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IN THE SUPREME COURT OF FIJI (WESTERN DIVISION)
 AT LAUTOKA
 Criminal Jurisdiction
Criminal Case No. 16 of 1981

Between :

R E G I N A

v

MUKESH CHANDRA s/o Ambika Prasad

Mr. S. Maharaj, Counsel for the Prosecution
 Mr. S. Khan, Counsel for the Accused

J U D G M E N T

There is little point in going over ground covered in the summing up which I bear in mind.

The medical evidence tendered by an expert of considerable experience and high qualifications, namely Dr. Iyer shows that since the middle of 1978 the accused has been under Dr. Iyer's care in St. Gile's mental home on three separate occasions. Dr. Iyer diagnosed the mental disease known as schizophrenia on each occasion.

On the last occasion the accused was under Dr. Iyer's care for over two months ending on 18th September, 1980. As the learned psychiatrist pointed out the accused was discharged under continued medication. He had to take tablets to control the schizophrenic attacks.

According to Dr. Iyer a schizophrenic can have attacks of insanity lasting minutes, days or years and during an attack of insanity does not know what he is doing. The attack can be homicidal in nature.

It is probable that the accused's attacks could be reasonably well controlled if he took his tablets as he should. No evidence has been led to assist in deciding whether he was taking the prescribed medication.

As Dr. Iyer's report indicates it is not possible for him to state, some months following the killing, whether or not the accused acted during a schizophrenic attack. He did say in evidence that the accused's behaviour at the time was consistent with an attack of insanity.

The father of the accused Ambika Prasad, D.W.1, described how the accused had attacks of insanity. Although the accused was in St. Gile's on three occasions that was not because he had had only three attacks.

It was because of persistent insane behaviour or repeated insane attacks that the father Ambika Prasad was caused to take the accused to St. Giles.

I am satisfied that the accused for at least three years prior to his marriage suffered from the mental disease known as schizophrenia.

I accept the evidence of the expert on mental disease, Dr. Iyer, that during schizophrenic attacks the schizophrenic does not know what he is doing.

It follows then, that if the accused killed his wife during one of his attacks of insanity then it is probable that he was not aware of what he was doing. I say "when the accused killed his wife" because the assessors have found, and I concur, that he did kill her.

In my summing up, I stressed the evidence pointing towards the accused's mental state when he was seen shortly after the killing.

After killing her he did not run away or hide; he did not move the body, he did nothing whatever to try and mislead any person as to the cause of death or as to the accused's own presence at the scene at all times material to the moment of death.

He remained in the adjoining room lying on the floor wrapped in hessian. The deceased's mother and brother say he was wild eyed and shivering. He did not try to stop them from seeing the deceased or from touching her. At first he said she was in bed and had stomach ache. To my mind that was not simply a silly remark, it was an idiotic remark, to come from someone who had just knowingly killed her.

When the deceased's mother accused him of killing her daughter he did not react other than to say she was asleep. Again to my mind that was an idiotic remark because it was obvious to any sane mature person that *vigor mortis* was setting in.

When the mother and brother began to weep the accused joined them. Dr. Iyer says that is consistent with schizophrenic behaviour.

In his confession at 11.00 p.m. about 9 hours after the killing the accused gave a very detailed account of how he had killed his wife, and how after choking her he poured water into her mouth to see if she were dead. If I understand Dr. Iyer's evidence correctly that behaviour does not show that he was sane enough to understand consciously what he was doing. I take his evidence to mean that although during the attack the accused will go through the motions he would follow if he were sane he is not aware that he is doing them. Hours later there can be, and in the accused's case there was, a total recall of memory revealing the events to him perhaps a way in which one may recall a

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horrible dream.

He recalled why he killed his wife. It was because he alleged she was wasting dhal in the cooking of the lunch. She argued and he killed her. No sane person would even slap his wife for such a matter. Apart from that statement of the accused the killing was, as far as is apparent, quite motiveless.

The accused says in his confession that when he realised he had killed his wife he tried to hang himself and rope was found on his bed.

Once again, the psychiatrist says the suicide attempt, if there was one, was consisted with the pattern of a homicidal schizophrenic attack and not necessarily due to remorse for a killing of which he was aware.

In my opinion the accused was not guilty of murder, although I find that he killed his wife, because of insanity.

It is a great pity that the accused's parents did not inform the girl's parents that the accused was a schizophrenic. They did nothing to prevent the girl from living alone with their son whom they knew had frequent violent bouts of insanity.

