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[CROWN CASE RESERVED.]

Present : Bertram C.J., De Sampayo J., and Garvin A.J.

THE KING *v.* RENGASAMY.

3—P. C. Kegalla, 2,522.

Murder committed while in a state of drunkenness—Self-induced intoxication—Penal Code, ss. 78, 79, and 294—Knowledge—Intention.

In all cases of self-induced intoxication it is a question of fact for the jury, whether the accused actually entertained the intention necessary to constitute the crime.

Section 79 is intended to deal with two classes of cases :—

(*a*) Cases in which knowledge is an essential element of the crime.

(*b*) Cases in which intention is an essential element of the crime.

In the first of these cases it imputes to the drunkard the knowledge of a sober man. In the second of these cases it also imputes to the drunkard the knowledge of a sober man in so far as that knowledge is relevant for the purpose of determining his intention.

What is the knowledge referred to ? In the first case it is the knowledge specified in the Code as the essential element of the crime. In the second case it is the " knowledge of the nature and consequences of the act." The law does not allow the drunkard to say that owing to his intoxication he did not know that a particular stab with a particular instrument would be likely to cause the death of a human being. But if in fact the degree of intoxication was such that the man imagined that what he was striking was not a man but a log, proof of this circumstance would not be excluded. On the contrary it would be the very strongest evidence that the man had formed no murderous intention.

Subject to the qualifications above explained, the question whether an intoxicated person is guilty of murder depends upon whether he has formed what I may describe as a murderous intention. That is a question of fact. For the purpose of determining that question of fact the jury must attribute to him the knowledge of the nature and consequences of his act that would be attributed to a sober man. If they consider that the degree of intoxication was such that he could not have formed a murderous intention or any intention at all, they must acquit him of murder and consider the question of culpable homicide. For the purpose of that question they must attribute to the accused within the limits above explained the knowledge of a sober man. The law will not allow the accused to disclaim that knowledge, and if they come to the conclusion that a sober man in the prisoner's position would have known that he was likely to by his act to cause death, they must convict him of culpable homicide. This is

subject to the special case dealt with by paragraph " Fourthly " of section 294, and also subject to the four exceptions enumerated under the same section.

Per GARVIN A.J.—The imputation of knowledge authorized by section 79 should be confined to those cases in which knowledge and intention are specifically stated in the alternative as elements of an offence.

Paragraph " Fourthly " of section 294 of the Penal Code applies only to cases in which without any definite intention to injure a person deliberately takes the risk of inflicting death. The words, " without any excuse, &c.," are intended to except such cases as where a military officer lawfully fires upon a mob, or where the captain of a vessel takes the risks contemplated in section 74.

Apart from this special case and apart from the special exceptions enumerated under section 294, culpable homicide, as distinguished from murder is a question of knowledge; murder is a question of intention.

THIS case was referred to a Bench of three Judges under section 355 of the Criminal Procedure Code by Bertram C.J. by the following order :—

On May 9, 1924, at the Kandy sessions, one Krishnen Rengasamy was convicted of murder and sentenced to death. He committed the crime when in a state of drunkenness. I directed the jury with reference to the meaning of section 79 of the Penal Code, and I informed them that in my own opinion the effect of that section was as follows: namely, that where an act done is not an offence unless done with a particular knowledge or intention, the law imputes to a man who does the act in a state of intoxication the knowledge of a sober man. It does not impute to him any particular intention. It leaves the question of intention at large. In all such cases it is a question for the jury whether the degree of the intoxication was such that the accused was incapable of forming any definite murderous intention. I pointed out to them that a drunken man is not necessarily incapable of forming an intention. In some cases he may be incapable, in other cases he may not. In a case of murder the law will not allow an offender to say that owing to his intoxication he did not know that the act which he was committing was likely to cause death. But whether he did from any particular intention is a question of fact for the jury. It may well be that he would not have entertained the intention which he in fact entertained if he had not been drunk. But this merely means that drunkenness has affected his judgment.

