[COURT OF CRIMINAL APPEAL]

1971 *Present :* **H. N. G. Fernando, C.J. (President), Sirimane, J., and Weeramantry, J.**

WEERAPPAN, Appellant, *and* THE QUEEN, Respondent

C. C. A. NOS. 35–36 OF 1971, WITH APPLICATIONS NOS. 48–49

S. C. 325/70—M. C. Badulla, 31710

Charge of murder—Statement of deceased person after he was injured—Evidential value thereof—Maxim that a rational man must be presumed to intend the natural and probable consequences of his acts—Rebuttable presumption—Evidence Ordinance, s. 114—Evidence that only one stab was inflicted on the deceased—Inference of absence of murderous intention—Misdirection.

(i) Where, in a prosecution for murder, a witness testifies that the deceased person, after he had been injured, stated that the accused had injured him, it would be a non-direction amounting to misdirection if the trial Judge omits to direct the Jury that a statement of a deceased person must be considered with care because the person himself is not before the Court, is not under oath, and cannot be cross-examined.

(ii) The maxim that a rational man must be presumed to intend the natural and probable consequences of his acts is not a rule of law giving rise to a presumption of law which leaves the jury no choice in the matter. It is nothing more than a presumption of fact of the class enumerated in section 114 of the Evidence Ordinance, which the Jury may or may not draw.

(iii) Where a person is charged with murder, evidence showing that only one stab was inflicted by him on the deceased may indicate the absence of murderous intention. In such a case, it is the duty of the Judge to give appropriate direction to the Jury.

APPEALS against two convictions at a trial before the Supreme Court.

E. R. S. R. Coomaraswamy, with *M. A. Jesuratnam, C. Chakradaran, T. Joganathan, P. H. Kurukulasooriya, N. J. Vilcassim* and *L. Jayetileke* (assigned), for the accused-appellant.

N. Tittawella, Senior Crown Counsel, for the Crown.

Cur. adv. vult.

July 16, 1971. H. N. G. FERNANDO, C.J.—

The two accused in this case, who are a son (1st accused) and his father (2nd accused), have appealed against their convictions on the charge of the murder of one Ramalingam.

The case for the prosecution was that Ramalingam was stabbed with a long knife at the top of a flight of steps leading away from the premises of a kovil. The evidence was that a large crowd of people had attended a ceremony in the kovil ; the 2nd accused had there abused one Mariae, the mother of Ramalingam, apparently because Mariae had trampled

the 2nd accused's foot. Ramalingam, after hearing this abuse, said that he was going home, and ascended the flight of steps. The 2nd accused, and after him the 1st accused, followed Ramalingam; when Ramalingam had reached the top of the flight, the 2nd accused held Ramalingam's hands from behind, and thereupon the 1st accused stabbed Ramalingam on his chest and inflicted an injury which cut the cartilage of two ribs, and cut also the wall of the pericardium and the right ventricle. The injury was necessarily fatal.

Two of the prosecution witnesses testified that Ramalingam, after he had been stabbed, stated that these two accused had stabbed him. In referring to this testimony the learned Commissioner omitted to direct the Jury that a statement of a deceased person must be considered with care because the person himself is not before the Court, is not under oath, and cannot be cross-examined. We agree with Counsel for the accused that there was thus non-direction amounting to misdirection as to this testimony. But we are satisfied that no miscarriage of justice occurred in this case on that account.

The case for the prosecution depended very largely on the evidence of a young woman Sengodi Amma, who had herself been standing near the top of the flight of steps. We see no reason for an opinion that the Jury reached an unreasonable conclusion in accepting her evidence, from which it was clear that the 1st accused stabbed Ramalingam after the 2nd accused had held his hands in order to facilitate the act of stabbing. The stabbing undoubtedly took place in pursuance of a common intention.

As to the possible verdicts which might be returned upon that conclusion, the learned Commissioner gave the usual directions as to the difference between a "murderous intention", and knowledge of the likelihood of causing death. But towards the end of the summing-up the learned Commissioner gave the following direction:—

> "A person does not declare why he is doing a thing. His intention is silent and can be presumed or gathered only from his acts. But, a person is presumed to intend the ordinary and foreseeable consequences of his acts. In law that is presumed."

A direction in these terms is undoubtedly incorrect, the law on the question having been stated in the judgment of this Court in the case of *R. v. Wijedasa Perera* [1]:—

> "It seems to us that these authorities make it plain that the maxim that a rational man must be presumed to intend the natural and probable consequences of his acts is not a rule of law giving rise to a presumption of law which leaves the jury no choice in the matter. It is nothing more than a presumption of fact of the class enumerated in section 114 of the Evidence Ordinance, which the Jury may or may not draw."

[1] *(1950) 51 N. L. R. 29.*

In the case just cited, the trial Judge had at one stage directed the Jury that the law presumes that a person did intend the natural and inevitable consequences of his act. Nevertheless because of other directions in the summing-up concerning the consideration by the Jury of this same question of intention, the majority of the Bench was of opinion that when the summing-up was read as a whole there had been in effect no misdirection. Moreover, in that case the Bench was unanimously of opinion that even if there had been a misdirection, the proviso to section 5 (1) of the Court of Criminal Appeal Ordinance should be applied. In the instant case there was not in the summing-up any direction which could have compensated for the prejudice caused to the defence by the misdirection to which we have referred.

Moreover, although only one stab was inflicted on Ramalingam, the learned Commissioner did not advise the Jury that these circumstances might indicate the absence of the murderous intention. If the Jury had been properly directed on this question, a verdict of culpable homicide not amounting to murder may well have been returned.

For these reasons we set aside the verdict and sentences of death, and substitute a conviction of each accused for the offence of culpable homicide not amounting to murder. We sentence each of the accused to a term of 7 years rigorous imprisonment.

Verdict altered.