A

TEVITA NOABA

v.

REGINAM

B

[COURT OF APPEAL, 1972 (Gould V.P., Marsack J.A., Spring J.A.), 19th, 30th October]

Criminal Jurisdiction

C *Criminal law—homicide—defence of insanity in trial for murder—meaning of "incapable of understanding what he is doing"—Penal Code (Cap. 11) s.12.*

Criminal law—insanity—defence of in trial for murder—meaning of "incapable of understanding what he is doing"—Penal Code (Cap. 11) s.12.

When a defence of insanity is being considered the words "through any disease affecting his mind incapable of understanding what he is
D doing", in section 12 of the Penal Code are to be construed in their ordinary sense unless there are strong reasons for doing otherwise.

Case referred to :

R. v. Rivett (1950) 34 Cr. App. R. 87.

E Appeal from a conviction of murder in the Supreme Court.

K. C. Ramrakha for the appellant.

R. W. Davies for the respondent.

F 30th October 1972

Judgment of the Court (read by Marsack J.A.) :

This is an appeal against conviction for murder entered in the Supreme Court at Lautoka on the 28th August, 1972. The trial took place before
G a judge and three assessors. The assessors expressed the unanimous opinion that the appellant was guilty of murder. The learned trial Judge accepted their opinion, entered a conviction accordingly and imposed the mandatory sentence of imprisonment for life.

For the determination of the appeal it is not necessary to set out the
H facts concerning the actual commission of the offence itself. The grounds of appeal put forward by the appellant, and argued before us, could be summarised thus: That the conviction for murder could not be supported having regard to the evidence; and that the correct verdict would have been one of not guilty on the ground of insanity.

Apart from the admitted fact that the appellant had been a mental patient at St. Giles' hospital, Suva from the 3rd May, 1959, till the 15th August, 1959, when according to the hospital records the appellant had been suffering from paranoid schizophrenia, the only evidence called at the trial as to the appellant's mental state at the time of the alleged offence, was that of Dr. Price who is a highly qualified doctor, consultant psychiatrist to the Fiji Medical Department and Medical Superintendent of St. Giles' hospital in Suva. Dr. Price examined the appellant on the 15th of March, 1972, between seven and eight weeks after the date on which he was alleged to have killed the deceased Peter Chang. His examination lasted rather more than an hour and a quarter. He deposed that in his opinion the appellant was then suffering from the same complaint, namely paranoid schizophrenia. The doctor was then examined and cross-examined with reference to the terms of section 12 of the Penal Code, the relevant portion of which reads as follows:

> "A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission."

Relevant extracts from Dr. Price's evidence are quoted here:

> "It is true to say that he knew what he was doing. If he knifed somebody he knew he was knifing a person and not a slice of butter. He knew what he was doing. To say he understood it, is more difficult. I take it the word 'understood' to mean realising the significance more than just knowing."

> "Q. Would he know what he was doing then was wrong, that he ought not to do the act?

> A. Yes, he would know it was wrong, yes."

> "I would say that his judgment would be radically disturbed . . . . Severely impaired would be a better word."

> "What I am saying I think the disease affected his mind in such a way whereby he was incapable of understanding what he was doing but I would not say that he did not know that he ought not to do the act. It says here — 'incapable of understanding what he is doing, or of knowing that he ought not to do the act . . . .' It is the first of the two I think in fact applied in this case. The second I think was alright. He did know that he ought not to do the act. The first of the two I would regard as being applicable here, not the second." "Perhaps, if we can go back to what I said before by understanding, I am meaning, realising the significance by that his appreciation of the significance of what he was doing, that he was in fact wounding another human being for really not very good reason, this, in fact, was caused by the disease from which he was suffering. To that extent, his understanding was impaired. This is the gist of what I am trying to put to you."

"Q. From your examination of this man, Doctor, would you say that he was suffering with a disease of the mind at the time of this alleged crime?

A. Yes, I would.

Q. Now, would you say whether he was capable of understanding what he was doing at the time?

A. I do not think he was capable of understanding in a normal fashion."

In Mr. Ramrakha's submission section 12 of the Penal Code must be read to mean that a person is not criminally responsible if either one of two conditions is present: If either he is, through mental disease incapable of understanding what he is doing, or if for the same reason he does know that what he was doing was wrong. The evidence of Dr. Price makes it clear that in his opinion the appellant knew that the act he committed was wrong; but Mr. Ramrakha contends that the effect of the doctor's evidence is to establish the fact that he was incapable of understanding what he was doing, a condition which would come within the first part of section 12.

The doctor himself obviously found difficulty in answering the question as to the appellant's understanding. If "understanding" is to be taken as meaning a full appreciation of the significance of what he was doing, then in the doctor's opinion the appellant did not have that understanding.

We are in agreement with Mr. Ramrakha's submission that the two parts of section 12 as quoted are disjunctive and that under it an accused person cannot be held responsible for an act if he is incapable of understanding what he is doing. The difficulty facing the learned trial Judge and the assessors—a difficulty which was felt also by Dr. Price — was to determine exactly what is meant by the word "understanding" as it is used in section 12 of the Penal Code.

Although it may be considered that the learned trial Judge was, in his summing up, not entirely fair to Dr. Price when he says —

"You may feel that there is sense of complete unreality in the evidence of Dr. Price. In one breath, he seems to be saying that the accused was incapable of understanding what he was doing and by the next that he ought not to do it as against the law."

yet we are of opinion that he directed them correctly in saying that the Court should construe the words in their ordinary sense unless there are strong reasons to do otherwise. It is certainly true that in defining the word "understanding" as a "full appreciation of the significance of his actions" the doctor could be said to be giving a technical meaning to a word which in its ordinary everyday use would have a much broader connotation.

In the result the learned trial Judge and the assessors unanimously found that the mental state of the appellant at the time of the crime was was not such as to relieve him of criminal responsibility under the provisions of section 12. The onus of proof of insanity was correctly explained to the assessors by the learned trial Judge as being on the defence, the standard of proof required being a balance of probabilities. A

In these circumstances we can find no ground for interfering with the judgment of the Court below. We would respectfully adopt the principle clearly set out in the judgment of Goddard L.C.J. in *J. F. Rivett*, 34 Cr. App. R. 87 at page 94 : B

> "The second matter for emphasis is that it is for the jury and not for medical men of whatever eminence to determine the issue. Unless and until Parliament ordains that this question is to be determined by a panel of medical men, it is to a jury, after a proper direction by a Judge, that by the law of this country the decision is to be entrusted. This Court has said over and over again that it will not usurp the functions of the jury . . ." C

In this case, as has been explained, the learned trial Judge and the assessors unanimously found that insanity had not been proved. The determination of that question lay squarely within their province; and as it cannot be said that the assessors were wrongly directed, or that on the evidence that conclusion was not open to them, we can find no reason to interfere with their finding. D

No other grounds were submitted upon which this Court would be justified in upsetting a verdict based upon the unanimous opinion of the learned trial Judge and the assessors. Accordingly, for the reasons given, the appeal cannot succeed and is dismissed. E

Appeal dismissed.