An insidious act of blood vengeance and its cultural background

Question(s) at stake:

Whether a killing in a blood feud can be insidious (heimtückisch).

Outcome of the ruling:

A killing in a blood feud can be insidious if the victim does not anticipate an attack in the specific circumstances and the perpetrator deliberately exploits his defencelessness and lack of suspicion to commit the crime.

Topic(s):

- Crime and Punishment under State Law

Keywords:

- Revenge / Vendetta / Feud

Tag(s):

- Cultural background
- Clan
- Insidiousness

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Official citation:

Regional Court Dortmund, Judgement of 7 July 2003, C1/02 (LG Dortmund, Urteil vom 7. Juli 2003, C 1/02)

Link to the decision:

https://openjur.de/u/95126.html

ECLI:

ECLI:DE:LGDO:2003:0707.14SCHW.C1.02.00

Date:

07 July 2003

Jurisdiction / Court / Chamber:

Regional Court Dortmund, Criminal Division with Lay Judges (Schwurgericht)

Remedy / Procedural stage:

First Stage

Previous stages:

None

Subsequent stages:

None

Branches / Areas of law:

Criminal law

Facts:

The Kurdish families C and D, who live in Eastern Anatolia, had been enemies for many years. Finally, a mediation took place. Nevertheless, two days after the mediation ceremony, D9, a leading member of family D, was shot dead by a member of family C in a teahouse early in the morning. Within a few hours, both families had passed on the news of the crime to members of their respective families living in Germany in the Ruhr area. D2 and D3, two nephews of the victim, decided to take immediate revenge for this act. Either D2 or D3 demanded

D4, another nephew of the victim, to drive them in his car to a district of the city of E, where, as they knew, numerous members of family C lived. They wanted to shoot any members of family C whom they chanced upon in that district. D4 understood from D2's and D3's remarks during the drive and from their openly carried weapons what they were planning to do, but nevertheless continued the journey. On M Street, a busy shopping street in the city of E, these members of family D recognized three members of family C walking down the street. At the behest of D2, D4 turned into a side street shortly thereafter and parked the car. All three members of family D then walked back to M Street and waited for the members of family C at the street corner. Shortly before the members of family C reached the street corner, D2 and D3 stepped onto M Street and shot them down at close range, while the unarmed D4 remained in the background to render assistance if necessary. C2 and C3 died immediately; C4 was saved by emergency surgery but remained paraplegic. A passerby, L, who had nothing to do with the parties, was also seriously injured.

Ruling:

In the operative part of the verdict, the three defendants, D2, D3, and D4, were sentenced to life imprisonment for murder under specific aggravating circumstances. All three perpetrators were found to have committed murder insidiously, and D2 and D4 were also found to have had base motives. Furthermore, in the case of D2 and D4, the "particular severity of the convicted person's guilt" (according to section 57a (I) no. 2 German Penal Code) was established, which means that they may not be released on parole after 15 years, as is the rule with sentences to life imprisonment.

In the reasons for the sentence, a section on the position of the individual and the family in the defendants' region of origin is inserted between the sections on their personal circumstances and on the facts to be judged (corresponding to the usual structure of a German sentence). Here it is explained on the basis of an expert opinion that, in the defendants' culture of origin, a single person is given importance or recognition not as an individual but as a member of a family. The flip side of this is that the misconduct of a single family member is also attributed

to the entire family. The restoration of one family member's honour is also the duty of all members of that family. Those who evade this duty lose their own honour. This line of thinking is also behind blood feuds between families, which can only be ended by a mutually recognized arbitrator. These explanations are followed by a description of the hostile conflict between families C and D, which had existed for years, and then a nuanced consideration of the extent to which each of the three defendants is still attached to the value system of their region of origin and the extent to which they have been affected by the conflict between the two families.

Only after the expert's explanations do the findings on the course of events on the day of the crime, a presentation of the defendants' statements, and the assessment of the evidence follow. Here, information about their cultural background plays a role at several points in particular. It relates to the finding that D2 and D3 alone took that decision to commit the crime, which corresponds firstly to the fact that they were both the oldest brothers in their respective family branches and therefore, due to hierarchical-patriarchal ideas, authorized to make decisions without having to involve younger brothers; and secondly to the fact that in cases of blood vengeance, if the closest relatives of the victim (who are initially called upon to carry out the blood vengeance) do not take action or have shown themselves incapable of doing so in the past, any other family member can carry it out in their stead. Furthermore, according to the customs, the intention to take revenge does not have to single out a victim. It was sufficient in this case that the victim was a member of family C. Finally, the cultural background comes into play in weighing whether D4, who did not shoot a weapon, is to be regarded as an accomplice or merely an accessory. This depends on whether he wanted to commit the crime on his own, i.e. whether he had the intent to commit the crime. The court answered in the affirmative, among other things on the grounds that D4 considered the act "necessary" in view of the events in Turkey and that he did not believe he could avoid participating in the act "without losing face".

