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CHRISTOS
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KOLIANDRIS
v
THE REPUBLIC

[ZEKIA, P, VASSILIADES, TRIANTAFYLIDIS, MUNIR AND
JOSEPHIDES, JJ]

CHRISTOS STYLIANOU KOLIANDRIS,
Appellant,

v.

THE REPUBLIC,
Respondent

(Criminal Appeal No 2772)

*Criminal Law—Murder—Premeditated murder—Sentence of death—
Premeditated murder, contrary to sections 203 and 204 of the
Criminal Code, Cap 154, as amended by section 5 of Law 3
of 1962—Conviction for premeditated murder set aside and con-
viction for homicide contrary to section 205 of the Criminal
Code (supra) entered, on the ground that the appellant might
have committed the offence without having formed an intention
to do it beforehand*

*Criminal Procedure—Appeal —Premeditated murder—Element of
premeditation—Whether the homicidal act perpetrated by appel-
lant was accompanied by premeditation and whether the evi-
dence adduced on behalf of the Republic discharged the onus cast
on the prosecution as to the presence of premeditation in this
crime—Direction of the Supreme Court, under section 25 (3)
of the Courts of Justice Law, 1960, recalling expert witness to
assist on certain points which in its view needed further elucida-
tion*

*Criminal Law—Appellant's affliction with mental disease made it
sufficient for defence to raise reasonable doubt in the mind of
the Court, that there might not have been premeditation*

Section 12 of the Criminal Code, Cap 154, reads as follows —

“ 12 A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission

But a person may be criminally responsible for an act or omission, although his mind is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act or omission ”

Sections 203, 204 and 205 of the Criminal Code, Cap. 154, as amended by Law 3 of 1962 read as follows :

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“ 203.—(1) Any person who with, premeditation by an unlawful act or omission causes the death of another person is guilty of the felony of premeditated murder.

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(2) Any person convicted of premeditated murder shall be sentenced to death.

204. Premeditation is established by evidence proving whether expressly or by implication an intention to cause the death of any person, whether such person is the person actually killed or not, formed before the act or omission causing the death is committed and existing at the time of its commission.

205.—(1) Any person who by an unlawful act or omission causes the death of another person is guilty of the felony of homicide.

(2) An unlawful omission is an omission amounting to culpable negligence to discharge a duty though such omission may not be accompanied by an intention to cause death.

(3) Any person who commits the felony of homicide is liable to imprisonment for life.”

The appellant was convicted of the premeditated murder of a certain Despina Charalambous, a 14-year old school-girl, contrary to sections 203 and 204 of the Criminal Code, Cap. 154, as amended by section 5 of Law 3 of 1962 and was sentenced to death. The appellant, a 52-year old driver, who comes from the same village as the victim—Dhiorios—called to the house of the victim’s god-parents at Engomi, armed with a big knife and stabbed the deceased to death immediately after he was admitted in the house.

The appellant was a certified mental patient for having attempted to commit suicide as long ago as 1941 when he was admitted to the Mental Hospital and ever since he has been in and out of the Mental Hospital on several occasions. According to Medical evidence, for over 20 years the prisoner has been suffering from a mental disease called recurrent depression.

The issues before the trial Court were two :

1. Whether the prisoner was insane within the definition of section 12 of the Criminal Code ; and

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2. If not insane and therefore criminally responsible for his acts, to ascertain the nature of the offence committed by appellant.

On the first issue after hearing medical evidence, the trial Court found that the prisoner was criminally responsible for his acts and he failed to bring himself within the definition of section 12 of the Criminal Code. On the second issue the trial Court found that the killing of the victim was accompanied by premeditation ; the appeal was mainly directed against the finding.

In the course of the hearing of the appeal the Supreme Court, after weighing the evidence adduced before the trial Court and, considering that the mental condition of the prisoner, especially his ability to scheme a killing at the material time was of vital importance for ascertaining the element of premeditation, exercising its power under section 25 (3) of the Courts of Justice Law, 1960, directed the recall of Dr. A. Mikellides to assist it on certain points which, in its view, needed further elucidation.

