

SOKWESOKWE v THE PEOPLE (1966) ZR 116 (HC)

HIGH COURT

BLAGDEN CJ, DOYLE JA, RAMSAY J

15th NOVEMBER 1966

Flynote and Headnote

[1] Criminal law - Provocation - Physical presence essential.

The physical, and not constructive, presence of an accused before the person alleged to have done the provoking is an essential element of the defence of provocation sufficient to reduce murder to manslaughter.

Statute construed:

Penal Code (1965, Cap. 6), ss. 182, 183.

Judgment

By the court: This appellant appeals against his conviction for murdering Timothy Jereman on the 8th May, 1966, in Chief Mukubwe's Area in the Broken Hill District. The learned trial judge summarised the facts in his judgment in these words:

' The undisputed basic facts of this tragic case are as follows:

The deceased stabbed his wife in the abdomen when he caught her about to commit adultery. The accused heard this, went to see the wounded woman, who was his sister, and then went and stabbed the deceased in the right lower abdomen. The woman died the same day, and the deceased died on the 8th May, the cause of his death being haemorrhage and peritonitis caused by his wounds.'

The learned trial judge then went on to make specific findings. He found the accused's sister was stabbed by the deceased at 8 a.m.; that the appellant having heard about the stabbing walked for some five minutes to the headman's house where he asked where his sister was; that he there saw the deceased who told him that he had stabbed her in the arm; that the appellant then went to see his sister and found her lying unconscious with a severe abdominal wound; that he then returned within a few minutes to the headman's house where he said to the deceased: 'You have bluffed me by saying you stabbed her in the arm when in fact you have killed her', and that he then stabbed and killed him.

[1] The defence raised by the appellant was mainly one of provocation, which has also been raised by Mr Coovadia for the appellant in argument before us. Provocation sufficient to reduce a crime of homicide from murder to manslaughter is defined in ss.182 and 183 of the Penal Code (Cap. 6). It is conceded in this case that the appellant received no direct provocation from the deceased. The passage which Mr Coovadia relies on in s.183 of the Penal Code is expressed in these words:

' The term provocation means and includes . . . any wrongful act or insult of such a nature as to be likely, when done or offered . . . in the presence of an ordinary person to another person . . . to whom he stands in a . . . fraternal relation . . . to

1966 ZR p117

BY THE COURT

deprive him of the power of self - control and to induce him to assault the person by whom the act or insult is done or offered.'

In this case Mr Coovadia is arguing that the stabbing of the appellant's sister to whom he stood in a fraternal relation was a wrongful act or insult of a nature which would cause an ordinary person to lose control of himself. Mr Coovadia had to concede that this act was not done in the appellant's presence; but he submitted, there is such a thing as constructive presence. What he meant by that, apparently, was that near presence, either in a place or in time could constitute 'presence' within the meaning of s. 183. It is clear, however, that 'near presence' is not the sort of presence envisaged by s. 183 of the Penal Code. What is required is actual physical presence.

In our view the learned trial judge here quite rightly rejected the defence of provocation, and without that this homicide is clearly murder.

Appeal dismissed

1966 ZR p118