2. In giving this direction to the jury, I assumed that the intention of section 79 was to declare the law in the same sense as that in which it was defined by Stephen J. in *R. v. Doherty* cited in *Gour, Penal Law of India, 2nd ed., p. 514* :—

" Although you cannot take drunkenness as an excuse for crime, yet when the crime is such that the intention of the party committing it is one of its constituent elements, you may look at the fact that the man was in drink in considering whether he formed the intention necessary to constitute the crime. If a sober man takes a pistol, or a knife, and strikes or shoots at someone else, the inference is that he intended

[1] *16 Cox C. C. 306.*

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to strike or shoot him with the object of doing him grievous bodily harm. If, however, a man acting in that way was drunk you have to consider the effect of his drunkenness upon his intention. In such a case a distinction of vital importance occurs. A drunken man may form an intention to kill another or to do grievous bodily harm to him or he may not; but if he did form that intention he is just as much guilty of murder as if he had been sober."

3. I told the jury that in my own opinion in view of the repeated and determined nature of the blows given to the murdered man, and in view of his immediate observation to a witness, " I have killed one; I will kill another " there was ample evidence from which they could find that the accused in fact had formed a murderous intention.

4. As I understand that one of my predecessors has interpreted section 79 in a different sense, and as I have, from time to time, heard that some perplexity is felt as to the real meaning of the section, I hereby reserve, as a question of law, for the consideration of three Judges the question whether my direction to the jury was correct.

5. The obscurity of section 79 appears to arise from this circumstance that the case which it proposes is a case where an act is not an offence unless done with a particular knowledge or intention, but while it proceeds to impute a particular knowledge, it says nothing about the intention. My own suggested explanation of this circumstance is that in determining whether or not a person had a particular intention, it may often be material to know what was his knowledge.

Akbar, A.S.-G. (with him *Barber, C.C.*, and *Dias, C.C.*).—The English law cannot be applied in this case (see *Kachcheri Mudaliyar v. Mohamadu* [1]).

Under section 78 of the Penal Code a man is not guilty where he has become intoxicated involuntarily. Section 79 goes on to speak of voluntary drunkenness. The intoxication contemplated in section 79 is the same degree of intoxication as that in section 78, that is to say, intoxication which renders the accused incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law. The burden of proving that he was so intoxicated is, of course, on the accused. Once he proves this intoxication, the effect of section 79 is this. Some of the offences under the Penal Code require intention, and intention alone—for example, theft. In such cases intoxication will, as a result of section 79, negative intention, and therefore one of the elements of the offence of theft having disappeared, the accused must be acquitted. It is on this basis that the case reported in *17 N. L. R. 95* was decided.

Then again, there are certain other offences where knowledge alone is sufficient. The effect of section 79 is that intoxication makes no difference. For example, if a person is charged with voluntarily causing hurt as defined in section 312, intoxication will be no defence, because intoxication will negative intention, but will not

[1] *(1920) 21 N. L. R. 369.*

negative knowledge, and, as under section 312 a man may have either intention or knowledge, the accused will not be able to plead intoxication as a defence.

Now, if this test is applied to murder as defined in section 294, it will be noticed that the definition in section 294 is split up into four groups—the first three dealing with intention and the last dealing with knowledge. So that, it is submitted, intoxication will have the same effect as in the case of ordinary hurt, that is to say, it will negative intention, but it will not negative knowledge, and the case will fall within the fourth paragraph of section 294, and the accused will still be guilty of murder.

The result would be the same if we apply section 79 in another way. Section 79 states that a man who commits an offence which requires a particular knowledge or intention is liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated. That is to say, in this particular case this accused is liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated. In other words, he must be presumed to have known all the circumstances of the case leading up to the death of the deceased. So that if the accused had used a lethal weapon being fixed with the knowledge that he is using this lethal weapon, he must be presumed to have intended the natural consequences of his act, and therefore he would still be guilty of the offence of murder.