Held, (1) it was open, no doubt to the trial Court to weigh the evidence of the expert witnesses with other evidence available before them and, no doubt, it was open to them to infer, as they did, premeditation from the fact that the prisoner was in possession of a big knife which was incommensurate even to carry on his person. But one cannot lose sight of the facts that the prisoner was afflicted with a mental disease, that he had no motive or reason to attack and kill the unfortunate victim and that it was sufficient for the defence to raise reasonable doubt in the minds of the Court that there might not have been premeditation in this case.

In other words, the prisoner might all of a sudden have conceived the idea of attacking and killing the girl after he was admitted into the house and received the negative reply that Mr. Petrondas was not in the house.

(2) This Court had the advantage of hearing at length Mr. Andreas Mikellides, a mental specialist, who knew the mental condition of the man since 1951, and after considering the evidence as a whole and taking into serious consideration the omission on the part of the police of placing the patient under medical examination and observation soon after the commission of the offence, that is, that although this crime was committed on the 3rd December, 1964, Dr. Mikellides was only called to examine him on the 26th January, 1965, and it

being clear from the evidence of the expert witnesses that if the patient was examined soon after the commission of the offence they would have been in a better position to testify as to his mental condition at the material time and that this omission might as well amount to depriving the prisoner of a possible defence, we have come to the conclusion that the appellant might have committed this offence without having formed an intention to do it beforehand, that is, before his entry into the house. In other words we find that he is entitled to the benefit of doubt as to premeditation.

(3) We, therefore, allow the appeal and we direct that the conviction for premeditated murder be set aside and a conviction for homicide under section 205 of the Criminal Code, Cap. 154, as amended, be entered against the appellant. Considering that appellant committed a horrible crime on an innocent school girl without any reason whatsoever and that it was a borderline case of premeditated murder we sentence him to life imprisonment.

Appeal allowed. Conviction for premeditated murder set aside. Conviction for homicide entered against appellant, who is sentenced to life imprisonment.

Appeal against conviction.

Appeal against conviction by the appellant who was convicted on the 21st April, 1965, at the Assize Court of Nicosia, (Criminal Case No. 7949/64) of the offence of premeditated murder contrary to sections 203 and 204 of the Criminal Code, Cap. 154, as amended by section 5 of Law 3/62 and was sentenced to death by Dervish P.D.C., HjiAnastasiou and Mavrommatis, D.JJ.

G. Tornaritis, for the appellant.

I. G. Loucaides, counsel of the Republic, for the respondent.

Cur. adv. vult.

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

ZEKIA, P. : The appellant in this case was found guilty by the Assize Court of Nicosia of the murder with premeditation of a certain Despina Charalambous Themistocleous of Dhiorios on the 3rd December, 1964, at Engomi and was sentenced to death.

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The appellant, by his Notice of Appeal, signed personally, appealed against sentence on the ground that it was "excessive". A counsel of his choice was assigned to him by this Court as it was done by the trial Court.

Counsel for the appellant, on the day of the hearing of the appeal, submitted the following grounds :

- (a) That the honourable Assize Court which tried the case erred in the assessment of the evidence, especially the evidence of the expert witness Takis Evdokas with respect to the view that it was premeditated murder.
- (b) The honourable Assize Court erred in finding that, once it was accepted by them that the accused suffered from a mental disease, the accused in his state of mind could have had time in which to reflect and relinquish his intention to kill the victim.

