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IN THE SUPREME COURT OF FIJI
Criminal Jurisdiction
Criminal Case No. 43 of 1984.

R E G I N A

v.

MOHAMMED SHAHEEM

J U D G M E N T

Mr. G. Leung for the Prosecution.

Mr. N. Dean for the Accused.

Case referred to : (1) R. v. Somers (1963) 3 All E.R. 808.

(Orally)

The summary of the evidence and the directions on the law contained in the summing-up statutorily applies to this judgment.

The accused's statement to the police and his evidence in court are in conflict. He did not impress me as a witness. His statement was made when events were fresher in his mind and there was less opportunity to concoct a story. I am satisfied that such statement is nearer the whole truth than his evidence. On that statement he clearly had an opportunity to escape or try to escape from the change room and I am satisfied that it was completely unnecessary and unreasonable to resort to the use of a knife at all.

Further, even if it was the case, and I am satisfied it was not, that the accused was held down by Timoci Gucake by the neck, I am satisfied that such situation was in no way so desperate that the use of a knife was necessary and reasonable. As I said in the summing-up, the accused was not without physical resource and could and should have made all physical efforts to escape, if not in the least to call out for help, which was in view of the known presence of Constable Seru, not to mention the staff in the hotel, forthcoming. Further again, I am satisfied that the continued assault on Timoci Gucake, when he was obviously no more than protecting himself, was completely unnecessary and unreasonable.

As regards the continued assault, there is the defence of temporary legal insanity. The Consultant Psychiatrist, Dr. Iyer opined that the accused possessed his cognitive functions at the relevant time, and could differentiate between right and wrong. In effect, Dr. Iyer's evidence indicates that if the accused had had an epileptic fit, then he would have become unconscious and fallen down and been unable to assault any one in the second stage of such fit. Had he attacked anyone in the first stage thereof, he would nonetheless at that stage be responsible for his actions.

The learned Counsel for the defence Mr. Dean has placed a text book before me entitled "Mental Abnormality And The Law" by Wily & Stallworthy (1962). The learned authors therein indicate at pp 156/160 that offences have been committed by epileptics in a "perverted state of consciousness", that is, without their necessarily falling down and becoming completely unconscious, save that the epileptics were not aware of their actions meanwhile, and had no recollection of such thereafter. Such cases are apparently outside the normal run of the cases of grand mal epilepsy, which type the accused suffers from. Such cases no doubt constitute psychiatric complications of the disease, and might well provide a defence to the present offence charged, under the law of other countries. The defences of, for example, epileptic automatism and diminished responsibility are not available in Fiji however.

Furtherwhile a text book may be made the basis of an expert's sworn opinion evidence (see R. v. Somers (1) at pp 810/811) the text book itself cannot amount to evidence where, as in this case, it was not put in evidence or even made the basis of examination of the learned Consultant Psychiatrist. As I see it, the only evidence before the court is the opinion of the Consultant Psychiatrist in the matter.

In any event, even the cases cited in the particular text book reveal a complete loss of memory and control during the relevant period. I am satisfied that such is not the case here. There is the accused's evidence; there is also his statement to the police. Even his evidence in places indicates that he realized that he was striking out at Timoci Gucake. His statement to the police indicates this all the more. As I see it, his statement in particular is that of a person who was so angry that he was reckless as to the number and direction of the blows that he aimed, but not that of a person who was completely unaware that he was stabbing another with a lethal weapon.

I am not satisfied that the accused probably did not know what he was doing when he continued to strike Timoci Gucake, nor that he probably did not know it was wrong to do what he did. In all the circumstances I am satisfied beyond reasonable doubt that the accused wounded Timoci Gucake, that he had no lawful excuse therefor and that the only reasonable inference arising from the use of the particular knife in this case, is that he intended grievous harm. I find myself in agreement with the majority opinion of the Assessors. I find the accused guilty as charged and I convict him accordingly.

Delivered in Open Court this 27th day of May, 1985.



B. P. CULLINAN

JUDGE