

PRASAD PERERA
v
THE ATTORNEY-GENERAL

COURT OF APPEAL
NANAYAKKARA, J. AND
ABEYRATNE, J.
C.A. 17/2001
H C AVISSAWELLA 70/99
NOVEMBER 3, 2003
DECEMBER 16, 2003 AND
MARCH 18, 2004

Penal Code, section 296 – Murder of a 2 year old child – Evidence Ordinance, section 33 – Actus reus – No murderous intention but with complete knowledge – What is intention ?

The accused-appellant was indicted for the murder of a 2 year old female child. The trial judge found the accused guilty and imposed the death sentence.

On appeal it was contended that the *actus reus* was committed by the accused-appellant, without a murderous intention but with knowledge only.

Held:

- i) Intention is the determination of the will and implies volition and willingness. Knowledge on the other hand implies cognition and consciousness.
- (ii) Questions of knowledge, intention and the like which arise in such cases are always essentially questions of fact falling within the purview of a decision solely on the particular facts and circumstances of each individual case.
- (iii) Expression – intention to cause bodily injury as is likely to cause death merely means an intention to cause a particular injury, which injury is or turns out to be one likely to cause death.
- (iv) Murderous intention, *a fortiori* has to be judged in relation to the surrounding circumstances of each individual case as it is axiomatic "That not even the devil knoweth the mind of the man."

APPEAL from the judgment of the High Court of Avissawella

Case referred to:

1. *K v Aung Nyun* - Law of Crimes by Ratnalal at page 1259

Dr. Ranjith Fernando with *A. Gunwardane* for accused-appellant.

Kapila Waidyaratne, Senior State Counsel for Attorney-General.

Cur.adv.vult

May 10, 2004

GAMINI ABEYRATNE, J.

This is an appeal preferred against the order of the learned High Court Judge of Avissawella in a case resultant in conviction for murder and consequent imposition of the death sentence on the accused-appellant. 01

The factual background reveals that the indictment of the accused-appellant on a murder charge under section 296 of the Penal Code was predicated on the death of a two year old female child. On the day in question it appears that the mother of the child had left for a boutique to procure bread for consumption, entrusting the child to the care of the accused-appellant who was her paramour. On her return she found the female child in pain and crying, quite opposite to the condition in which she left the child-hale and hearty. The child had been lying on a mat while the accused-appellant rested on a bed. She had immediately transported the child to a Doctor and upon his advice to the Navagamuwa Hospital where the child was found to be dead on admission. 10

The post mortem examination revealed the cause of the death as cardiac tamponade and internal hemorrhage following injuries to the internal organs. The injuries were consistent with those caused by blunt trauma caused to the chest and head. The pericardium indicated the presence of blood and a tiny tear with contusion on its upper part of the atrium-closer to the superior vena cava cardiac tamponade means none other than the inhibition of the heart action resulting from a sudden build up of the pressure in the pericardial sac- which is the sac covering the heart. 20

The mother's evidence given in the non-summary was admitted under section 33 of the Evidence Ordinance due to her absence in the High Court. Notwithstanding this the other independent items of circumstantial evidence when concatenated, proves irrefutably that the death of the child was caused by the accused-appellant.

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The necessity to indulge in an academic discourse or analysis of the evidence and subjecting the same to judicial review is obviated by virtue of the fact that very prudently and with characteristic foresight, learned counsel for the defence restricted his argument to the *actus reus* being committed by the accused-appellant without a murderous intention with knowledge only.

There appears to be no merit in this argument when one considers the circumstantial background of the case and the items of evidence which are a pointer to the fact of previous instances of infliction of physical cruelty to the deceased child by the accused-appellant.

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Intention is the determination of the will and implies volition and willingness-knowledge on the other hand implies cognition and consciousness. It can be stated with certainty that questions of knowledge, intention and the like which arise in such cases are always essentially questions of fact falling within the purview of decision solely on the particular facts and circumstances of each individual case. *Vide Penal Law of India* to editor Gour Vol. 3 at page 1269.

Homicidal Intention as described under section 293 of the Penal Code can be classified into two kinds. Firstly, it is an intention of causing death and secondly it is an intention of causing such bodily injury as is likely to cause death. It is manifest that intention is associated in connection with the causing of death or of bodily injury; causing death whereas knowledge is mentioned of in connection with 'act' which is likely to cause of death. The term intention of causing an injury likely to cause death is that such an injury was intended as in fact is likely to cause death. It is redundant to conclude that the person inflicting the injury should have knowledge that the injury he intends to cause will be sufficient in the ordinary course of nature to cause death. As was stated in the case of *King v Aung Nyun*⁽¹⁾ a Rangoon case at 1259.

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"The expression-intention to cause bodily injury as is likely to cause death, merely means an intention to cause a particular injury, which injury is or turns out to be one likely to cause death"

Murderous Intention, a *fortiorari*, has to be judged in relation to the surrounding circumstances of each individual case as it is axiomatic "That not even the devil Knoweth the mind of Man".

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In the instant case, if one accepts as a Universal Truth the fact that each man intends the natural consequences of his act no other interpretation can be given of the accused-appellant's behaviour other than the fact that, being an adult with a history of constant infliction of physical cruelty to the deceased child in the past preceding the child's death did lay upon or did press with his hands and subject the tender body of the two year old to such pressure that he caused 'Cardiac Tamponade' on the little body did commit such act with murderous intention.

Accordingly in view of the above conclusion the appeal of the accused-appellant is dismissed and the conviction and sentence imposed by the learned High Court Judge of Avissawella on the 19th day of July 2001 is hereby affirmed.

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NANAYAKKARA, J.

I agree.

Appeal dismissed.