The subsequent legal assessment comes to the conclusion that all three perpetrators fulfil the insidiousness element, one of the possible elements of murder under specific aggravating circumstances, and that D2 and D4 had base motives as well. Insidiousness means the deliberate exploitation of the victim's defencelessness and lack of suspicion for hostile purposes. The offender must have understood the importance of the victim's lack of suspicion and defencelessness against the crime and must have consciously taken advantage of it. Here, the cultural background played a role in the assessment of the victims' lack of suspicion. The court assumed that the members of family C, who were the victims of the crime, were not prepared for an attack despite knowledge of the killing of D9 by a member of their family that morning and the warning of a family member from Turkey "to protect yourself", on the one hand because the weaker family D had always retreated in the long-standing conflict and had not really defended itself, and on the other hand because the concrete behaviour of the members of family C, who were unarmed, chatting in a group along the busy street, showed that they were not expecting an attack. The perpetrators took advantage of this situation and confronted them at a street corner so that the victims had no possibility to flee.

Base motives exist if "according to a general moral evaluation, the motives for the crime are on the lowest level and are therefore particularly despicable" (para. 200). "The standard for the evaluation of a motive is to be taken from the ideas of the legal community in the Federal Republic of Germany and not from the views of the ethnic group to which the accused feels himself to belong and which does not recognize the moral and legal values of the German legal community" (para. 200). In this context, the court particularly emphasizes that the German legal system places a high value on life, and furthermore that none of the victims had done anything to the defendants and that they were killed only because they were members of family C. Thus, as the court emphasizes, they were uninvolved according to German standards, even if the value system of the defendants' region of origin may see it differently. The existence of base motives could only have been denied in exceptional cases, namely if the defendants had not been

aware of the circumstances that justified the assessment of the existence of base motives, or if they had been unable to mentally control or steer their emotional impulses. However, the court did not consider such an exception to apply.

In the case of D3, base motives were rejected because the victim, who had been murdered on the same day in the morning in Turkey, had not only been his uncle and father-in-law, but had also been like a father to him for many years. D3 was therefore considered to be particularly emotionally affected. Furthermore, because he was clearly more rooted in the value system of his village than D2 and D4, there were doubts as to whether he would have been able to comprehend the existence of base motives.

In the case of all three perpetrators, it was examined whether a mitigation of the sentence pursuant to section 21 of the German Penal Code would be possible due to a profound disturbance of consciousness. Since the ethno-cultural influences might have been of importance in this context, an ethno-psychological expert was consulted. However, the expert explained to the court that from his point of view, none of the accused displayed such a profound disturbance of consciousness within the meaning of section 21 German Penal Code. The court followed this opinion.

In the case of D2 and D4, the particular severity of guilt was derived from the presence of two characteristics of murder under specific aggravating circumstances, insidiousness and base motives; from the planning of the crime, which displayed considerable criminal energy; as well as from the serious consequences of the crime -- two deaths and two serious injuries. In the case of D3, only one criterion of murder under specific aggravating circumstances was fulfilled; in addition, his special relationship to the victim D9 and his simple personality structure were taken into account. Therefore, his guilt was considered to be less severe than that of D2 and D 4.

