PYARA SINGH

v.

REGINAM

[COURT OF APPEAL, 1965 (Mills-Owens P., Marsack J.A., Gould J.A.), 10th May, 16th June]

Criminal Jurisdiction

Criminal law—evidence and proof—intoxication—sufficiency of evidence of intent to kill or do grievous harm—whether conviction of murder unreasonable.
Criminal law—onus of proof—intoxication—intent—direction to assessors—Penal Code (Cap. 8) ss.13(1),(2),(4), 224.

The appellant caused the death of the deceased by administering at least four violent blows with a cane knife. It was accepted by the court that the appellant was intoxicated at the time but there was ample evidence to support the unanimous opinion of the trial judge and the assessors that his intoxication was not such as to render the appellant incapable of forming an intention to kill or cause grievous harm.

In his judgment the trial judge said that he had come to the conclusion that there was insufficient evidence to rebut the presumption that the accused did intend the natural consequences of his own acts. It was contended for the appellant that the judge thereby wrongly applied an objective test in considering the degree of drunkenness in relation to intent.

Held : 1. That it was not possible for an appeal court to hold that the finding of the Supreme Court was unreasonable.

2. In the context of the summing up and judgment as a whole when the trial judge used the words "that there is insufficient evidence to rebut the presumption" he was merely indicating that the evidence as a whole did not leave him in reasonable doubt and he was not placing an onus on the appellant.

3. In the circumstances of the case it was only necessary to direct the assessors that the onus remained with the Crown and that if, upon consideration of the whole of the evidence, the assessors were either satisfied that the appellant was incapable of forming the requisite intention, or were left in reasonable doubt whether he was so capable or not, the appellant was entitled to be convicted of manslaughter only. This was in fact the approach of the trial judge.

Cases referred to : *Director of Public Prosecutions v. Smith* [1961] A.C. 290; (1960) 44 Cr. App. R. 261: *Attorney-General for Northern Ireland v. Gallagher* [1963] A.C. 349; [1961] 3 All E.R. 299: *Nyakite v. R.* [1959] E.A. 322.

Appeal against conviction of murder.

S. M. Koya for the appellant.

G. N. Mishra for the Crown.

A The facts sufficiently appear from the judgment of the court.

Judgment of the Court : [16th June, 1965]—

The Appellant was convicted by the Supreme Court of Fiji at Lautoka on the 8th March, 1965, of the murder of Mani Ram s/o Jalim Singh at Asi Asi, Tavua, on the 27th September, 1964.

B It has never been in dispute that the appellant caused the death of the deceased by at least four violent blows with a cane knife, one of which, 5½" long, entered the brain and the other three, also severe wounds, were on the neck, the right shoulder and the left chest. The only real issue at the trial was whether the appellant was at the time of the killing so intoxicated as to be incapable of forming any intent to cause either the death of or grievous harm to the deceased and C whether the Crown had discharged the onus which lay upon it of proving beyond reasonable doubt that the appellant was not so incapacitated. The five assessors were unanimous that the appellant was guilty of murder and the learned trial judge, finding that the onus had been discharged, convicted the appellant of that offence.

Only the main facts bearing on this issue need be stated. The appellant and the deceased were friends and neighbours and there D never had been any enmity between them. On the day in question they and others had indulged in heavy drinking, which, in the case of the appellant at least, had gone on at intervals all day. In his judgment the learned Judge said —

> "The accused had been drinking gin on and off all that day. I am satisfied that he himself had drunk in all about one or one E and half bottles of gin and was intoxicated."

It is not easy to ascertain from the record of the evidence in which witnesses referred rather vaguely to quarter bottles, half bottles and full bottles, just how this estimate was arrived at, but it is in the circumstances a finding in favour of the appellant's case and, as such, we naturally accept it.

F The scene of the killing was the house of the deceased, where the appellant, the deceased and others were together at the concluding stages of the drinking. It was there that the appellant exhibited the signs of intoxication which have been relied upon by his counsel in this appeal. He twice left the drinking party to see one Ram Lal at a nearby reservoir to complain about his water having been cut off. On each occasion he was followed and brought back by one Puran G Singh, who said that on the first occasion he found the appellant and Ram Lal crying together. After the second visit the appellant said he had punched Ram Lal three times and asked the others, in the event of police inquiries, to deny that he had left the party. There was evidence that about this stage the appellant was noisy, shouting or singing and making strange noises with his throat. He apparently H claimed to have "Dakuwaqa" upon him :— this term was not explained in the evidence, but counsel for the appellant suggested there was sufficient inference that it imported some form of evil spirit.

