A

ATTORNEY-GENERAL

v.

SHIU RATTAN

[SUPREME COURT, 1970 (Moti Tikaram P.J.), 1st May, 19th June]

B

Appellate Jurisdiction

Criminal law—onus of proof—carrying offensive weapon—sheath knife neither made nor adapted for causing injury to the person—onus on prosecution to show intended by accused for causing such injury—knife intended for self-defence—reasonable excuse—Penal Code (*Cap.* 11) *s.* 89 (1) (2) (3)—*Criminal Procedure Code* (*Cap.* 14) *s.* 201.

C

Criminal law—self-defence—carrying offensive weapon—reasonable excuse—Penal Code (*Cap.* 11) *s.* 89.

In the Magistrate's Court the respondent was acquitted of carrying an offensive weapon without lawful authority or reasonable excuse. When searched he was found to be carrying a concealed sheath knife; his explanation to the police and in evidence was that he was carrying it for self defence and this received some support from the evidence for the prosecution. It was held by the Magistrate that the sheath knife was of such a nature as not to be an offensive weapon *per se* and that the prosecution had failed to establish that the respondent was carrying it with the intention of causing injury to any person. On appeal by the Attorney-General—

D

Held: 1. The particular sheath knife was neither made nor adapted for causing injury to the person.

E

2. The onus was therefore upon the prosecution to establish that the article in question was intended by the respondent to be used in causing injury to the person.

3. Self-defence is a right recognised by law and there was no ground for assuming that the respondent actually intended to cause injury to the person of another.

F

4. Even on the basis that the prosecution evidence was sufficient to place an onus of showing reasonable excuse upon the respondent it had been discharged, as it could not be held that legitimate self-defence could not constitute reasonable excuse.

Cases referred to:

Woodward v. Koessler [1958] 3 All E.R. 557; [1958] 1 W.L.R. 1255.

R. v. Petrie [1961] 1 All E.R. 466; [1961] 1 W.L.R. 358.

G

Appeal by the Attorney-General against an acquittal in the Magistrate's Court.

D. I. Jones for the appellant.

M. S. Sahu Khan for the respondent.

The facts sufficiently appear from the judgment.

MOTI TIKARAM P.J.: [19th June, 1970]—

H

This is an appeal by the Attorney-General against the acquittal of the respondent by the Magistrate of the First Class sitting at Nadi. The respondent had been charged as follows:—

"Statement of Offence

Carrying Offensive weapon wihout lawful Authority or reasonable excuse: Contrary to Section 89 (1) of the Penal Code, Chapter 11.

Particulars of Offence

Shiu Rattan s/o Barsati:

On the 23rd day of September 1969 at Koroivalu Avenue, Nadi in the Western Division, without lawful authority or reasonable excuse, had in his possession an offensive weapon, namely, a dagger, in a public place, namely Nadi Court House."

The Attorney-General has appealed against the Order of acquittal upon the following grounds:—

" (*a*) That the Trial Magistrate erred in law and in fact the ruling that the said dagger was not an offensive weapon *per se*, within the definition set out in section 89 subsection (3) of the Penal Code, Chapter 11.

(*b*) That by the aforesaid mentioned premise the Trial Magistrate erred in law in failing to consider that the onus of proving lawful authority or reasonable excuse should lie upon the said *Shiu Rattan s/o Barsati.*

Alternatively

(*c*) That the expressed intention by the respondent to make use of the said dagger by way of self defence was evidence of the intention of the said *Shiu Rattan s/o Barsati* to cause injury with the said dagger, thereby bringing the said dagger within the definition of "offensive weapon" set out in section 89 subsection (3) of the Penal Code, Chapter 11.

(*d*) That the Trial Magistrate erred in law and fact in acquitting the said *Shiu Rattan s/o Barsati.*"

Paragraph 2 of the learned Attorney-General's petition of appeal states as follows:—

" That after the close of the prosecution's case the Trial Magistrate ruled that the aforesaid dagger, otherwise referred to as sheath knife was not an offensive weapon and thereupon acquitted the said Shiu Rattan s/o Barsati ".

A perusal of the trial record shows that after the conclusion of the prosecution's case section 201 of the Criminal Procedure Code was complied with and the accused elected to, and, in fact gave evidence on oath, whereafter the learned trial Magistrate heard the defence Counsel's address wherein he made certain submissions. This, therefore, does not appear to be a case of a ruling of no case to answer at the conclusion of the prosecution's case as is implied by paragraph 2 of the Petition.

