

YIANNIS PIERIS,

Appellant,

v.

THE REPUBLIC,

Respondent.

(*Criminal Appeal No. 2652*)

Criminal Law—Premeditated murder—The Criminal Code, Cap. 154, sections 203 and 204 as enacted by section 5 of the Criminal Code (Amendment) Law 1962 (Law No. 3 of 1962)—Premeditation—Section 204—An intention to kill to be carried out only if the victim behaves in a certain manner and carried out accordingly is the result of the deliberate decision taken originally and continues down to the time of the killing—Therefore, it fulfils all the requirements of section 204 as to premeditation.

Criminal Law—Insanity.

Evidence in criminal cases—Insanity—To be established on the balance of probabilities.

The appellant was convicted of the premeditated murder of a young girl at Nicosia on the 6th March, 1963, under sections 203 and 204 of the Criminal Code, Cap. 155, as amended by Law No. 3 of 1962. He was sentenced to death. It was found that in the morning of the 6th March the appellant had formed the intention to kill the girl if she refused to become his wife. One or two hours later on the appellant approached the girl and requested her to be allowed to speak to her, when, upon receiving no reply, he stabbed her to death. The trial Court found also that the appellant would not have killed the girl had she spoken to him. It was contended by counsel on behalf of the appellant that the appellant's conduct did not establish "premeditation" within the meaning of section 204 of the Criminal Code but rather conditional premeditation. Counsel for the appellant relying on *Rex v. Halil Shaban* (1908) 8 C.L.R. 82 contended that in the present case the appellant did not form the intention to kill until after the girl had refused to speak to him on the morning in question: her refusal so provoked him that he had no time to reflect after being provoked before he commenced to strike her with the knife. And that therefore, there is no premeditation within the case just quoted.

Counsel for the appellant further contended that on the evidence the trial Court ought to have held that the defence of insanity had been established.

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Held : As to the question of insanity : On the evidence given at the trial and on the reasonable balance of probabilities the defence of insanity was not established. It is of course not normal conduct for one person to kill another but to say that, without more, such conduct establishes insanity is not justified in law.

(2) *As to the premeditation :*

(a) It is abundantly clear that the appellant did plan to kill the girl if she refused to become his wife well before the killing and not, in point of time, at the moment the girl refused to speak to him.

Rex v. Halil Shaban (1908) 8 C.L.R. 82, distinguished.

(b) The fact accepted by the trial Court that the appellant would not have killed the girl had she spoken to him can make no difference because his intention to kill her, if she refused him, was the result of deliberate decision on his part which continued down to the time of the killing. Therefore the requirements of the statute as to premeditation have been met.

Mustafa Halil v. The Republic (1962) C.L.R. 18, applied.

Appeal dismissed.

Cases referred to :

Rex v. Halil Shaban (1908) 8 C.L.R. 82, distinguished.

Mustafa Halil v. The Republic 1962 C.L.R. 18, applied.

Appeal against conviction.

The appellant was convicted on the 10th June, 1963, at the Assize Court of Nicosia (Cr. Case No. 4040/63) on one count of the offence of premeditated murder contrary to s. 203 of the Criminal Code Cap. 154 as amended by s. 5 of Law 3 of 1962 and was sentenced by Stavrinides, P.D.C., Haji Anastassiou and Demetriades D.JJ., to death.

Cur. adv. vult.

L. Clerides with G. Platritis and C. Adamides for the appellant.

S. A. Georghiadis for the respondent.

The facts sufficiently appear in the judgment of the court delivered by :

WILSON, P. : This is an appeal from the conviction by the Assize Court of Nicosia of the accused upon a charge of murder by premeditation contrary to section 203 of the

Criminal Code, Cap. 154, as amended by section 5 of Law 3 of 1962. On June 10, 1963, the accused was sentenced to death. The two main grounds of appeal put forward by the appellant's Counsel were :—

- (1) The appellant was insane at the time he committed the offence, namely on March 6, 1963, and
- (2) the prosecution failed to prove that this was a murder by premeditation.

The actual facts leading up to the killing were not in dispute.

They are as follows, as found by the trial Court :—

“ At about 6.45 o'clock on the morning of March 6 last a number of schoolgirls, among whom Astero Grigoriou, Sotiroulla Haralambou and a sister of the accused named Vassiliki, left Kondemenos village for Nicosia in the bus of Costis Y. Poullacos. Astero and Sotiroulla sat on the first seat after that of the driver. These two, Vassiliki and some of the others were pupils of St. Joseph School here, Astero, who was 15½ years of age, being in the fourth class, while Sotiroulla and Vassiliki were in the fifth. Among the passengers was the accused, who also got in at Kondemenos, which is his village. He sat on the back seat. At about 7.25 or 7.30 a.m., the bus reached the junction of Regaena and Arsinoe Streets here, by the Pallas cinema. There the three named girls and other girls attending St. Joseph's alighted. The first three proceeded down Arsinoe Street, Astero walking ahead, followed by Sotiroulla and Vassiliki, who were by each other's side. The accused alighted at the same place and followed Astero. When she had gone some 65 feet from the junction he addressed her from behind, with these words : ‘ Astero, I want to say something to you ’. His tone may have been ‘ a little loud ’. The girl looked round but kept on her way without speaking to him, whereupon he took her with the left hand by the shoulder and with the other hand plunged a large knife (exh. 8) into her chest. He stabbed away at her, inflicting on her forty wounds, and finally left the knife planted in her chest. At the first stab or so the girl collapsed, and the other stabs were inflicted while she was on the ground, the accused kneeling on or by her. At the sight of the first stab Sotiroulla ran with Vassiliki in terror towards the school.”