Main quotations on cultural or religious diversity:

- "Contrary to the Western European cultural understanding, the image of a human is not strongly characterized by the individual and is not based on the self-determination and self-responsibility of the individual. The individual is not given importance and recognition as an individual. Rather, he or she receives both essentially as a member of a family. In this respect, the individual is a respected legal person only insofar as he or she is a member of a nuclear family or secondarily of the larger unit in which he or she possesses certain rights; on the other hand, the individual is subject to certain duties. Just as respect is accorded to the individual in accordance with the esteem accorded to his or her family as a whole, the misconduct of another member of the family is also directly attributed to this individual as a person. Thus, if an individual injures a member of another social unit through his or her behaviour, he or she also injures all the other members of that unit, and conversely, an attack on one of the members of one's own family is also understood by each individual [in that family] as an attack on himself or herself. Because of this effect, the violation of one's own honour is perceived as an attack on or insult to the family, so that the defence against such attacks is the corresponding task of all family members to defend their honour. The concept of honour is central to this. It is comprehensive and concerns the respect shown to one's own family and thus at the same time to each of its members. Their position in society is based on such respect. This position is jointly acquired through past behaviour. In addition, esteem is also determined by existing financial possibilities, intellectual ability, or even professional success. The honour of the individual and the family can be affected by one's own behaviour as well as by verbal and physical attacks on individual members or on their property." (para. 41)
- "This understanding of the inseparable interrelationship of respect for one's family and one's reputation also consistently influences the goal of education. The goal of education is not for the individual to decide and act independently on the basis of ideas of conscience and inner convictions internalized through education. Rather, education aims from the outset to

ensure that the individual sees himself as part of the group and therefore always strives to meet the group's expectations of him and his role. This goes hand in hand with a strictly hierarchical system within the family itself, in which in each case the younger (male) has to show respect, i.e. obedience, to the older ones, just as he can expect the same respect from younger ones. This understanding of the individual and the family is also essential for understanding the nature of blood vengeance. Indeed, the underlying idea also gains significance in blood vengeance as a means of preserving one's honour in the case of past assaults". (para. 42)

- "Despite the state's power to punish crime, it is seen as required by one's own code of honour to take the law into one's own hands. In view of the collective self-image, not only the individual but all members of the group whose honour has been violated are called upon to do so. Conversely, the potential target of revenge is not only the perpetrator, but all (male) members of the perpetrator's group. According to the local understanding of honour, evading the task of restoring honour after an assault by another person results in one's own loss of honour." (para. 43)
- "Even the intervention of state punishment through imprisonment does not release the offender from the obligation of blood vengeance, since the injured honour can only be restored through blood -- not through imprisonment. To avoid blood vengeance, the only means available is mediation by arbitrators accepted by both parties." (para. 44)
- "This expert has convincingly and comprehensibly shown the Division the way in which the personality profile of the accused, which is shaped by their upbringing, deviates from the Central European self-image. Furthermore, the expert also demonstrated to the court the way in which the integration into the family and the obedience owed to the respective elder had an effect on each individual." (para. 148)
- "The fact that the two elders made the decision without the prior involvement of their younger brothers corresponds precisely to the

hierarchical and patriarchal cultural background of the accused. Also, the absence of any instructions from fathers or uncles from Turkey to carry out the crime does not contradict the 1st Division's conviction. As expert witness U convincingly explained, according to the cultural background of the accused, the immediate family of the victim is initially called upon for blood vengeance. If, however, this family does not take action or has not shown itself capable of doing so in the past, then every other member of the extended family is called upon to restore the 'honour of the family' and thus at the same time the reputation among the local Kurdish public in Germany." (para. 170)

- "The Division also recognized that according to the archaic conception of morality and values that characterizes the blood feud, in the case of the killing of a relative -- especially if, as in the present case, a particularly respected exponent of one's own family was killed and, moreover, in breach of the peace that had been concluded between the parties shortly before -- it is 'a question of honour' to avenge the killing by blood and thus by killing one or, depending on the position of the person killed, possibly several members of the opposing family." (para. 201)
- "Nevertheless, this does not lead the court to deny the existence of base motives with regard to the accused D4 and D2, as the existing rootedness of an accused in his ethno-cultural origin and the possibly existing (persistent) adherence to the ideas of blood vengeance can only lead to the denial of [base motives] in exceptional cases. Such an exception can only be made if the perpetrator was not aware of the circumstances that otherwise would be considered to underlie the baseness of his motives, or if it was not possible for him to mentally control or steer the emotional impulses that determine his actions [...]. However, this was not the case here. Both D2 and D4 had grasped -- as they admitted -- that their values, which on the day of the offence required them to restore their honour even at the cost of the unauthorized destruction of human life, were not approved of in this form by the legal system here. Despite their ethno-cultural background and despite

the morning events at the time of the crime, they were in a position to control their reaction and to resist the desire to take revenge that came from their upbringing." (para. 202)