The main part of the facts of the case is to be found in the evidence of Evgenia Petronda whose evidence the trial Court has fully accepted :

"On 3rd December, 1964, at 1 p.m. I and my said servant Katina Nicolaou were in our house. Deceased came home from school at about 1.30. My husband was away at Morphou. 5-10 minutes after deceased came home the door bell rang. Katina and I were busy in the kitchen and I asked deceased to go and see who it was. I heard the door open but heard no conversation, so I shouted 'who is it?' The deceased replied to me in a very natural voice. 'It is Mr. Koliandris'. I shouted back asking him to come in. I heard no conversation at all and I shouted to the accused : Mr. Koliandris, forgive me for not coming out, I am very busy ; please come to the kitchen. If it is my husband you want, he is not here. Come over to the kitchen'. At that moment I heard deceased shrieking three times. I ran out of the kitchen immediately together with Katina, went to the hall and there I saw the deceased on the ground and the accused rising himself up from the deceased holding a huge knife in his hand. Deceased appeared to be unconscious but I saw no blood and I presumed that she had fainted of fright. Accused proceeded towards me holding a huge knife. I rushed on the accused, got hold of his right hand in which he was holding a knife, in an attempt to take the knife away

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from him and at the same time trying to humour him. I said to him : ' Please calm yourself Mr. Koliandris. Why have you come to stab us ; what have we done to you? Accused did not speak to me. He had a wild stare. I was trying to push him out of the door and he was pushing me towards the kitchen. I kept repeating to him to calm himself and I added, ' Have pity on your children '. Immediately this appeared to have had an effect on him, he calmed down a bit and I managed to push him out of the front door which was not fastened. As I was pushing him out he spoke for the first time and said : ' Call the Police, I have done wrong '."

The above facts may be supplemented by the evidence of Katina Nicolaou, the maid servant, who was present at the time the prisoner entered the house. The said Katina stated that after the failure of her efforts to bring to life the victim called out for help from the kitchen-door and there and then she noticed the prisoner at a distance of 20 yards walking away from the house and, on seeing her, the prisoner asked Katina two or three times, " Is she still alive and has she not died yet? "

From the evidence of Dr. Kyamides who held the post-mortem examination on the dead body on the 3rd December, 1964, it appears that several penetrating wounds were inflicted on the body of the victim, one across the left breast 20 cm. long and 4 1/2 cm. wide which cut through the left 3rd and 4th ribs and cut also the left lung and the apex of the heart. Two other stab wounds were directed to the abdomen which were delivered deep into the abdominal cavity injuring the omentum.

It is apparent from the evidence and the accompanying facts that these fatal wounds were inflicted on the body of the victim soon after the prisoner was admitted into the house of Mrs. Petrondas. It is also in evidence that the accused is 52 years of age, a driver by profession, coming from Dhiorios, the same village as the deceased. Accused and deceased's families are related and their houses at Dhiorios are near each other. The deceased was 14 years old, a school-girl attending the Kykko Gymnasium and was residing with her god-parents, the Petrondas family, at 25, Ayios Nicolaos Street, Engomi, and she was in the habit of spending her week-ends at her village with her family. The prisoner, on the other hand, was a certified mental patient for having attempted to commit suicide as long ago as 1941 when he was admitted to the

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Mental Hospital and was under the care of late Dr Lysandrides. He was treated as an out-patient by Dr. Andreas Mikellides since 1951 up to the year 1963 when he was admitted again to the Mental Hospital in that year for two weeks and, having responded well, he was allowed to leave the Mental Hospital. According to medical evidence, for over 20 years the prisoner has been suffering from a mental disease called recurrent depression.

The Assize Court, having no difficulty as to the circumstances under which the unfortunate girl was brutally attacked by the prisoner and stabbed to death, had only two issues to consider, *ie* (1) whether the prisoner was insane within the definition of section 12 of the Criminal Code, Cap 154, and (2) if not insane and therefore criminally responsible for his acts, to ascertain the nature of the offence committed by the appellant.

The trial Court at the early stage of the proceedings heard Dr. Andreas Mikellides as to the ability of the appellant to plead and they found that he was fit to do so and the trial Court proceeded with the hearing of the case.