It was on both these grounds that the Indian Court held in the case reported in *38 Mad., p. 479*, that the accused was guilty of murder.

The following authorities were also quoted :—*Rex v. Beard, 89 Law Journal (Q.B.) 437 ; 78 Law Journal (K.B.) 476 ; Ratanlal, p. 163 ; 29 Cal. 493 ; Gour, vol. I., p. 506.*

Rajaratnam (with him *Charles de Silva* and *Speldewinde*).—Section 78 of the Penal Code refers to cases of advanced intoxication, where a man is deprived of the consciousness of the moral or legal character of his acts. Section 79, on the other hand, does not specify the degree of intoxication, but leaves it to the Court to determine from the facts of each case whether the accused was capable of forming the requisite intention. So far as knowledge of the nature of the act and its consequences is concerned, drunkenness makes no difference under this section. It imputes the knowledge of a sober man to the accused, however drunk he might have been at the time he committed the act.

Intention is a conscious and voluntary act of the mind. It consists in desiring a particular result and in formulating to oneself the physical means by which that result is to be achieved. The mental decision and the physical act may be momentary, but the above factors must be present.

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Knowledge, on the other hand, is a mere passive condition of the mind. It may or may not be consciously present in the mind at the moment the act is done.

Intention involves knowledge, and is frequently inferred from it. In cases where knowledge of the nature of the act and its consequences is sufficient, drunkenness will afford no excuse. For example, in the cases contemplated in the fourth paragraph of section 294 of the Penal Code, such knowledge alone is sufficient to constitute murder.

This paragraph does not apply to all cases of homicide. It relates only to cases of extreme rashness and disregard of human life. Illustration (*d*) under this section shows what was intended by the framers of the Code. This is the only class of cases in which a man may be guilty of murder, even though he might not have intended the death of his victim. In all other cases intention is an essential requisite of murder under our Code.

Where knowledge is imputed to the accused as a legal fiction, in ention should not be argued from it.

Counsel referred to *Gora Chand Gopie's case*[1]; *King-Emperor v. Barkatullah*[2]; *King-Emperor v. Uga Tun Baw.*[3]

June 2, 1924. BERTRAM C.J.—

The question submitted has proved to be one of great difficulty. We are all agreed that the direction to the jury was substantially right, and that in all cases of self-induced intoxication it is a question of fact for the jury, whether the accused actually entertained the intention necessary to constitute the crime. But it has not been possible to enumerate with confidence any completely satisfactory explanation of the meaning of the section.

The Solicitor-General has suggested an alternative explanation. This explanation is, in fact, the theory to which I alluded in the reference. That theory, as I understand it, is as follows :—

Sections 78 and 79 cover the same ground. By " intoxication " in section 79 is intended the same degree of intoxication as is specified in section 78, that is, intoxication so intense as wholly to obscure in the mind of the drunkard the nature, the morality, or the criminality of the act done. No other degree of intoxication is the subject of any definite enactment of the Code. But with reference to this degree of intoxication, section 79 lays down a specific principle for the purpose of certain classes of cases. These cases are the cases where the law requires a particular knowledge or intent to constitute the crime. In these cases the law attributes to the drunkard an artificial state of mind. It imputes to him a particular condition of knowledge, but regards him as being devoid

[1] *5 W. R. 45*

[2] *Punjab Record 1887, 32.*

[3] *13 Cr Law Journal 804.*

of all intention. As the Solicitor-General first put it—it "substitutes knowledge for intention": as he afterwards put it "it eliminates intention." It calls upon us to deal with him, as though he had no intention at all, but only a particular condition of knowledge. For this imputed condition of knowledge he is criminally responsible, and in so far as this condition of knowledge in the circumstances of the case would constitute a crime, he is liable to be punished, but not further.

