

Jaswant Vithaldas

Appellant

v.

The Queen

Respondent

FROM

THE SUPREME COURT OF MAURITIUS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 28TH APRIL 1987

Present at the Hearing:

LORD BRIDGE OF HARWICH

LORD ELWYN-JONES

LORD TEMPLEMAN

LORD OLIVER OF AYLMEYTON

LORD GOFF OF CHIEVELEY

[Delivered by Lord Goff of Chieveley]

There is before their Lordships an appeal by the appellant, Jaswant Vithaldas, against a decision of the Supreme Court of Mauritius, who dismissed an appeal from his conviction by the Intermediate Court of Mauritius on a charge of being in possession of a firearm with intent to endanger life, contrary to section 19 of the Firearms Act 1940.

The appellant worked as a jeweller in his father's jewellery business at Port Louis, Mauritius. The complainant, Dhanraj Gangadin, was an employee of that business. On 9th May 1983, an altercation arose between the complainant, on the one hand, and the appellant and his father, on the other. Evidence was given by the complainant to the Magistrates of the Intermediate Court as to what occurred, as follows. He was working in the workshop, when the appellant's father questioned him about some gold filings which had been found in the drawer of his work table. The complainant said that he did not know how they came to be in the drawer. The appellant and his father then beat the complainant with wooden bars. A struggle ensued, and the complainant then left; and as he was leaving, he was shot from behind. He was injured in the legs, and fell down. The appellant

then went up to him, and pointed a gun at him; but when he saw that the complainant was injured, he went back into the house. The complainant had been injured in both legs. The bullet had passed through the calf of his left leg and had fractured the tibia of his right leg.

Neither the appellant nor his father gave evidence before the Intermediate Court. In a statement made to the police on the day of the incident, the appellant stated that, when the complainant was asked to explain the presence of the gold filings in the drawer, he attacked the appellant and his father with a "grattoir". The appellant then struck the complainant on the hand with a wooden bar to make him drop the grattoir; but the wooden bar then fell to the ground, and the complainant then continued to assault the appellant and his father. So the appellant, in order to defend himself and his father, went into the house and found his revolver and loaded it. He came out into the yard. The complainant was coming towards him; and, in order to scare him, the appellant fired one bullet at the complainant's feet.

However, as their Lordships have already recorded, the appellant gave no evidence before the Court. The Magistrates in the Intermediate Court accepted the evidence of the complainant, and rejected the account given by the appellant in his statement to the police. They convicted the appellant of the offence of being in possession of a firearm to endanger life. With regard to the requisite intention, the Magistrates stated:-

"We consider that in the present case [the appellant] who, following a dispute whereby he accused the declarant of stealing gold filings, had hit declarant with a wooden bar and gone inside the house to load his gun and come back and fired at him, injuring him, had the requisite intention."

They added:-

"To go further, [the appellant] cannot be said not to have intended the natural consequences of his act and not to have foreseen it when he fired the gun in the direction of declarant who was leaving with his back turned to [the appellant] injuring him."

The appellant then appealed to the Supreme Court against his conviction. On the appeal, it was submitted on his behalf that the Magistrates ought to have found that he acted in self-defence or at least under provocation, and it was further submitted that the evidence did not establish the offence of being in possession of a firearm with intent to endanger life. The Supreme Court dismissed the appeal. With regard to the latter submission, they said:-

" We ought to observe that the offence charged against the appellant was of a kind which is committed where the element of intention is present, though that intention has not been implemented. Additionally, however, this was a case of actual shooting and the Magistrates were quite justified in considering the deliberate implementation of the intention as further evidence of the intention. We are unable in the circumstances to say that the element of intention was lacking. As far as endangering life is concerned, the concept is clearly much wider than mere intention to kill. Pointing a revolver in the direction of a person, irrespective of the part of the anatomy aimed at, and firing it cannot be said not to amount to an intention to endanger life, account being taken, as in this case, of the distance from which the revolver was fired and the movements of the person shooting and of his target."

The appellant now appeals against that decision, with the leave of the Supreme Court.

Before their Lordships, it was submitted on behalf of the appellant that the Magistrates misdirected themselves on the question of intent, in that they adopted an objective as opposed to a subjective test; and that the Supreme Court erred in not allowing the appeal before them on that ground. Their Lordships are unable to accept this submission. As they read the judgment of the Intermediate Court, it was to the effect that the appellant had the requisite intention; in other words they in fact applied a subjective test. Of course, as the appellant elected not to give evidence, they had no direct evidence from him as to his actual intention during the period when he was in possession of the revolver after taking it from his house, or in particular when he fired it in the direction of the complainant. Accordingly, their finding as to his intention could only have been made as a matter of inference from the evidence before them. From that they inferred that he had in fact the requisite intention, i.e. the intention to endanger life. That finding was certainly open to them on the evidence before them. What they added thereafter did not, in their Lordships' opinion, in any way detract from that conclusion.

In these circumstances, the Supreme Court was, in the opinion of their Lordships, fully justified in dismissing the appellant's appeal. It is plain from what they said that, in their opinion, it was an irresistible inference from the facts of the case that, having regard to the distance from which the revolver was fired, the movements of the appellant and the movements of the complainant, the appellant

had indeed the intention to endanger life. Their Lordships do not consider that, in so holding, the Supreme Court were applying an objective test: on the contrary, they were considering, as a matter of inference from the evidence before the Magistrates, the appellant having given no evidence, what his intention must in fact have been.

For these reasons, their Lordships consider that there is no substance in the appeal. They will therefore humbly advise Her Majesty that the appeal should be dismissed.

