

## (ASSIZE COURT OF PAPHOS.)

[TYSER, C.J., BERTRAM, J., BROS, P.D.C., SAMI EFFENDI  
AND DEMETRIADES, JJ.]

REX

v.

NIKOLI HAJI ANTONI CHAKOLI.

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COURT  
OF  
PAPHOS  
1909

Feb. 16

CRIMINAL LAW—HOMICIDE WITH PREMEDITATION—GENERAL PREMEDITATION—OTTOMAN PENAL CODE, ART. 170.

In order to justify a verdict of homicide with premeditation it is not necessary to show that the premeditated design was directed against a particular person.

It is sufficient if it is shown that the accused had formed a general design to kill any person whom he encountered and who interfered with his purpose.

The accused, having stabbed a man, fled to a neighbouring village, with the object of taking possession of a gun, and making for the mountains. He threatened to stab a man who tried to prevent him from breaking into the house to get the gun; next, threatened to shoot a boy who raised an outcry against him; and finally after repeated warnings shot and killed a woman belonging to the house from which the gun was taken, who pursued him with remonstrances.

HELD: Guilty of homicide with premeditation.

The accused was charged with homicide with premeditation under the following circumstances:—

On the afternoon in the day in question, the accused being in a café and heated with drink, became engaged in a quarrel with his brother. His brother insulted him and he thereupon stabbed his brother,—as it was supposed at the time, fatally. The Mukhtar instructed a zaptieh who was at the village to arrest him but the accused threatened them both with the knife, and succeeded in getting away. He then left for the next village, with the intention of getting a gun and making for the mountains. On the way a woman met him and jeered at him for killing his brother. He stabbed this woman, killing her, and ran on. (The information charged him with killing this woman without premeditation.)

Arrived at the village to which he was proceeding (it being now some hours after his original crime) he went to the house from which he intended to take the gun, and kicked at the door to burst it open. A man, called Janni, came and pulled him back, the accused threatened this man with the knife, saying, "Stand back or I will disembowel you." He then forced the door and in a few minutes came out with the gun and some ammunition. A boy, called Polybio, next called out after him. The accused threatened him with the gun, saying "Stand back, or I will shoot you." Finally, a woman called Myrofora, who lived in the house from which he had taken the gun came after him and remonstrated. He said, "Stand back, Aunt Myrofora, don't come near me, or I will shoot you." She repeated her remonstrances and he repeated his warning, and thereupon fired and killed her.

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The information charged him with killing this woman, Myrofora, with premeditation, under Art. 170 of the Penal Code. It also contained counts under Art. 174 charging him with having committed this homicide without premeditation but after other crimes, *i.e.*, the stabbing of his brother with intent to kill (Art. 180), and the homicide of the woman whom he stabbed on the way to the village.

*Bucknill, K.A.*, for the Crown.

*C. Nikolaides (N. Nikolaides with him)*, for the accused. The previous crimes charged are not sufficiently intimately connected with this homicide to justify a conviction under Art. 174. The only material evidence to be considered is that of the conversation with the woman Myrofora immediately before the crime. This shows the crime to have been suddenly resolved upon and executed as soon as conceived. The elements of premeditation are, (1) consideration, (2) determination, (3) execution. In a case of premeditated homicide these three elements can be separately distinguished. In a case of unpremeditated homicide all these three elements are confounded together. *Costes: 'Ερμηγεία του Ποινικού Νόμου, § 82.\**

The Court, without giving any decision on the counts under Art. 174, convicted the accused of homicide with premeditation, for reasons explained by the Chief Justice.

*Judgment.* THE CHIEF JUSTICE, in passing sentence of death said:

It is admitted that you killed this woman. That you had the intention to kill her is clear from the facts. As to premeditation,—the formation of a previous design—there is ample evidence of that also.

It is not necessary that the premeditation should be directed to a particular person.

The conclusion we have come to is that you had formed the design to kill anyone, whoever it might be, who obstructed you or interfered with your purpose in any way, as you ran away. This is proved by your threat to Janni, your threat to Polybio, and by your repeated threats to Myrofora.

We think that you formed the design to kill anyone who obstructed you as you went along, and that you killed this woman intentionally in pursuance of that design.

*Sentence: Death.*

\* The passage cited was as follows:

Ἐπὶ τοῦ ἐκ προμελέτης δόλου ἢ σκέψις, ἢ ἀπόφασις καὶ ἡ ἐκ τῆς ἀποφάσεως ἐκτέλεσις εἰσὶ σαφῶς ἀπ' ἀλλήλων κεχωρισμένα. Ὁ ὑπαίτιος πρὶν ἢ ἐνεργήσῃ ὅπωςδήποτε σκέπτεται περὶ τῆς ἐπιχειρητέας πράξεως. Διὰ τῆς σκέψεως συλλαμβάνει ὠρισμένην τινὰ ἀπόφασιν καὶ ὡς ἄμεσον ἀποτέλεσμα αὐτῆς ἐπέρχεται ἢ ἐκτέλεσις τῆς πράξεως.

Τοῦναντίον ἐπὶ τῆς ψυχικῆς παραφορᾶς τὰ διάφορα σημεῖα τῆς ἐνεργείας, ἐνεκα τοῦ πάθους, ὑφ' οὗ κυριεύεται ὁ πράττων συγχέονται μετ' ἀλλήλων. Ἡ σκέψις, ἢ ἀπόφασις καὶ ἡ πρὸς ἐκτέλεσιν ἐνέργεια ἐκδηλοῦνται σὺν ἄμα καὶ ἐν ἀκαρεῖ.