The prisoner deposed before the Court and gave his version of the facts leaving certain gaps relating to the actual stabbing of the victim. The defence also adduced medical evidence as to the mental condition of the prisoner. Dr Takis Evdokas was called as a witness for the defence ; he had the prisoner under observation for a few days only, but he had consulted Dr. Mikellides as regards the medical history of the appellant. He has referred at length in his evidence as to the irresistible impulse which patients suffering from recurrent depression might be subject to but the relevant part of his evidence was summarised in a few lines :

“ Q In a nutshell that is the result of your evidence isn't it that he knew what he was doing was wrong but he could not control himself?

A Yes.”

The trial Court found that the prisoner was criminally responsible for his acts and he failed to bring himself within the definition of section 12 of the Criminal Code. Learned counsel for the appellant did not argue before us otherwise but his complaint, as it appears from the grounds of appeal, was directed against the finding of the trial Court that the killing of the victim was accompanied by premeditation.

The only issue before this Court, therefore, is whether the homicidal act perpetrated by the prisoner was accompanied by premeditation and whether the evidence adduced on behalf of the Republic discharged the onus cast on the prosecution as to the presence of premeditation in this crime.

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On the question of premeditation the trial Court states the following :

“ We now come to the question of premeditation. Premeditation is defined by section 5 of Law 3/62 as follows :

‘ Premeditation is established by evidence proving whether expressly or by implication an intention to cause the death of any person, whether such person is the person actually killed or not, formed before the act or omission causing the death is committed and existing at the time of its commission.’

In the present case the accused, as we said, went to the house of the deceased armed with a very formidable knife and inflicted horrible injuries on a poor girl of tender years without any apparent justification or provocation. We do not accept his excuse for carrying the knife and we reject the reasons he gave for it. We have it in evidence that some days before the killing he made enquiries of the mother of the deceased as to the latter’s movements. It is true that evidence of motive for the killing is almost lacking. But we are satisfied from all the surrounding circumstances of this case that the accused had made up his mind to kill the deceased and that he went to her house armed with the knife, exhibit 3, and that there he stabbed her and inflicted the wounds described by Dr. Kyamides on her with the intention of causing her death.

There is no doubt that the accused is suffering from a mental disease which though not within the definition of section 12 of the Criminal Code yet in our opinion it did not prevent him from forming in his sick mind an intention to kill the deceased apparently for some illogical reason or motive. We find that it was with that intention that the accused went to the house at No. 25, Ay. Nicolaos Street on that day. We further find the defence has failed to prove that the accused was not of sound mind when he committed

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the offence or that he was acting under an irresistible or even an unresisted impulse which impaired his will power. We, therefore, find the accused guilty as charged.”

This Court, after weighing the evidence adduced before the trial Court and, considering that the mental condition of the prisoner, especially his ability to scheme a killing at the material time was of vital importance for ascertaining the element of premeditation, exercising its power under section 25 (3) of the Courts of Justice Law, 1960, directed the recall of Dr. Andreas Mikellides to assist us on certain points which, in our view, needed further elucidation. We quote hereunder certain parts of Dr. Mikellides' evidence as given in the Supreme Court :

“ Q. The appellant in this case is known to you?

A. Yes. And he had been a patient under me twice and under the late Dr. Lyssandrides, and on several times at my consulting room as a private patient. As from 1951, 1952, he was treated as an out-patient up to 1963, when he was admitted to the mental hospital in 1963 for the first time by me but it only lasted for a few weeks and to which he responded very well and we instructed him to leave the mental hospital. Before that time, he was a certified one for having attempted to commit suicide and was under the care of late Dr. Lyssandrides in 1941.

Q. What kind of mental disease?

A. Recurrent depression.

Q. Is this kind of disease prompting to be dangerous or causing him to be dangerous and under what circumstances. If it is dangerous to himself, to others, to himself in the case of suicide, to others, under what circumstances that disease . . . The appellant, in this particular sense, you had the occasion to (interrupted by the witness).