If, however, the degree of intoxication falls short of complete oblivion of the intellectual, the legal and the moral sense, then section 79 does not apply. In such circumstances, even on this theory, the Solicitor-General agrees that it remains a simple question of fact for the jury, whether the accused actually entertained the necessary criminal intention.

The Solicitor-General viewed the theory with frank distaste. As he expressed it, it requires prosecuting officers to deal with the human mind as though it was a puzzle. It has also this particular result—which seems repugnant to all human justice—that under the paragraph "Fourthly" in section 294 (as the Solicitor-General seemed disposed to interpret it) it makes liable to be hanged a man who had in fact entertained no murderous intention, simply on the basis of a supposed condition of knowledge, which he had not in fact possessed, but which the law has artificially imputed to him.

Such is the theory suggested. It was in the hope of finally dissipating the mists of this theory that I made this reference to the Court. It is a theory which, with all respect to those who are said to have favoured it, seems to me altogether too artificial to be tolerable. I cannot believe that either Lord Macaulay or any reviser of his work can ever have intended to introduce into India a legal principle so entirely without precedent or resemblance.

Before I examine this theory in the light of the words of the section, I should like to deal with the Solicitor-General's reference to paragraph "Fourthly" of section 294. It is not actually incumbent upon us to interpret this paragraph, but inasmuch as this paragraph (the only enactment in the Code in which the death penalty is attached to knowledge alone) necessarily obtrudes itself upon our attention, and inasmuch as it will assist us to determine the problems under consideration if we acquire a clear idea of the scheme of the Code as regards murder and culpable homicide, I think it would be well that we should address ourselves to the interpretation of this paragraph.

In my opinion, this paragraph is not an enactment of general application, but was designed to provide for a particular case, which, if unprovided for, would have left the Code incomplete. That case was the case of a man who has no intention to injure anyone in particular, but who deliberately takes a risk, which may involve the infliction of death on some person or persons undetermined. A

typical example of this class of case is that of the man who fires or charges with a motor car down a crowded street. The object of this provision is very fully discussed in *Gour, Penal Law of India, 2nd ed., pp. 1343–1345.* Dr. Gour expresses the opinion that though the enactment was designed to meet this particular class of case, its application ought not necessarily to be confined thereto, and instances the case of a mother exposing her infant child as a case to which the words of the enactment appropriately extend. I quite agree. Another case which has recently come within my own experience, and to which the words of the enactment appropriately apply, is that of a man, who without any definite intention to injure, but out of pure bravado and insolence discharges a gun in the direction of a man with whom he is engaged in altercation. Making allowance for these cases, I am of opinion that the section applies only to cases in which without any definite intention to injure, a person deliberately takes the risk of inflicting death. The words " without any excuse, &c.," are intended to except such cases, as where a military officer lawfully fires upon a mob, or where the captain of a vessel takes the risks contemplated in section 74. In my opinion juries should be told that this enactment should be confined to that class of cases, and that in ordinary cases it should be left out of consideration.

If this is not done, the whole scheme of the Code is distorted. It can never have been intended that juries should be told that if the act committed is merely dangerous, they should find the accused guilty of culpable homicide, but that if it was " imminently dangerous " they should find him guilty of murder, or that if he knew that the act was " likely to cause death " they should find him guilty of culpable homicide, but that if he knew that it " must in all probability cause death " they should find him guilty of murder.

On the other hand, if the paragraph is eliminated and taken as applying to a special case, the whole scheme of the Code is clear and simple. Apart from this special case and apart from the special exceptions enumerated under section 294, culpable homicide, as distinguished from murder, is a question of knowledge ; murder is a question of intention. Knowledge is not necessarily conscious. A man may know a thing though he may not have it in his mind. Intention, however, is a conscious act. It is something present to the mind at or before the moment at which the act intended is done.

