot me."

3. "I saw him coming with the flock, holding a gun. I went to take it from him, and he shot me, before I approached him."
4. "I asked him for his gun license and he would not give it to me. I went for him (ἔπαισα 'πάνω του) with my horse to take it from him, and he shot me."

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According to the contention of the Crown, the zaptieh rode up to the prisoner and parleyed with him and the prisoner raised his gun and shot him.

According to another view the parleying must have taken place earlier, and have been followed by pursuit, the zaptieh being shot while pursuing and his body thrown forward by the impetus.

According to another view, the evidence of parleying was unsatisfactory and the person fired while the zaptieh was galloping up to him to cut off his retreat by the path.

*Theodotou* for defence (with him *Nikolaides*) referred to the French law on premeditation, and cited, with reference to the corresponding article of the French Code, *Garraud Droit Penal*, 1617.

"C'est qu'en effet, il y a, dans la préméditation, deux éléments qu'il faut combiner pour donner à cette circonstance sa véritable valeur: le calme de l'âme et l'intervalle de temps. Si l'âme n'est pas calme, si l'agent, suivant l'expression populaire, est hors de lui, ce n'est point l'empreinte de son caractère que manifesterà, à la fin de la lutte, l'état de conscience qui déterminera l'action. Si l'acte est accompli aussitôt résolu, il ne sera pas possible à l'individu de réagir, à la volition complète et murie qu'est la préméditation de s'établir. La préméditation est donc une forme de volonté, persistante et résolue, et dont le signe caractéristique est le calme et le sang-froid l'agent. Dans cet état, le criminel est bien lui-même, et cette circonstance fait prédominer son caractère et sa nature. C'est à ce résultat de la préméditation qu'il faut surtout rattacher l'influence de cette notion dans le problème de la culpabilité."

*Bucknill, K.A.* The most probable inference to draw from the facts is that the prisoner saw the zaptieh riding towards him—that the zaptieh stopped and parleyed with him, and that the prisoner, standing 10 to 15 paces off, raised his gun, took aim and shot the zaptieh. These facts show sufficient deliberation to constitute premeditation.

The following passages from Turkish Commentaries were cited by the Chief Justice in the course of the argument:—

"If there has passed time for a man to regret, between the making up of his mind to do the crime and the doing it, if he does not give up the crime he is guilty of the crime with premeditation."

*Mehmed Aziz*, pp. 27-29.

"In murder cases to commit a homicide "*kasd*" means to commit it knowingly, *i.e.*, not by accident or mistake. To commit a homicide "*te-amuden*" means to commit it, not by accident or

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mistake, but so that the man thinks it over and carries it in his mind beforehand, and decides it, and with that decision and thought commits the act of homicide."\*

*Georgaki Effendi* (MSS. notes, pp. 142-3).

*Judgment.* CHIEF JUSTICE: The question of premeditation is a question of fact.

A test often applicable in such cases is whether in all the circumstances a man has had sufficient opportunity after forming his intention, to reflect upon it and relinquish it.

Much must depend on the condition of the person at the time—his calmness of mind, or the reverse.

There might be a case in which a man has an appreciable time between the formation of his intention and the carrying of it into execution, but he might not be in such a condition of mind as to be able to consider it.

On the other hand, a man might be in such a calm and deliberate condition of mind that a very slight interval between the formation of the intention and its execution might be sufficient for premeditation.

In the present case we are not satisfied that the facts justify a finding of premeditation.

*Sentence: Fifteen years hard labour.*

TYSER, C.J.  
&  
BERTRAM,  
J.  
1908  
Nov. 27

[TYSER, C.J. AND BERTRAM, J.]

PEDROS ALEXANDROU,

*Plaintiff,*

*v.*

NICOLAOS BAROUTES,

*Defendant.*

COMMERCIAL LAW—BANKRUPTCY—CIVIL CAPACITY OF BANKRUPT—EFFECT OF CONCORDAT—DISTINCTION BETWEEN CONCORDAT AND UNION—EXCUSABILITY—REHABILITATION—INTERIM REPORT ON CHARACTER OF BANKRUPTCY—DATE OF OPERATION OF CONCORDAT—COMMERCIAL CODE, ARTS. 153, 226, 244-246, 305 AND 314.

By the pronouncement of a judgment directing the confirmation of a concordat arranged between a bankrupt and his creditors, the bankrupt is restored to his rights of suit against persons indebted to him.

It is not necessary for this purpose that his bankruptcy should have been declared excusable or that he should have obtained rehabilitation.

The difference between "concordat" and "union," and the effect of "excusability" and "rehabilitation" considered and explained.

A judgment confirming a concordat, not appealed against, cannot be afterwards impeached on the ground of informality in the previous proceedings.

The judgment confirming the concordat operates from the date of its pronouncement and not from the date of its entry.

\* This was an appeal from the judgment of the District Court of Nicosia.

\* Cf. also Savvas Pasha: "Théorie du droit Musulman," Vol. XI, p. 517. "Ce que les Arabes appellent "amd" est une décision (détermination) que l'homme adopte après avoir bien considéré les raisons qui militent pour ou contre l'accomplissement d'une action."