ALO SINGHO

v.

ATTORNEY-GENERAL

COURT OF APPEAL
TAMBIAH, J. ABEYWARDENE, J. AND G. P. S. DE SILVA, J.
C.A. 10/83–H.C. GAMPAHA 12/83.
DECEMBER 1, 1983.

Criminal law–Murderous intention–Whether maxim that a person intends the natural consequences of his acts is a presumption of fact or of law.

The appellant was indicted on a charge of murder. In his summing up, the Trial Judge told the jury that, " . . . . the law says that a person's intention could be gathered from his acts. The law says that a person intends the natural consequences of his acts." The jury found the accused guilty and he was sentenced to death.

Held –

The Judge's summing up contained a serious misdirection which could well have caused prejudice to the appellant. The maxim that a man intends the natural and probable consequences of his acts is not a presumption of law upon which the jury was obliged to act. It is no more than a presumption of fact of the kind enumerated in section 114 of the Evidence Ordinance, which the jury may or may not draw. It is a presumption which could be rebutted on a consideration of all the circumstances of the case.

Case referred to

(1) *Chung Kum Moey* alias *Ah Ngar v. Public Prosecutor for Singapore [1967] 2 WLR 657 (P.C.)*

APPEAL from conviction in the High Court holden at Gampaha.

V. S. A. Pullenayagam with *M. Wijetillake, Wimal Wikremasinghe* and *Miss Deepali Wijesundera* for the accused-appellant.

D. P. Kumarasinghe, Senior State Counsel, for the Attorney-General.

Cur. adv. vult.

January 26, 1984.

G. P. S. DE SILVA, J.

The appellant was indicted on the charge of murder of one Wimalasiri. The jury by a unanimous verdict, found the appellant guilty of the charge and he was sentenced to death. This appeal is against the conviction.

The case for the prosecution, very briefly, was that it was the appellant who inflicted one stab injury which had penetrated the heart and the left lung. Having stabbed the deceased, the appellant is alleged to have uttered the words, "Is that enough ?" Having regard to the fact that two of the ribs had been cut, it seems clear that the blow had been dealt with a fair degree of force. At the hearing before us, Mr. Pullenayagam did not seek to canvass the fact that it was the hand of the appellant that caused the fatal injury. Counsel, however, strenuously contended that there was, first, a serious misdirection on the law and, secondly, an equally serious non-direction which amounted to a misdirection in law, in the summing-up.

While dealing with the question of "murderous intention", the Trial Judge rightly told the jury that "intention" is something in the mind of a person and that it is difficult to present "direct evidence" in regard to "intention". Then followed the passage in the summing-up which Mr. Pullenayagam submitted was a misdirection on the law. "But the law says that a person's intention could be gathered from his acts. *The law says that a person intends the natural consequences of his acts.*"

am in entire agreement with Mr. Pullenayagam that this was a clear misdirection on the law. The maxim that a man intends the natural and probable consequences of his acts is not a presumption of law upon which the jury were obliged to act. It is no more than a presumption of fact of the kind enumerated in section 114 of the Evidence Ordinance, which the jury may or may not draw. It is a presumption based on common sense and may be rebutted by the circumstances of the particular case.

It is important to note that, in the instant case, the appellant had inflicted only a single stab injury in circumstances indicative of the fact that he had acted on the spur of the moment, without pre-meditation. No motive was alleged by the prosecution against the appellant. Having regard to the above facts, it seems to me that the misdirection complained of, could well have caused prejudice to the appellant. In my view, it is unsafe to assume that the jury would have found a murderous intention to have been proved beyond reasonable doubt, had they been told that the presumption was one of fact which could be rebutted on a consideration of all the circumstances of the case. However, there could be no doubt that the appellant had the knowledge that the injury was likely to cause death, and was, therefore, guilty of the lesser offence of culpable homicide, not amounting to murder.

The next submission made by Mr. Pullenayagam was that there was a non-direction amounting to a misdirection, inasmuch as the Trial Judge has failed to direct the jury on the second limb of section 293 of the Penal Code, viz., that the injury was inflicted "with the *intention* of causing such bodily injury as is likely to cause death". In this connection, Counsel relied strongly on the judgment of the Judicial Committee of the Privy Council in *Chung Kum Moey* alias *Ah Ngar v. Public Prosecutor for Singapore* (1). Since I am of the opinion that Mr. Pullenayagam's first submission is entitled to succeed, his second submission does not arise for consideration in this appeal.

Accordingly, the conviction on the charge of murder and the sentence of death are set aside and a verdict of guilty of the offence of culpable homicide, not amounting to murder, is substituted therefor. The appellant is sentenced to a term of six years' rigorous imprisonment.

TAMBIAH. J.–I agree.

ABEYWARDENE, J.–I agree.

Conviction for murder set aside and
substituted by conviction for culpable homicide
not amounting to murder.