

It is clear that a person who has formed such a previous design to take life and takes life in consequence is subject to the death penalty although he had no previous design against the life of the person killed.

We cannot help feeling how important it is that people of this class should be checked, and in any case in which such people are convicted full information should be given by the police to the Court so that the Court may adopt measures for their reclamation or otherwise to check their career and the evil example which they set.

ASSIZE
COURT
OF
LIMASSOL

REX
v.
TELEMACHOS
AGATHOCLES

(ASSIZE COURT OF NICOSIA.)

[TYSER, C.J., BERTRAM, J., HOLMES, P.D.C., IZZET EFFENDI
AND MITZIS, JJ.]

REX

v.

CHRISTODOULO SAVA.

ASSIZE
COURT
OF
NICOSIA
1909

March 5

CRIMINAL LAW—HOMICIDE—SELF DEFENCE—EXCESS OF SELF DEFENCE—
GENERAL PRINCIPLES—OTTOMAN PENAL CODE, ARTS. 186, 189, 190—
EXCUSABILITY—"BY WAY OF RETALIATION"—BIL MUKABELE (بيل موكابله).

A man is not justified in voluntarily killing another in self defence, unless in good faith he reasonably believes such killing to be necessary for the purpose of saving himself from death, or most serious bodily harm.

Nor is he justified, if in self defence, without the intention to cause death, he uses such violence as to kill his assailant, unless in good faith, he reasonably believes that such violence is necessary for the purpose of defending himself.

In determining whether in any case a man is justified in killing his assailant in self defence, the Court will take into consideration.

- (a) The nature of the violence threatened by the assailant,
- (b) The nature of the weapon used in self defence.

The general principles governing

- (1) The justification of homicide on the ground of defence of self or others under Art. 186,
- (2) Its excusability on the ground of retaliation under Arts. 189, 190, considered and explained.

The accused was charged with having killed one Kyriako Georgi without premeditation. He pleaded that he had done so in self defence.

It appeared that the accused, having had some words with the deceased earlier in the evening, returned to his house late at night and found the deceased in his yard shouting insulting observations to his wife and mother. Seeing the accused the deceased turned to flee, but finding his escape cut off he seems to have drawn a knife on the accused and wounded him in two places. The accused, who

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was armed with a heavy stick severely beat the deceased and, having succeeded in getting away his knife turned him out into the street, where he was shortly afterwards picked up in a dying condition. He expired the same night from a rupture in the stomach. He had two large wounds on the scalp, several contused wounds on the legs, and was severely bruised on both back and front. The only evidence as to the details of the struggle consisted of the statements of the deceased and the accused and his mother (who was charged as an accomplice and acquitted) and the testimony of a neighbour who heard the voice of the deceased begging for mercy.

Amirayan for the Crown.

Paschales Constantinides for the Defence.

The Court held that the violence inflicted by the accused was more than was necessary for the purpose of self defence, but was excusable, within the meaning of Art. 189, having been given "by way of retaliation" (دفاع).

Judgment. THE CHIEF JUSTICE: The principal provisions of the law to be considered in this case are contained in Arts. 186 and 189 of the Ottoman Penal Code.

By Art. 186: Acts of wounding and killing which occur for self defence and to protect life and honour are not punished.

Wounding and killing only are mentioned but this covers also a beating.

Self defence is not confined to defence of life and honour, but extends to any necessary self defence.

Protection of life and honour is not confined to the protection of one's own life or one's own honour, but extends to the protection of the life and honour of others.

But it is not in every case where a person is defending himself, or acting in defence of life or honour that killing is condoned, or wounding or striking.

I will consider the matter as regards self defence only, as that is the only matter with which we are concerned in this trial.

A blow is not condoned if it is unnecessary for self defence. For example, if a person threatened with a beating knows that he can call the police to his aid and so save himself from the threatened injury, and gives a blow, he would not wholly escape punishment. He must *bonâ fide* believe the blow to be necessary for self defence.