They had a duty to ensure that the accused was not enabled to cause serious harm to any person. The Director of Public Prosecutions may consider whether he could take any steps under Chapter XXI of the Penal Code.

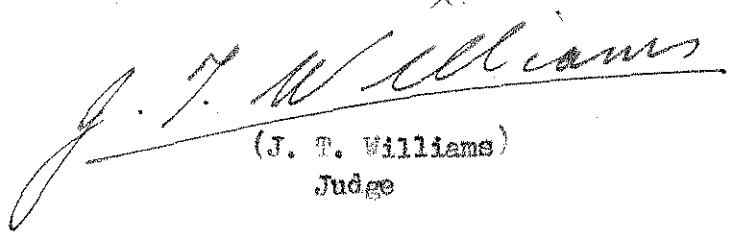
I have come across other cases in the West where imbeciles are born under unions which should have been avoided.

In this case the deceased was six months' pregnant with a possible lunatic in her womb. How many lunatics she could have given birth to one cannot say.

Our legislation should at once ensure that parents and persons in charge of mental defectives should take great care in ensuring that lunacy is not multiplied by rash and dangerous marriages such as this.

I ORDER THAT THE ACCUSED BE DETAINED AT ST. GILES MENTAL HOSPITAL until further order of the Governor-General to whom the facts of this case shall be reported.

LANTOKA,
26th March, 1982


(J. T. Williams)
Judge

Gentlemen you are judges of fact. I am judge of law and will direct you as to the law.

In this trial there has been no conflict as to the evidence on either side and cross-examination by both counsel has been directed towards clarifying certain aspects of the evidence rather than challenging the credibility of witnesses. It is the defence contention that the accused suffers from a mental disease called schizophrenia.

When you are assessing the evidence put out of your minds anything that you may have heard or read outside of the Court about the accused or his family in connection with these proceedings.

The charge against the accused is that on 14th August, 1981 at Madhuvani, Rakiraki, he murdered his wife, Kushma wati.

Murder is defined by section 199(1) of our Penal Code as follows:-

"199(1).- Any person who of malice aforethought causes the death of another by any wrongful act or omission is guilty of murder."

Malice aforethought has a special meaning which appears in section 202 of the Penal Code as follows :-

"Section 202.- Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:-

- (a) an intention to cause the death of or to do grievous harm to any person, whether such person is the person actually killed or not;
- (b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused."

Grievous harm means dangerous or serious harm which is likely to permanently injure health or cause permanent injury or serious injury to any organ membrane or sense. Malice aforethought has reference to what is going on in a person's mind when he doing a particular act and it means that he is aware of the fact that he is doing that specific act.

A person's intentions are in his mind and since we are not mind readers we cannot positively prove what was in an accused's mind when he performs a certain action. We may see what he did or prove what he did e.g. he throws a stone at a window but we do not know if he intended to break it.

If we know how big the stone and the window were and how big he is and how far away he was we can be sure whether he wanted to break it. If the stone breaks the window that is further proof of his intention. But even so he may not have intended to break it.

Intention to kill can be proved by conduct on the part of the accused which makes one sure that his actions were intended to kill or to cause grievous harm to the deceased. The onus is upon the prosecution to prove that intention and it is never upon the accused to negative it.

The onus of proving the accused's guilt lies upon the prosecution at every stage of the trial and the standard of proof is high. They have to prove the death of the woman; how she died; the cause of her death; the approximate date; and her identity. After considering all the evidence on both sides you must be sure of the accused's guilt before you convict him of murder. If you are not sure of his guilt you will acquit him.

Remember it is your independent opinions that are required and anything I say will be in the way of reminding you of the evidence and directing you as to the law.

The evidence led in this trial has been short and I will simply mention the salient features though I may spend some time on their possible significance.

The deceased woman ^{was} Kusma Wati and her body was found by her mother, Dhan Kumari, (P.W.6), at 4.00 p.m. on 10th August, 1981. She, Dhan Kumari, stated that the deceased had married the accused in March, 1981. The police removed the body to Lautoka hospital and it was accompanied by Shiu Nath (P.W.7) the deceased's father. Shiu Nath identified the body to Dr. Gounder, the Pathologist who did the post-mortem examination. You heard Dr. Gounder's evidence and his report is before you. He states that the deceased died from asphyxia caused, in his opinion, by manual strangulation. He explained that the finger-marks were still visible on the deceased's neck and he described how the killer's hands must have gripped her throat.