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With respect to the first ground of appeal referred to above, it was contended during the early part of the argument that the appellant was sane down to the moment when the deceased refused to reply to the appellant's request that he be allowed to speak to her, when, upon receiving no reply, he became insane and commenced the stabbing which resulted in death. It was also contended that during the stabbing his mind became "cloudy" as it was called and that he did not know what he was doing and therefore the conclusion to be drawn from his acts was that he must have been insane. This argument is refuted by the accused's own statement given to the Police shortly after his arrest in which he said—

"this morning I decided to find her and to speak to her and to have her to tell me the reason she had (for her changed attitude towards him when she said 'I want (us) to stop'). For this reason to-day I took from my house at the village a knife and I travelled with Asteroulla in the same motor vehicle. I met Asteroulla in the street and we were walking together outside Pallas cinema. I excused myself to speak to her and to have her tell me the reason, but she did not reply to me and continued walking. Then I drew the knife from under my cardigan (tricon) and I stabbed her wherever I could. I left the knife on her. I did it because we had a vow and I did not want to break (trample on) our vows."

— With respect to the evidence of the doctor called on behalf of the appellant at the trial I agree with the conclusions expressed by the trial Court that, taking into account all the other evidence in the case, on the reasonable balance of probabilities the defence of insanity was not established. It is of course not normal conduct for one person to kill another but to say that, without more, such conduct itself establishes insanity is not justified in law.

Later in his argument counsel for the appellant seemed to offer a third ground of appeal, based upon the assumption that the appellant was not sane on the day when the killing took place. Reference was made to portions of the evidence which indicated the appellant's unusual conduct at work, shortly before March 6th. Even taking this into account, however, I am unable to come to the conclusion that the accused was insane before the commission of the offence.

All that is really disclosed in this case is the simple fact that the appellant was determined to have this young girl of 15½ years for his wife and that after at least two re-

fusals by her and her father he took a knife with a blade 9" in length from his home, he followed her into Nicosia and when she refused to speak to him he drew his knife and as he put it—

“ I stabbed her wherever I could. I left the knife on her. I did it because we have a vow and I did not want to break our vows.”

With respect to the alleged failure of the prosecution to prove that this was a murder by premeditation, it is abundantly clear from what has already been said that the appellant did plan to kill his intended victim if she refused to become his wife. It was argued that the appellant's conduct did not prove premeditation but rather conditional premeditation. If this were accepted, then premeditation as contemplated by the Criminal Code had not been established and the accused would be guilty of unpremeditated murder. It was never contended that the appellant should escape conviction but that, if convicted, should be found “ guilty but insane at the time he committed the offence ” or “ guilty of unpremeditated murder ”. Upon the facts of this case, it is quite clear that the appellant, by early morning of March 6th had formed the intention to kill if his approaches to the girl were refused. Under section 204 of the Criminal Code, Law 3 of 1962 “ premeditation is established by evidence proving whether expressly or by implication an intention to cause death of any person

formed before the act causing death is committed and existing at the time of its commission.” In my opinion the fact accepted by the trial Court that the appellant would not have killed the girl had she spoken to him can make no difference because his intention to kill her, if she refused him, was the result of deliberate decision on his part which continued down to the time of the killing. Therefore the requirements of the statute have been met as to premeditation. This construction of section 204 accords with the decision in *Mustafa Halil v. The Republic*, 1962 C.L.R. 18, and which we affirm.

It was argued that the decision in *Rex v. Halil Shaban*, (1908), 8 C.L.R. 82, applied in this case. There it was decided “ 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 ”. It was contended in the present case that the appellant did not form the intention to kill until after the girl had refused to speak to him on the morning in question : her refusal

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so provoked him that he had no time to reflect after being provoked before he commenced to strike her with the knife. Therefore, there is no premeditation within the decision just quoted. The facts in it, however, were quite different. There the accused who was on foot was being chased by a man mounted on a horse which was galloping. The circumstances in which the shot was fired were left in obscurity but it is fair conclusion from the report of the case that there was at least a reasonable doubt as to when the intention to kill was actually formed. In any event, the intention to kill must have been formed a very short time before the killing if it was formed at all. As I have already said it is abundantly clear in the present case that the appellant formed the intention to kill well before the killing itself and not, in point of time, at the moment the girl refused to speak to him on the street in Nicosia. For these reasons the appeal must be dismissed.

Appeal dismissed.