A. From the records, it appears that back in 1941, when he was admitted for the first time to the mental hospital, he had propensities, then again he developed these ideas, these tendencies. In 1961, we had to admit him again to the mental

hospital and he had the same ideas. During that time he was under my observation. Of course, after the commission of the crime, he expressed the same kind of ideas, self-destruction.

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Q. But at no time did he express any ideas or did he show any propensities or tendencies against other persons.

A. He did not. We considered him to be of a very mild nature.

Q. If he carried a knife it would be a possibility that he would intend to kill himself or others?

A. While carrying a knife to kill himself, a patient may suddenly decide to kill others.

Q. The problem we want to solve is whether this man had formed the intention to kill the unfortunate girl after the door was opened and he faced her, or whether he conceived the idea of killing either the girl or anybody else who would be answering the bell or the knock on the door. We know that his illness has, in some way or other, contributed to this tragedy, but what we are interested at present is at what time that illness made him to form the intention to kill. Whether killing had entered his mind before he went up to the door, or not we want an answer from a medical point of view, if possible.

A. It is very difficult, Your Honours. If I am allowed I should think that he conceived the idea of killing after the door was knocked and the negative reply that Mr. Petrondas was not in was received. He developed the homicidal tendency after he received the negative answer that Mr. Petrondas was not in the house, this is possible.

Q. You tell us, Doctor, that the man got wild after receiving the negative reply but if I told you that this man was carrying with him a formidable lethal weapon at the time he came up to the door and knocked at the door, would you still give the same opinion or would that fact lead you to a different opinion as to the time of conceiving the killing.

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A. I do not know. Knowing the appellant it is rather difficult for me to arrive at any other assumption."

To the question "if the prisoner for some illogical reason or motive had killed the deceased could there not be some illogical reason or motive on his part unconnected with a scheme to kill anybody to carry the knife he used for this crime" the doctor replied, "he could be carrying the knife for self-protection, self-destruction or other purposes unconnected with an intention to kill somebody else".

It was open, no doubt, to the trial Court to weigh the evidence of the expert witnesses with other evidence available before them and, no doubt, it was open to them to infer, as they did, premeditation from the fact that the prisoner was in possession of a big knife which was incommensurate even to carry on his person. But one cannot lose sight of the facts that the prisoner was afflicted with a mental disease, that he had no motive or reason to attack and kill the unfortunate victim and that it was sufficient for the defence to raise reasonable doubt in the minds of the Court that there might not have been premeditation in this case. In other words, the prisoner might all of a sudden have conceived the idea of attacking and killing the girl after he was admitted into the house and received the negative reply that Mr. Pedrondas was not in the house.

This Court had the advantage of hearing at length Dr. Andreas Mikellides, a mental specialist, who, as we said, knew the mental condition of the man since 1951, and after considering the evidence as a whole and taking into serious consideration the omission on the part of the police of placing the patient under medical examination and observation soon after the commission of the offence, that is, that although this crime was committed on the 3rd December, 1964, Dr. Mikellides was only called to examine him on the 26th January, 1965 and it being clear from the evidence of the expert witnesses that if the patient was examined soon after the commission of the offence they would have been in a better position to testify as to his mental condition at the material time and that this omission might as well amount to depriving the prisoner of a possible defence, we have come to the conclusion that the appellant might have committed this offence without having formed an intention to do it

beforehand, that is, before his entry into the house. In other words we find that he is entitled to the benefit of doubt as to premeditation.

We, therefore, allow the appeal and we direct that the conviction for premeditated murder be set aside and a conviction for homicide under section 205 of the Criminal Code, Cap. 154, as amended, be entered against the appellant. Considering that appellant committed a horrible crime on an innocent school girl without any reason whatsoever and that it was a borderline case of premeditated murder we sentence him to life imprisonment.

Appeal allowed. Conviction for premeditated murder set aside. Conviction for homicide entered against appellant, who is sentenced to life imprisonment.

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