That evidence of the Pathologist has not been challenged in any way and you may have no difficulty in concluding that Kusma Wati, was married to the accused, and that she was strangled to death on 10th August, last year.

The prosecution say that the accused strangled her and the accused's unchallenged confession to the police confirms the evidence of the Pathologist that she was strangled. If you wonder whether the accused

was strong enough to choke her you should consider the evidence of D.W.1, Ambika Prasad, the accused's father. He said that when accused hugged him from the rear during one of the accused's schizophrenic attacks the father could not release himself.

The accused was married to Kusma Wati in March, 1981. They lived in a small house provided by accused's father, D.W.1, on one of the father's two farms. On 10th August, 1981, she was found dead about 4.00 p.m. by her mother and brother P.W.'s 6 and 5. The evidence of Dr. Gounder, the Pathologist at Lautoka Hospital is that he examined the body on 11th August, which was identified by her father, Shiu Nath, P.W.7. Dr. Gounder P.W.1 gives his opinion that death was due to asphyxia caused by manual strangulation or throttling. His report Ex.P.1 and his evidence discloses his reasons for coming to that conclusion. You have to decide whether you accept Dr. Gounder's professional opinion.

You may think that the doctor's evidence is consistent with the confession made at 11.00 p.m. on 10th August, 1981 by the accused to the police in which he admits that he strangled his wife. The confession, Ex.2, has not been challenged by the defence.

In his alleged confession to the police, the accused stated that he quarrelled with his wife when she was cooking lunch and he strangled her; then he tried to hang himself in the adjoining room but his feet were touching his bed and eventually he untied the rope. There is evidence from the prosecution that a length of rope was found on a bed in the room adjoining that in which the wife's body was found.

P.W.5, Attend Kumar, a young boy who did not know his own age, gave an unsworn account in the witness box of his arrival at the accused's home at 4.00 p.m. on the day in question. He was the deceased's brother and he was in company of his mother, P.W.6, who was visiting the deceased. They both described finding the house door locked but the window of one room was open. P.W.5 climbed through that window and found the accused lying alone on the earth floor of the room wrapped in hessian and shivering and somewhat "wild-eyed". The accused opened the door and P.W.'s 5 and 6 saw the deceased lying on a bed in the adjoining room. The mother of the deceased, P.W.6, said that the deceased was already beginning to stiffen. When the mother and brother began to cry the accused also joined in their weeping.

You have heard the evidence of the Consultant Psychiatrist, Dr. Iyer, D.W.2, from St. Giles Mental Hospital who says that the accused suffers from a mental disease called schizophrenia. The evidence is not that

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he used to suffer from schizophrenia but that he currently suffers from the disease. You have to consider whether the accused killed his wife and whether his behaviour, if he did kill her, occurred during an attack of schizophrenia. Dr. Iyer, the Psychiatrist, has told you that a person with schizophrenia can have periods of lunacy lasting for hours or for a day, or several days and that there can be several months of lucidity between the attacks of insanity.

Murder is unfortunately not uncommon. Usually some motive can be attributed to the murder. If there is apparently no motive the behaviour of an accused at the time of and immediately after the killing may assist you in deciding whether he intend to cause grievous harm or to kill. In this case you have heard that the marriage, which had only lasted from March until August, had, as far as the families know, been happy. On the face of it there was no reason for the accused to want to kill his wife. There is no known history of quarrels or ill-treatment. The wife had not run to her home with any complaint of unkindness on the part of the accused. To kill someone because of an argument about cooking food is something which you would not expect from a sane and normal man; it is even more difficult to understand when the accused and his wife who are newly weds had been happily married. It was not a sudden blow with a club or a cane-knife; it was a deliberate manual strangulation, if you accept the evidence.

Thereafter the accused did not run away from the scene but was found an hour or so later in the adjacent bedroom. He had wrapped himself in hessian and was shivering. He opened the door for his mother-in-law and brother-in-law P.W.S 5 and 6 and he wept with them when they cried over the deceased's body. You must draw your own conclusions as to the state of the accused's mind from his behaviour at the time. It may along with Dr. Iyer's evidence enable you to arrive at an opinion concerning the accused's intention at the time he allegedly killed his wife. Of course no one saw her being attacked but he was found at the scene within a short time of her death and some hours later he described how his wife died.