The appellant next produced a penknife and uttered a threat against Ram Lal. The knife was taken from him. He called to his house, which was nearby, for his son to bring him a knife, but there was no response. He then left the scene and returned with a cane knife. With it he attacked Puran Singh but hit him only with the flat of the blade as he ran away. He then turned to the deceased, whose attitude had been placatory throughout, and inflicted the wounds described above. Puran Singh then told the appellant that the deceased was seriously injured and the appellant said to the deceased — "Brother, are you seriously injured?" Puran Singh and the appellant then carried the deceased to the road where the appellant left the other two. The appellant ran to the police station and reported that he had hit the deceased with a knife, saying that the deceased had struck him first, twice, on his back with a stick. The next day, in a cautioned statement, he repeated the allegation of assault with a stick and added that the deceased had also used abusive words towards him.

At his trial the appellant gave evidence that he had no recollection of his actions at the deceased's house, of his visits to Ram Lal or of any of the events that followed. He did, however, remember lifting the deceased up after he called out "Brother I am killed". He explained that his allegations to the police that the deceased had struck and abused him were false and were made up by him as "I had to tell them something in my defence".

Before this Court counsel for the appellant argued that, on the evidence of the facts we have outlined, the finding implicit in the opinions of the assessors and the learned Judge, that the appellant was not by reason of drink incapable of forming an intent to kill or do grievous harm, was unreasonable and should not be supported. We find this submission entirely unacceptable. The extent or degree was peculiarly for the assessors, properly directed, to express their opinions upon, and for the learned Judge, properly directing himself, to decide. Though it was accepted that the appellant was intoxicated, the assessors and the learned Judge were unanimous in their opinion that his intoxication was not such as to render him incapable of forming an intention to kill or to cause grievous harm, and there was ample evidence to which they could point, in support of that view. For example, the appellant displayed clear reasoning power when he asked the others to support an alibi in relation to Ram Lal if necessary. Again, it was not a case of a fortuitous snatching up of a handy weapon. The appellant evinced a formed intention to acquire the cane knife — first calling to his son and then going to get it himself. He was able to help carry the deceased and run to the police station, an action which showed realization at that time of what had happened. He was sufficiently in command of his intelligence to manufacture excuses for his conduct when he reported to the police. On such evidence it is not possible for this Court to hold on appeal that the assessors and learned Judge were unreasonable in arriving at the conclusion they did, and this ground of appeal fails.

The only other ground of appeal which requires discussion arises out of references in the learned Judge's judgment to the case of the *Director of Public Police Prosecutions v. Smith* (1960) 44 Cr. App. R. 261 and his application of principles drawn from that decision. Before approaching that ground we would observe that the law in Fiji as

to the effect of drunkenness is set out in section 13 of the Penal Code, which provides, in sub-section (1) that, save as provided in the section, intoxication shall not constitute a defence to any criminal charge. Subsection (2) enacts two exceptions to the rule which are, in brief, that either intoxication caused by another person without the consent of the accused, or intoxication causing insanity, shall be a defence if by reason thereof the accused did not know what he was doing was wrong or did not know what he was doing. Then sub-section (4) provides —

> "(4) Intoxication shall be taken into account for the purpose of determining whether the person charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the offence."

That is the provision which is relevant in the present case and which imports into the law of Fiji the principle of English law expressed by Lord Denning in *Attorney-General for Northern Ireland v. Gallagher* [1961] 3 All E.R. 299 at p.313 as follows :

> "The general principle which I have enunciated is subject to two exceptions: (i) If a man is charged with an offence in which a specific intention is essential (as in murder, though not in manslaughter), then evidence of drunkenness, which renders him incapable of forming that intent, is an answer; .... In each of those cases it would not be murder. But it would be manslaughter."

We have made this brief reference, as counsel for the appellant in his address to this Court appeared to take some exception to the learned Judge's use in his judgment of the phrase "self-induced drunkenness"; it is clear that he was merely indicating that he was (quite correctly) dealing with the case under section 13(4) and not 13(2) of the Penal Code.

In order to consider the grounds of appeal based on the reference to the *Director of Public Prosecutions v. Smith* (supra) (hereinafter referred to as "Smith's case") it will be necessary to set out parts of the judgment of the learned trial Judge. Having dealt with section 13 of the Penal Code he said —

> "The nature of the injuries inflicted by the accused on the deceased fall within the class of case referred to by Byrne J. in the Court of Criminal Appeal in *D.P.P. v. Smith* (1960) 44 C.A.R. at p. 265. He there said, in connection with the rebuttable presumption that a man must be taken to intend the natural consequences of his acts :—
>
> > 'Thus there is a class of cases where the act of the accused must obviously cause grievous bodily harm as where a blow with a sharp and heavy hatchet is deliberately aimed at and strikes the victim.'
>
> This part of the judgment was not criticised or questioned in the later judgment of the House of Lords which reversed the decision of the Court of Criminal Appeal on quite different grounds.
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> It is further now well established that when considering this presumption, the objective and not the subjective test must be

applied. The Court must consider not what the accused himself, or even a man as intoxicated as the accused, but what a reasonable and sober man, of a similar kind to the accused, would contemplate to be the natural results of the acts concerned :— see the Judgment of the Lord Chancellor in the House of Lords in *D.P.P. v. Smith* 44 C.A.R. at p. 286."