Let us now examine the suggested theory in the light of section 79. I do not agree that the " intoxication " there referred to means intoxication of the same degree as that defined in section 78. It covers intoxication of any degree whatever. Nor can I see anything in the section which either " eliminates intention " or

"substitutes knowledge for intention." The section, as I understand it, is intended to deal with two classes of cases :—

(*a*) Cases in which knowledge is an essential element of the crime.

(*b*) Cases in which intention is an essential element of the crime.

In the first of these cases, it imputes to the drunkard the knowledge of a sober man. In the second of these cases it also imputes to the drunkard the knowledge of a sober man, in so far as that knowledge is relevant to his intention. To put the second case in another way : it often happens that for the purpose of determining a man's intention, it is material to know his knowledge. In such a case for this purpose the section attributes to the drunkard the knowledge of a sober man.

In both these cases, the state of the accused's knowledge is or may be relevant—in the first case, directly relevant ; in the second case, indirectly relevant as throwing light on his actual intention. In both these cases the law imputes to him the knowledge of a sober man, and does not allow him to disclaim that knowledge.

But what is the " knowledge " which is referred to ? In the first case, the answer is clear. The knowledge referred to is " a particular knowledge," that is to say (as the Burma case puts it), a specified knowledge. The knowledge meant is the knowledge specified in the Code as the essential element of the crime. But what about the second case ? In that case the Code does not specify any knowledge but only an intention. Is the scope of the " knowledge " in this case unrestricted ? Does it extend to and negative every incidental delusion of fact which the drunkard in his disordered condition may entertain ? I do not think so. In my opinion the " knowledge " meant, is the knowledge which is the subject of discussion in the connected sections, namely, " knowledge of the nature and consequence of the act." The law does not allow the drunken man to say that owing to his intoxication he did not know that a particular blow or a particular stab with a particular instrument would be likely to cause the death of a human being. But if in fact the degree of intoxication was such that the man imagined that what he was striking was not a man but a log, proof of this circumstance would not be excluded. On the contrary, it would be the very strongest evidence that the man had formed no murderous intention.

The Solicitor-General put to me the objection that this interpretation might have the result that in a particular case an artificial knowledge might be imputed to a man, and that thereupon irresistible logic might lead to the imputation of an artificial intention, and that thus a man might be hanged on the basis of a knowledge and an intention which he did not in fact possess. I think, however, that if the word " knowledge " is interpreted as I have interpreted it in the last paragraph, the risk of such a contingency is reduced

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to a minimum, if it is not altogether eliminated. There is certainly one case in which a capital verdict may rest and may rightly rest—upon an imputed knowledge. It is the special case provided for by paragraph " Fourthly " of section 294. The law will not allow a drunken man who fires down a crowded street to plead that owing to his intoxication he did not know that the act "was so imminently dangerous that it must in all probability cause death." I see nothing necessarily repugnant to justice in this conclusion.

Other means of escaping from the difficulty of the section have been suggested. One is based upon the word " liable. " The suggestion is that the expression " shall be liable to be dealt with " has not the same meaning as if the words had run " shall be dealt with." It is suggested that the words were intended to give the Court or jury a latitude to deal with the offender according to their discretion according to the circumstances of the case. I do not think that this is a possible interpretation. It would be contrary to all established principles to leave a capital sentence to the discretion of a Court or jury. The issues for the Court or jury under such circumstances must be " clean-cut," and it is impossible that the framers of the Code could have intended otherwise.

Another suggestion was that made by my brother Garvin in the course of the argument. He drew attention to the fact that there are certain sections of the Code in which knowledge and intention are specifically stated in the alternative as elements of an offence. See in particular section 313. He suggested that it was intended that section 79 should apply to these cases only, and that in such cases the meaning is that in such cases an intoxicated person is liable to be dealt with under the first of the alternatives. I cannot believe that the section was intended to have so restricted an application. I can see no reason why it should not be held to apply to cases in which knowledge alone is stated as an essential element in the crime.

