

[COURT OF CRIMINAL APPEAL]

1969 Present : Sirimane, J. (President), Alles, J., and
Weeramantry, J.

THANGAVELU, Appellant, and THE QUEEN, Respondent

C. C. A. No. 12 OF 1969, WITH APPLICATION NO. 16

S. C. 97/68—M. C. Galle, 956/U

Charge of murder—Drunkenness of accused—Evidence of it given by prosecution witness—Duty of Judge to give adequate directions on defence of drunkenness—Whether expert evidence is necessary to prove drunkenness.

Where, in a prosecution for murder, there is evidence of drunkenness of the accused in the evidence led by the prosecution, it is the duty of the trial Judge to give adequate directions to the jury in regard to the defence of drunkenness. It is not necessary that some kind of expert evidence should be led in order to prove a state of drunkenness.

APPPEAL against a conviction at a trial before the Supreme Court.

E. R. S. R. Coomaraswamy, with *S. C. B. Walgampaya* and (assigned)
D. A. E. Thevarapperuma, for the accused-appellant.

A. C. de Zoysa, Senior Crown Counsel, for the Crown.

¹ (1894) A. C. 347.

March 28, 1969. SIRIMANE, J.—

Learned counsel for the defence has urged that the conviction for murder by a divided verdict (6 to 1) of the Jury should be reduced to a conviction of culpable homicide not amounting to murder on the ground of the drunkenness of the accused-appellant.

There was evidence of drunkenness in the evidence led by the prosecution. The widow of the deceased stated that the accused was "thoroughly drunk". She said this twice over in the course of her evidence. Witness Subramaniam stated that immediately after the incident he saw the accused staggering and that he appeared to be drunk. There was also evidence that the accused habitually takes wine and that this incident took place on pay day, the accused being a labourer on an estate. It was explained at the trial that the wine the accused takes was spirits of wine and that he was commonly called "Wine Tangavelu". On this day after having taken liquor he had tried to injure one of his own little children.

In the course of the trial a plea of culpable homicide not amounting to murder was offered by the defence, and accepted by the Crown, but the learned Judge did not permit the acceptance of the plea because he thought that the evidence of the widow indicated that the accused had been lying in wait for the deceased. The evidence of the widow was to the effect that the deceased had taken the accused's wife and children to the Conductor's office, and was returning when the accused who was in the verandah in front of his own line room attacked the deceased. She added that he was waiting for the deceased. This was an inference that she had drawn. The learned Judge did not tell the jury that the widow was merely drawing an inference that the accused was "waiting for her husband" from the fact that the accused was seen in front of his own line room. He dealt with this evidence in his charge as follows :

"In that connection there is the evidence of the woman Mariaththa who says that the accused was waiting for the deceased and sprang upon him. If that evidence is true, it shows some kind of premeditation on the part of the accused. The accused had decided, 'As soon as he comes this way I will do this and that will be the end of him'. If that is your estimate of his mind, it is clearly premeditated murder."

We are in agreement with the contention made by counsel for the defence that the evidence relating to drunkenness had not been placed in its proper perspective by the learned Judge in his charge to the Jury. In referring to the evidence of the widow on drunkenness the learned Judge told the Jury that she was not an expert. This was an unfortunate

remark which may have led the Jury to believe that some kind of expert evidence was necessary in order to prove a state of drunkenness. He went on to say :

“Mariaththa says, as far as she could say, the man was drunk, thoroughly drunk, to use her own phrase. *Whether she is exaggerating*, that is a matter entirely for you to consider. Anyway there is that evidence that the man had taken alcohol. The evidence of the other man who says the accused when he came to the bungalow with blood stains on his sarong” (he was here referring to the evidence of Subramaniam) “is that the accused was staggering and he appeared to be drunk, *but that was after* the killing of Muniandy. So the fact that the man was staggering thereafter may not be in consequence of the liquor he had taken, but because the mind has been upset upon the deed committed.”

The learned Judge also stated :

“And in this case there is no evidence of any witness who has seen the accused drink. It may be that he has partaken of some liquor. But, it may be a small quantity and if you, when you consider that aspect of the accused being drunk, consider that according to the evidence of Mariaththa, you will find that he was quite capable of waiting in the line room and watching Muniandy coming back.”

There was also evidence that immediately after the incident the accused threw away the axe in the presence of the deceased's widow and others, and the Police found this weapon some 10 feet away from the body of the deceased. The learned Judge dealing with this evidence said :

“Then there is also this fact, having done this foul deed what did the accused do? He throws the axe into the paddy field. You will ask yourselves, ‘Why did he throw it’? and perhaps you will answer, the answer is entirely yours, ‘He threw it for the *purpose of concealing the weapon* which he used on this day’.”

He then went on to tell the Jury that they could infer a murderous intention from the fact that the accused threw away the katty. We are of opinion that in the circumstances of this case, the directions given in regard to the defence of drunkenness were inadequate and the evidence relating to this question was not fairly placed before the Jury.

We quash the conviction of murder and substitute a conviction of culpable homicide not amounting to murder and impose on the appellant a sentence of ten (10) years' rigorous imprisonment.

Verdict altered.