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IN THE COURT OF APPEAL OF NEW ZEALAND C.A. 195/86

THE QUEEN

v.

IVAN ALEXANDER MUNRO

Coram: Cooke P.
Somers J.
Hillyer J.

Hearing: 2 December 1986

Counsel: J.R. Billington for Appellant
Miss Kristy McDonald for Crown

Judgment: 2 December 1986

JUDGMENT OF THE COURT DELIVERED BY COOKE P.

This is an appeal against a conviction for attempted murder. The appellant was friendly with the young woman who was his victim and her boyfriend. On the evening of 29 April 1986 they called to visit him at his flat in Blenheim. When they came in he locked the door after them. A knife was found later under a cushion in the living room, but this was not the one he used. After a time he asked the girl to go into the kitchen to make some coffee. She complied with his request and came out of the kitchen to make some enquiry regarding the coffee-making. Then he went into the kitchen with her, shut the door behind them, directed her attention to a upper shelf where there was some milk powder, took a knife from a drawer and stabbed her five times. The wounds were described in evidence by Mr Inder, a surgeon who attended her on her admission to hospital, as follows:

> When admitted she was very pale and shocked and bleeding from multiple stab wounds. The stab wounds, first wound was in centre of her lower lip, the second wound in inner side of her arm near biceps muscle and this stab wound passed right through the arm behind biceps muscle emerging on other side, this wound clearly had divided main artery to the arm, the bracheal artery and hand and forearm were clearly deprived of blood. The third wound entered the left chest cavity just behind left breast and this wound was directed downwards and medially through the stab wound ... the third wound was behind left breast about inch long, the fourth wound was in the abdomen underneath the right ribs and the fifth wound was directly posterior to that alongside the spine, looked as if this had been penetrating wound from front to back. As result of those wounds she had an unrecordable blood pressure, she was very pale, and clearly needed urgent surgery.

Obviously she is fortunate to be alive.

The evidence at the trial indicated that the accused had been in a state of deep depression arising partly from a motor accident in which he had been injured and partly from the absence of his wife. There was also evidence of some smoking of cannabis by him during the day leading up to the stabbing but not of more than a fairly modest amount of cannabis. There was some evidence of what witnesses referred to as delusions, to which we will return shortly.

The primary defence at the trial and indeed what the Judge understood to be the only defence was insanity. Psychiatric witnesses testified to the opinion that the

accused was suffering from a disease of the mind or psychosis brought on temporarily by cannabis. It was said that he did not know that what he was doing was wrong. While there was quite substantial expert evidence on those lines counsel for the appellant has accepted in this Court, and rightly so, that the evidence was not so strong that the jury were bound to accept that the defence of insanity had been made out. Further counsel has accepted, and again rightly, that it could not successfully be argued that the verdict of guilty of attempted murder was unreasonable or could not be supported having regard to the evidence. It was a verdict open to the jury having regard to the evidence as a whole.

The issue on the appeal has reduced to whether the summing up was correct or sufficient in the light in particular of a question asked by the jury after they had been in retirement for some hours. In the main summing up the Judge gave correct directions regarding the intent that the prosecution had to prove for a conviction of attempted murder or on the alternative count of intentionally causing grievous bodily harm, but he did in effect indicate to the jury that the defence was insanity or nothing. The question asked by them at 3.50 p.m., after they had retired at 12.33 p.m., was worded with some degree of sophistication as follows:

> Is a person who is under the influence of a self-induced illegal drug considered to be responsible in law for his or her actions?

The Judge dealt with that question at some little length, saying inter alia:

> Ordinarily it is not a defence to a criminal charge in respect of things done while under that influence. If it has progressed to the extreme stage where they are simply acting like a robot, then it could become a defence because of the inability to formulate an intention of mind.

He then went on to say:

> Now that is a situation which really has not been canvassed in this case. Here the medical evidence was that there was a cannabis psychosis imposed on the disease of depression. It is entirely for you to say whether you accept that that is the situation. If you were to conclude, upon the evidence there has been, that the actions of the accused were referable only to the consumption of cannabis and not to any underlying disease, then that would not have amounted in law to a defence to this charge.

The argument as the appeal developed became concentrated on that passage. It is clear that in some circumstances such a passage would not be adequate to bring home to the jury the tests to be applied in accordance with R. v. Kamipeli [1975] 2 N.Z.L.R. 610, the leading case in this field in New Zealand. There may be a case where cannabis or some other drug or alcohol may have had an effect upon the mind of the accused resulting in his not forming an intention essential for proof of the crime charged. And

even if the evidence does not go to the length of establishing that such an effect did exist in fact, the evidence may still raise a reasonable possibility that such was the position. If that reasonable possibility remains, in the opinion of the jury, then the Crown has not discharged the onus of proof of intent that lies upon it. Had there been in the present case a sufficient evidential foundation along the lines just indicated, the direction given by the learned Judge would not have been adequate. In particular it would have failed to bring home that upon the establishment of such an evidential foundation the onus is on the Crown to prove the necessary intent despite the evidence of drug use or consumption. A bare reference to a defence would not be sufficient in our view to make the position as to onus clear to a jury.

The question then becomes whether in this case there was a sufficient evidential foundation to require the Judge to say more. Counsel have taken us through the relevant evidence. We have come to the conclusion that there was not a sufficient foundation. The so-called delusions under which the appellant may have been labouring are said to have consisted of or resulted in a belief that the two young people were in some way a threat to him. In a statement prepared by the accused personally the day after the stabbing, and in very different terms from the brief question and answer statement taken from him by the police on the preceding evening, he made a number of references to

'devils', 'angels', 'black and white tempting me here and there but nowhere', 'black angels I have to contend with' and so forth. In the course of the statement as to the actual stabbing he said:

> ... I saw the knife she looked at me and it just happen - I stab Geneen and then run out the back door thinking they wont get me that's the black angels ...

And the psychiatric evidence does provide some basis for the view that some such delusions may have been entertained by him. Be that as it may, it is plain on his own version in that statement, taking into account the background of the other evidence, that the accused intentionally stabbed the girl, possibly because he thought that she was some kind of threat to him. Nor is there anything in the psychiatric evidence to suggest that his intention was other than deliberately to stab her and inflict harm upon her. There is nothing to suggest that he was incapable of realising or failed to realise that the savage wounds that he was inflicting were likely to be so grave as to put her life in peril. Indeed the only conclusion reasonably open on the evidence is that he did attempt to murder her. On no view of the evidence is it reasonably possible that the drug taking meant that he was unable to form that intent or, more importantly, did not form that intent. On the contrary it was his intent, although the consumption of cannabis may have contributed to his forming it. One of the reasons why cannabis, like other drugs, can be dangerous is that it can lead a person to form an irrational intent.

Accordingly we are satisfied that the Judge was right to regard this case as one depending on whether or not the defence of insanity was made out. As already mentioned the jury were entitled to reject that defence. The Judge's directions on insanity were in no way deficient and have not been challenged. The appeal is therefore dismissed.

R B Cooke P.

Solicitors:

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