If a man knows that he can defend himself without recourse to dangerous weapons, as for instance, by the use of his hands or fists, he must not have recourse to dangerous weapons like a gun or a knife.

A person must not have recourse to killing unless in good faith and on reasonable grounds he believes that nothing else will be effectual to save him.

Even if a man cannot otherwise avoid a threatened injury he must not wilfully cause death or serious injury unless the mischief threatened is of so serious a nature as to justify such action.

A man cannot shoot another to avoid a cuff in the head. In such cases he can obtain reparation in a Court of Law.

A man cannot draw a knife and stab another because that other had struck him in a quarrel and is prepared to strike him again.

The fact that a man carried a dagger knife and on receipt of a blow from another stabbed him with the knife would be strong evidence that he carried the knife for the purpose of quarrelling and that he desired to fight with it and was not acting in self defence.

A test as to whether a man is acting in self defence or fighting is this: A man defending himself does not want to fight and defends himself solely to avoid fighting.

It would be difficult to give an exhaustive statement as to what measures a man may take to defend himself or as to what circumstances justify the adoption of more or less severe measures. The circumstances are so varied, so many things must be taken into consideration that a general statement might easily be misleading.

As bearing on the case now under consideration the following rules may be taken to be correct:—

1. If a person is assaulted in such a manner as to put him in immediate and obvious danger of instant death or most serious bodily injury, he may defend himself on the spot and may kill or wound the person by whom he is assaulted, provided that he inflicts no greater injury in any case than he, in good faith and on reasonable grounds, believes to be necessary.

It follows that under these circumstances a man would be justified in adopting measures, which might have fatal consequences.

2. It is a good defence in justification of a blow to prove that the complainant assaulted or beat the defendant first, and that the defendant committed the alleged beating merely in his own defence. It is not necessary for the defendant to prove that he received a blow, if, for example, he proves that the complainant lifted up a stick and offered to strike him it is sufficient to justify the defendant striking in self defence for he need not, in such a case, stay till the other has actually struck him.

But in all these cases the injury inflicted must be such only as was necessary to the defence of the defendant, for if it were excessive, if it were greater than was necessary for mere defence, or if it were after all danger from the assailant had passed away and by way of revenge, the prior assault will not wholly excuse the assault done.

Where in such a case no more force is used than is lawful under the circumstances, and such force is not likely nor intended to cause death, even if death ensue, the killing is justifiable.

3. If two persons quarrel and fight neither is regarded as defending himself against the other until he has in good faith fled from the fight as far as he can; but if either party does in good faith flee from the fight as far as he can, and

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if, when he is prevented either by a natural obstacle or any other cause of the same nature, from flying further, the other party to the fight follows and again assaults him, the person who has so fled may defend himself, and may use a degree of violence for that purpose proportioned to the violence employed upon him.

4. If a man kills another and the killing is not excused by self defence as above described or by any other matter regarded by law as an excuse, the person who commits the act of killing is at least guilty of killing without premeditation. Where the killing, or indeed any blows or wounds, are given by way of retaliation for wounds or blows previously inflicted, which are of a nature to be an extenuation of the crime done, the man who kills is no less guilty of the crime of killing, wounding or striking although his punishment is reduced by virtue of Arts. 189 and 190.

Applying those rules to this case the questions we have to ask ourselves are:—

1. Did the defendant when he struck the deceased in the manner described in the evidence so strike him for the purpose of defending himself or for the purpose of fighting with and inflicting injury on him.

2. Was the defendant at the time he assaulted the deceased in immediate and obvious danger of instant death or serious bodily injury, and were the blows inflicted necessary for his safety.

3. If the defendant was defending himself was the force used more than was lawful under the circumstances.

4. Was the deceased killed in a fight with the defendant.

We have carefully considered all these questions and the conclusion we have come to is that the violence used by the accused was more than was reasonably necessary for the purpose of self defence. The plea of self defence therefore fails.

He acted, however, under very great provocation, and under the circumstances we hold his conduct excusable within the meaning of Art. 189.

Sentence: Six months imprisonment.