On the morning of the 23rd September, 1969 the respondent Shiu Rattan went to the Nadi Magistrate's Court in connection with an arson case. Police suspected he was carrying a dagger and so kept a watch on him. At lunch time when the court adjourned a police officer searched the accused and found on him what he described as a " dagger " in a leather sheath. This instrument was concealed at the trouser hips under the shirt. The respondent told the police that he had been attacked by some Fijians and he was carrying it for self-defence. In his evidence the respondent said as follows:—

" I have been charged attempted arson. P.I. on at Nadi Court. On 23rd September, 1969 I had sheath knife with me EX " A ". I had with me on that day just to tell the Magistrate that I brought knife to produce to Court.

I am an unwell man. Complainant arson case had asked some Fijians at market. Complainant also had made threats against me. I have had the knife for a year. I have carried it since I was assaulted by the Fijians. I had carried it for a week. I reported the Complainant's threats to me, also Fijians' assault. I brought to show the Court. I was frightened that is why I had to carry it. I propose to use again in Supreme Court for same purpose.

I was wearing trousers as I have now. They have side pockets. I had it under my shirt as I did not want anyone to see it.

I was here at 9.00 a.m. The police got it at 1 p.m. I hadn't.

The Fijians had frightened me about 1 or 2 months before. I made the complaint to Constable at C.I.D. office, Nadi. "

Furthermore the arresting officer said in evidence as follows:—

" I know there is serious trouble between the accused and the complainant in the arson charge. There is a complaint that complainant's party used gun against the accused's brother. This was after the events."

The learned Trial Magistrate in his Judgment came to the conclusion that the sheath knife (Exhibit " A ") was not a dagger nor an instrument adapted for the purpose of causing injury to the person. In short he was of the view that the instrument in question was not *per se* an offensive weapon. He then considered the question whether or not there was an intention on the part of the accused to cause an injury to the person. He came to the conclusion that there was nothing in the case to show that the accused had the knife with him for any unlawful purpose. He held that provided it is not an offensive weapon *per se* a person may carry a weapon or article capable of use as a weapon and ruled that the police had failed to establish that the accused had the sheath knife with him with the intention of causing injury to the person of another. Consequently he did not find it necessary to consider the question of reasonable excuse.

Section 89 of the Penal Code, Cap. 11 reads as follows:—

" 89 (1) Any person who without lawful authority or reasonable excuse, the proof whereof shall lie on him, has with him in any public place any offensive weapon if guilty of a misdemeanour.

(2) Where any person is convicted of an offence under the last preceding subsection the court may make an order for the forfeiture or disposal of any weapon in respect of which the offence was committed.

(3) In this section " offensive weapon " means any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him."

In my opinion on a charge under section 89 of the Penal Code the onus of proving lawful authority or reasonable excuse shifts to the accused person in any recurrence of the following three sets of circumstances:—

(*a*) where the prosecution has proved that the article found on the accused person in a public place was *per se* an offensive weapon, for example a dagger, a revolver or a knuckleduster, which are weapons specifically made for the purpose of causing injury to the person;

(*b*) where the prosecution has proved that the article found in the possession of the accused person in a public place although not originally made for causing injury to the person was adapted for such use, for example a bicycle chain or a broken bottle;

(*c*) where the prosecution has proved that the article found in the possession of the accused in a public place though not made or adapted for use for causing injury to the person but was nevertheless intended by the accused for causing injury to the person, for example a razor or a knife.

The first matter which requires consideration in this case is whether or not the article in question was made or adapted for causing injury to the person. I agree with the learned Trial Magistrate's finding that the knife in question is not a dagger but only an ordinary sheath knife. I have had the advantage of examining the knife in question in the light of definition of a dagger given by both the Oxford English Dictionary and the Webster's (a 20th Century) Dictionary. In the first a dagger is described as a short, straight edged and pointed weapon used for thrusting and stabbing. Webster's Dictionary says that a dagger is a short weapon with a sharp point used for stabbing; a poniard. Pictorial illustrations given in Webster's Dictionary conform to the verbal descriptions in both the English and the American dictionaries. The most that can be said about Exhibit " A " is that it somewhat resembles a dagger. However the blade has a sharp edge on one side only and it is obvious that the primary purpose for which it was constructed was for use as an outdoor knife such as those used by Boy Scouts for sharpening, cutting etc. It is certainly not a knife constructed for stabbing nor can it be described as a sharp pointed weapon used for stabbing. Except for its peculiar handle and the sheath, it is not unlike a domestic knife of the type usually employed in the kitchen. Since Exhibit " A " was neither made nor adapted for causing injury to the person the learned trial Magistrate had rightly held that it was obligatory for the prosecution to establish that the article in question was intended by the accused to be used for causing injury to the person.

