IN THE SEYCHELLES COURT OF APPEAL

Regis D Brutus — Appellant

v

The Republic — Respondent

Criminal Appeal No. 12/85

JUDGEMENT OF THE COURT

The appellant was charged with the murder of Daniel Alphonse, contrary to Section 193 of the Penal Code. He was tried in the Supreme Court by Seaton, C.J and a jury, and was convicted and sentenced to life imprisonment. He now appeals against that conviction.

On the 16th January, 1985, the appellant was a private soldier stationed at Pointe Larue Army Camp. He was on this day given a rifle to clean by Lieutenant Dorby at about 9 a.m. The rifle was a Russian made AK47 semi-automatic, which can be adjusted to fire single shots, or short bursts, or long bursts. It was fitted with a magazine full of bullets. The rifle cannot be fired unless it is first cocked, by manually moving the cocking piece backward and forward. This has the effect of bringing up the first round from the magazine and placing it in the breech of the rifle. Then, before the rifle can be fired, the safety-catch must be moved from the 'safe' to the 'fire' position. Then the trigger must be pulled. There are thus three conscious actions required before a rifle can be fired; it must be cocked, the safety-catch must be released, and the trigger must be pulled. A soldier's training involved ensuring that when a rifle is being carried it has not been cocked and the safety-catch has been applied. The appellant was a trained soldier.

On the day in question, the appellant had been on duty, and at about 10.30 a.m he went to his tent to have a bath, leaving Lieutenant Dorby's rifle on his bed. After having his bath, he picked up the rifle. According to Cpl. Allisop, he then cleaned the rifle. This is confirmed by Private Moncherry. Soon after 11 a.m. the appellant left his tent, carrying the rifle. He was seen by Lance-Corporal Nicette and Private Louis to approach the deceased Alphonse, and after exchanging a few words, from a very short distance, the appellant fired a single shot into Alphonse' chest.

.../2

According to Nicette and Louise, the appellant then applied his safety-catch. According to the eye-witnesses, the appellant did not seem shocked or distressed. He handed the rifle to Nicette, who took him to Major Marengo who ordered him to be arrested. The dead body of Alphonse was immediately taken to the hospital at Victoria.

A post-mortem examination of the body of Alphonse was performed by Dr. Brewer, the Government Pathologist, at about 4.30 p.m. He saw an entry wound at the base of the breast-bone, in front of the body. Internally, the diaphragm was distroyed, the liver was destroyed, the aorta was destroyed, the oesophagus had a hole in it, and the ~~special~~ spinal column was destroyed. There was a smaller exit wound, lower down the body, the bullet having apparently been deflected. Death was caused by a gun-shot wound, the bullet being of high velocity, discharged close to the body.

On the 23rd January, a week after the event, the appellant made a voluntary statement under caution to Deputy Commissioner of Police Raymond Louise, in the course of which he said that after his bath he picked up the rifle from the bed, went outside, and met with Private Daniel Alphonse. Then he said -

> "I have a habit of joking with him because we were always friendly to each other. He was teasing me about a woman I had an affair with but I have left her ..... I told Alphonse I had stopped with that woman. I asked him for a cigarette but he did not give me one, instead he took the muzzle of the rifle and pressed it to his chest and said jokingly 'kill me'. I then looked and noticed that the safe (meaning safety-catch) of my rifle was open. I therefore was about to close it when my hand hit the trigger and the rifle went off. I saw Daniel Alphonse fall down. I was astonished".

That statement does not in itself suggest a motive for murder. On the contrary, it is exculpatory in that the appellant claims that he discharged the rifle accidentally when trying to close the safety-catch.

Mr Renaud for the appellant relies on a single ground of appeal, framed as follows -

> "That having given the jury guidance on the facts of the case, the learned Chief Justice ought to have considered in greater depth the possibility that the bullet that was fired could have been placed in the gun by some person other than the appellant".

The possibility was in fact considered by the learned Chief Justice in his summing up to the jury, when he said "let us assume

../3

it (the rifle) was on the bed, any one could go on the bed and tamper with it".

The appellant had not given evidence in his defence, or elected to make an unsworn statement. He preferred to rely on his extra-judicial statement, and was within his rights in so doing. Nowhere in that statement did he suggest that some third-party must have placed a live bullet in the breech of the gun. The learned Chief Justice nevertheless left that possibility to the jury, having fully directed them on the law relating to accident, manslaughter and murder. Mr Renaud conceded that the summing up was flawless, but he submitted if the Chief Justice had given more consideration to the possibility of the rifle having been tampered with, the jury might have brought in a verdit of manslaughter. We do not think so. The jury's verdit was unanimous. They were aware that no motive was established. They must have been impressed by the deliberate nature of the shooting, with the rifle held against the deceased's body, and by the appellant's subsequent behaviour. He showed no distress or shock; he walked calmly up to Lance-Corporal Nicette and handed the rifle to him. He was cool and collected, to all appearances like a man who had achieved what he set out to do. The circumstantial evidence justified the inference of malice aforethought implicit in the jury's unanimous verdit.

We see no merit in this appeal, which we dismiss.

Dated at Victoria this ..... day of April 1986.

A. Mustafa
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A Mustafa
PRESIDENT

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E Law
JUSTICE OF APPEAL

A. Sauzier
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A Sauzier
JUSTICE OF APPEAL