About 11.00 p.m. at the police station the accused made a statement which was read out to you in which he described how he throttled his wife and then tried to hang himself. Dr. Iyer, the Consultant Psychiatrist, of St. Giles Mental Hospital has told us that although a schizophrenic does not know what he is doing during an attack of insanity, he will probably have a full recollection at some later stage of what he did during that period of insanity. He said that it was quite probable that the accused could recollect at 11.00 p.m. the way in which

he had killed his wife at 2.00 p.m. although at 2.00 p.m. he did not know what he was doing. Dr. Iyer has a great deal of practical experience in regard to mental illness and his professional qualifications are of very high standing.

P.W.6, the mother of the deceased says that when she first saw the accused he said the deceased was resting in bed with stomach ache. It was then about 4.00 p.m. She went into the other room and saw the deceased on a bed. She noticed that the body was cold and the arms were stiffening and she spoke to the accused alleging that he had killed her daughter. The accused said what he had said earlier, that she was asleep. There was no attempt on the accused's part then or at any other time to invent some story about his being away and returning to find her dead; he said nothing to the mother to explain the death in a way which would shift some or all the blame from himself which one might expect when the killer is discovered at the scene. No attempt was made by him to remove the body. He did not go away and leave the body and at 4.00 p.m. when he was still there he said that she was asleep. Such behaviour can be evidence of the accused's state of mind and his intention at the time of the alleged killing.

If the accused had been aware at 4.00 p.m. that he had manually strangled his wife about two hours beforehand would he have made the absurd remark that his wife was asleep when her mother accused him of killing her? It is a matter for you. The mother says that body was stiffening. Surely that would have been apparent to the accused if he was able to understand what was happening.

The prosecution have to satisfy you that at the time of the killing the accused was sane and intended to do his wife some grievous harm or intended to kill her. You have to decide in the light of all the evidence whether he was, at the time, mentally capable of such an intention.

The defence have invited you to find that although the accused killed his wife by manual strangulation he is not guilty of any criminal offence by reason of insanity. That defence, if one can call it a defence, is specially provided for in our penal code. Whether or not the defence raise the issue of insanity it is always a conclusion which the Court can arrive at provided there is evidence to support it.

I have drawn your attention to most of the evidence concerning the accused's mental state at the time of the killing. But he also has a history of mental illness. There is before you the report of the psychiatrist which reveals that the accused has been in St. Gile's Mental Hospital under the psychiatrist's care on three previous occasions:

22.11.78 to 5. 12.78, 8. 7. 79 to 9. 8.79; 11. 7.80 to 18. 9.80. You will observe that all these admissions are recent. The last admission lasted over two months and he had only been out of the mental hospital for six months when he got married to the deceased. The psychiatrist's diagnosis was the same on all three occasions - disease of the mind called schizophrenia. The accused was given drugs to take in tablet form which he had to collect from the local health centre from time to time - about once per month. His father, D.W.1 tendered three packets containing different coloured tablets which he says the accused should have been taking. Dr. Iyer examined those packets and confirmed that they were the kind of tablets he had prescribed for the accused in order to try and keep the attacks of insanity under control. There is no way of knowing to what extent the accused kept up with that treatment.

Dr. Iyer's evidence reveals his opinion that the accused is still a schizophrenic. Dr. Iyer's report does not tell us how schizophrenia affects the patient. It describes the condition and treatment and the fact that schizophrenia was diagnosed. But in his evidence Dr. Iyer states that during a bout of insanity a schizophrenic is not aware of what he is doing.

Section 12 of the Penal Code states that the accused is not responsible for his act if at the time of the act he is unable by reason of disease of the mind of understanding what he is doing.

If you conclude that the accused strangled his wife to death then you have to decide whether the accused knew what he was doing at the time. Was he aware that his hands were gripping her throat? Does he suffer from that disease of the mind known as schizophrenia? In considering the issue of insanity you do not have to be sure that he is insane. If you think from all the evidence before you that the accused was probably insane when he attacked his wife, then you will return an opinion to that effect. If he knew his hands were on her throat did he know he was hurting her? Did he have, as his father has described, attacks of insane behaviour from time to time which caused the father to take him to St. Giles Mental hospital? On the occasion when his wife died was the accused suffering from one of his insane attacks? During that period of insanity did he strangle her to death? If so was his insanity such that he was not aware of what he was doing?

If, on a balance of probabilities, your answers to these questions are in the affirmative you will make a special finding to the effect that the accused is not guilty by reason of insanity.

Should you be of the opinion that the accused was not subject to a schizophrenic attack or other form of insanity and that whilst he was of sane mind he killed his wife in the manner described in his confession and intended to kill her or cause her grievous harm, then your finding would be one of murder.

You may retire to consider if you so desire.