The learned trial Magistrate came to the conclusion that the prosecution had failed to prove this. I cannot disagree with the learned Magistrate's conclusion on the basis of the evidence before him. Before this Court the learned Counsel for the Crown relied heavily on the submission that there was evidence from the accused himself to show that he intended to use the knife to cause injury and he cited the case of *Woodward v. Koessler* [1958] 3 All E.R. 557. In this case whilst the accused a youth was trying to break into a cinema along with others by forcing open a door with a sheath knife the caretaker came along. The accused went up to the caretaker, holding the knife in a threatening attitude as if to strike with it, and said "Can you see this ?". He was charged that without lawful authority or reasonable excuse he had with him in a public place an offensive weapon, namely a sheath knife. Taking a very narrow view of the words ' causes injury ' the Justice accepted his statement that he did not intend to use the knife to cause injury and thus came to the conclusion that the accused was not carrying an offensive weapon. They therefore acquitted the accused. On appeal by way of case stated, the Queen's Bench Division proceeded on the basis that the sheath knife was not *per se* an offensive weapon but nevertheless held that the accused was guilty because at the time when he went up to the caretaker his conduct showed that he had intended to cause injury to the person of the caretaker. Lord Goddard C.J. was of the view that frightening or intimidating a person in such circumstances with such a weapon amounts to causing injury.

The English definition of an offensive weapon is identical with the definition in Fiji. In *Woodward v. Koessler* even if the accused did not actually cause injury he at least, manifested an intention to use the knife against the person of the caretaker; and from his conduct as a whole and his remarks generally it is equally clear that what he did with the knife was unlawful. In the appeal before me there is no evidence that the accused made use of the knife in any way or that he attempted to do so nor is there any ground for assuming that he actually intended

to cause injury to the person of another. However it is argued that what else did he intend to do even if he was to use the knife in self-defence other than to cause injury to persons. Self-defence is a right recognized by law. In certain circumstances the law even excuses homicide if it is committed in self-defence. In *Rex v. Petrie* [1961] 1 All E.R. 466 the Court of Criminal Appeal in the course of its judgment at 468 said as follows:— A

> "It is absolutely essential in summing-up to the jury in a case of this sort not to muddle up the definition of ' Offensive weapon ' because, if the article in question is an offensive weapon, *per se*, once possession in a public place is proved, the onus shifts to the defence to prove on a balance of probability that there was lawful authority or reasonable excuse for carrying the weapon. If the accused fails to discharge this onus the jury must convict him. On the other hand, if the article is something like a sand-bag or a razor, the onus is on the prosecution to show that it was carried with the intention of using it to injure. The onus remains on the prosecution throughout, and if at the end of the day the jury are left in doubt about the intent of the accused, he is entitled to be acquitted." B C

If I were to examine this case on the basis that the prosecution led sufficient evidence to hold that the accused intended to cause injury to the person of someone, even then on a balance of probability it would appear that the defendant had discharged the onus and was, therefore, entitled to an acquittal. Although the trial Magistrate did not consider that the accused had any onus he was nevertheless impressed by his explanation. Furthermore there was something even in the prosecution evidence to support this excuse of self-defence. I am unable to hold that legitimate self-defence cannot constitute reasonable excuse. Of course magistrates ought not to accept fanciful and flimsy assertions of self-defence as a basis of acquitting an accused person once they come to the conclusion that the weapon in question was an offensive weapon within the meaning of the Ordinance. D E

In conclusion, I therefore hold that the learned Magistrate did not err in ruling that Exhibit " A " was not an offensive weapon *per se* and consequently the onus of proving lawful authority or reasonable excuse did not shift to the accused on that basis. Alternatively I am unable with respect to agree with the learned Attorney-General that on the evidence as it stood the Magistrate must of necessity have come to the conclusion that the respondent intended to cause injury to the person of another. F

Consequently I uphold the acquittal of the respondent and dismiss this appeal.

Appeal dismissed.