Another point raised in the course of the argument was that the interpretation which I have proposed means that we are applying English law to the case, and it has been ruled in a recent decision in *Kachcheri Mudaliyar v. Mohomadu* (*supra*) that there is no justification for holding that English law applies where our own Code is silent. In adopting this view, however, we are not adopting English law, we are simply interpreting the Code. The Code specifies a particular intention as a necessary element of certain crimes. That question is a question of fact for the jury, and we declare that in determining that question the jury may take into account all relevant considerations including the drunkenness of the accused. The fact that this conclusion is in harmony with the conclusions of English law is no objection to its adoption here.

This interpretation of the section is entirely in harmony with the general scheme of the Code with reference to murder and culpable

homicide. Subject to the qualifications above explained, the question whether an intoxicated person is guilty of murder depends upon whether he has formed what I may describe as a murderous intention. That is a question of fact. For the purpose of determining that question of fact, the jury must attribute to him the knowledge of the nature and consequences of his act that would be attributed to a sober man. If they consider that the degree of intoxication was such that he could not have formed a murderous intention or any intention at all they must acquit him of murder, and consider the question of culpable homicide. For the purpose of that question they must attribute to the accused, within the limits above explained, the knowledge of a sober man. The law will not allow the accused to disclaim that knowledge, and if they come to the conclusion that a sober man in the prisoner's position would have known that he was likely by his act to cause death, they must convict him of culpable homicide. This is subject to the special case dealt with by paragraph "Fourthly" of section 294, and also subject to the four exceptions enumerated under the same section.

On this fuller consideration of the subject, I am satisfied that the direction given to the jury was substantially correct, and that the judgment and sentence should be confirmed.

DE SAMPAYO J.—

I agree with the judgment of the Chief Justice.

GARVIN A.J.—

After careful consideration I have come to the same conclusion as to the direction to be given to a jury in cases of self-induced intoxication. I am inclined, however, to take the view that the imputation of knowledge to a person in a state of intoxication, which section 79 authorizes us to make, should be limited to the one class of acts which are declared to be offences, whether they be done with a particular intention or alternatively with a particular knowledge. This view appears to me to be in strict accord with the language of section 79 and to conform generally to the scheme of the Penal Code.

Where an act is declared to be an offence only when it is done intentionally, there seems to be no point in imputing knowledge to the doer of the act, since knowledge in the absence of intention does not, and can not, make the act a punishable offence. I cannot believe that section 79 contemplated that in such cases the knowledge of a sober man might be imputed to a person in a state of intoxication with a view to basing upon it an inference of intention from the knowledge so imputed. This would be to pass from an artificial imputation of knowledge to an artificial imputation of intention.

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Where intention is the essence of the offence, it is a pure question of fact which a jury is free to determine untramelled by any artificial rules upon a consideration of all the facts and circumstances of each case. The degree of intoxication of the person charged is a circumstance which can and should be taken into consideration. This matter of intention, being a pure question of fact, as indeed it is under the English law, it is I think competent for us to refer to the English cases for guidance where guidance is necessary.

In the very few instances in which a particular knowledge and not a particular intention is essential before an act is punishable as an offence, whether or not the doer of the act possessed the necessary knowledge is a question of fact, and must be determined accordingly. It is, I think, desirable to add that where the prosecution has established a *primá facie* case, it is for the person charged, if he relies on intoxication as a defence, to satisfy the jury that he had reached a state of intoxication which rendered him incapable of forming the required intention, or to prove facts or point to circumstances which are necessarily sufficient to raise a real doubt in the minds of the jury as to his capacity to form the intention imputed to him in the charge.

I agree with my Lord that paragraph " Fourthly " of section 294, which is the only provision which contemplates a verdict of murder in the absence of specified intention, should in its application be limited in the manner suggested by him.

Judgment and sentence confirmed.