The judgment then set out aspects of the evidence touching on the ability of the appellant to form an intent, and continued —

"By their unanimous opinion that the accused is guilty of Murder, the Assessors have made it clear, that they believe the accused did intend to kill or cause grievous harm when he struck the deceased.

After giving the whole of the circumstances careful consideration and bearing in mind the nature and the number of wounds inflicted upon the deceased, I have come to the conclusion that there is insufficient evidence to rebut the presumption that the accused did intend the natural consequences of his own acts.

"The accused's self-induced drunkenness may well have impaired his power of self control so that he more readily gave way to imagined provocation or reacted, possibly to imagined insults, in a way that he would not have done if he had been sober. A man is not, however, allowed to set up such self-induced want of control as a defence in law.

I hold that the Crown has established the case against the accused beyond reasonable doubt and I therefore convict him of Murder contrary to section 224 of the Penal Code as averred in the charge."

Counsel for the appellant submitted that Smith's case did not refer to a drunken man and that the passage from that case which the learned Judge quoted was irrelevant; and that the objective test laid down in that case did not apply when the Court was considering the degree of drunkenness of a person in relation to his intent. We agree, however, with counsel for the Crown that that is not the proper construction of the judgment read as a whole. In our view the first of the two passages quoted from the judgment was intended to indicate the law in relation to the ordinary man, whether sober or having taken drink to an extent which did not deprive him of ability to form an intent. In his recital of the evidence thereafter and in the second passage the learned Judge was dealing subjectively with the state of mind of the particular appellant — if he had been left in doubt on the whole of the evidence whether the appellant had been able to form an intent, he would naturally have convicted him of manslaughter only. As he was not in doubt the earlier part of the judgment applied and the appellant fell to be dealt with objectively as an ordinary reasonable man subject to the effect of certain presumptions.

We think it would have been preferable if the learned Judge, when he spoke of "evidence to rebut" had made it more clear that he was dealing with the evidence in the abstract and thus have avoided the implication, which the word "rebut" may convey, that he was placing the onus on the appellant to rebut the presumption. If the learned Judge in fact meant that, it was a serious misdirection, as was held by the Court of Appeal for Eastern Africa in *Nyakite v.* R. [1959] E.A.

322 at 323 (similarly involving a question of intoxication) in relation to the words "... the burden upon the accused of rebutting the natural presumption of the intent to kill or do grievous harm". We are quite satisfied, however, that the learned Judge was under no such misapprehension as the following passages from his summing up to the assessors clearly indicate —

"2. Onus of Proof explained — always on prosecution and never on defence.

"Standard of proof required of prosecution is proof beyond reasonable doubt. Unless prosecution discharge that onus the accused is entitled to the benefit of any doubt that is left in minds of Assessors. Accused never has to prove his innocence. Prosecution must always prove guilt."

. . . . . .

"Assuming that the accused inflicted the wounds on the deceased and that these wounds caused his death, have you been satisfied, by the prosecution, beyond all reasonable doubt that when the accused inflicted them, he intended either —

(a) to kill the deceased

or

(b) to cause grievous harm to the deceased?"

. . . . . .

"What we have to consider gentlemen is whether in fact he was in such a state of intoxication that he was incapable of forming the intention necessary to constitute the offence of murder. If you are left in any reasonable doubt on this issue then the prosecution has failed to prove its case beyond reasonable doubt and the benefit of that doubt must be given to the accused."

We are satisfied therefore, that when the learned Judge said "that there is insufficient evidence to rebut the presumption" he was merely indicating that the evidence as a whole did not leave him in reasonable doubt, and that he was not placing an onus on the appellant.

We would add that we have not found it necessary to embark upon any consideration of Smith's case generally in relation to the question whether, or to what extent, a presumption of the kind therein referred to is rebuttable. The issues in the present case were comparatively simple. There was ample evidence of intent in the ordinary way and the only evidence to set against it (whether such evidence should properly be regarded as tending to rebut a presumption or to prevent a presumption arising seems in the circumstances immaterial) was that relating to drunkenness. It was only necessary to say that the onus remained with the Crown and that if, upon consideration of the whole of the evidence, the assessors were either satisfied that the appellant was incapable of forming the requisite intention, or were left in reasonable doubt whether he was so capable or not, the appellant was entitled to be convicted of manslaughter only. As we have indicated, we are satisfied that this was in fact the approach of the learned trial Judge, and the grounds of appeal now under discussion cannot be sustained.

For the reasons given the appeal is dismissed.

Appeal Dismissed.