- "The argument that defendants D2 and D4 were under irresistible pressure does not rule out the attribution of base motives. If they had not killed uninvolved members of the other family -- supposedly to restore their own family's honour -- but instead had remained inactive, they would have had to reckon with a loss of reputation and honour within the Kurdish community in the worst case and possibly also accept ostracism and expulsion by their family. However, this did not put irresistible pressure on either of them in view of the conflicting high value of life, , since neither of them lived in a community network in Germany comparable to the agrarian life in their homeland, where being dependent on mutual help is necessary for survival." (para. 204)
- "On the other hand, the 1st Division denied that the actions of defendant D3 could be characterized as killing for base motives. In his case, killing to preserve the family honour was not in the foreground. Rather, the court at least could not exclude that in his case the act was committed more out of hatred in light of his elementary personal distress about the death of his uncle in Turkey. The person killed was not only the father of his wife and his father-in-law; for D3 he was much more. As has been shown, he had assumed the role of a substitute father for him since his earliest childhood [...]. In view of the fact that the revenge was taken not on the perpetrator but on uninvolved family members, this alone does not invalidate the accusation of the objective existence of base motives." (para. 206)
- "Here, however, the personality of the accused comes into play. He has hardly attended school and is far more entrenched in the socio-cultural thinking of his region of origin than his two co-defendants. He is a simply structured, uneducated person who, despite working in the big city of Istanbul during the winter months and despite his long stay in Germany, is

far more attached to his native values. In view of the clearly pronounced dominance of his ethno-cultural background on the one hand and his increased personal involvement on the other hand, the lst Division ultimately denied the existence of the characteristics of murder for base motives because of the subjective characteristics that could not be determined with certainty." (para. 207)

- "(D4) himself always considered blood vengeance to be unjustified, as he expressly stated to expert witness U with regard to the act of compatriot E4, which was committed to his own disadvantage. His sole concern was not to place himself outside the family circle in order not to be ostracized. Against the background of his ethno-cultural origin, this is indeed a quite serious consequence. Unlike his brother D2, he did not act additionally because he believed he had to restore the family honour in the eyes of the outside world. Unlike D3, he was always aware, also according to his intellect, his business experience, and his integration into the reality of life here, of how much his actions went against the values of the society that had granted him the right of hospitality and a basis for life after his flight." (para. 272)

Main legal texts quoted in the decision:

- Sections 211; 223; 224, para. 1, nos. 2, 4, and 5; 226, no. 3 German Penal Code

Cases cited in the decision:

Federal Court of Justice

- Federal Court of Justice, Order of 24 April 2001, 1 StR 122/01 (BGH, Beschluss vom 24.04.2001, 1 StR 122/01)
- Federal Court of Justice, Judgment of 20 February 2002, 5 StR 538/01 (BGH Urteil vom 20.02.2002, 5 StR 538/01=BGH NStZ 2002, 369, 370= CUREDI33DE004)

- Federal Court of Justice, Judgment of 2 February 2000, (BGH Urteil vom 02.02.2000, 2 StR 550/99=BGH NStZ-RR 2000, 168, 169)
- Federal Court of Justice, Order of 19 May 1981, GSSt 1/81 (BGH Beschluss vom 19.05.1981, GSSt 1/81=BGHSt 30, 105 ff.)

Constitutional Court

- Constitutional Court, Judgment of 3 June 1992, 2 BvR 1041/88 (BVerfG, Beschluss vom 03.06.1992, 2 BvR 1041/88= BVerfGE 86, 288)

Commentary

An insidious act of blood vengeance and its cultural background

This decision is particularly interesting because of the unusually precise description of the background to the crime. In this case, the court obtained an ethno-psychological expert opinion from a psychologist who himself came from Western Turkey and had produced numerous court opinions and publications on the assessment of ethno-cultural influences on persons of foreign origin living in Germany -- more specifically on their ability, as it pertains to criminal law, to grasp the injustice of certain acts and to behave accordingly. The explanations of the expert were used extensively by the court. He laid out the relationship between the individual and the family in the region of origin of the accused, including the explanation that the significance of an individual comes through his membership in a certain family. Accordingly, he enjoys respect to the extent that his family is respected; likewise, the misconduct of an individual family member is attributed to all members of the family. Any attack on an individual is considered an attack on the whole family, and any violation of the honour of an individual is considered a violation of the honour of the whole family, against which all family members must defend. Blood feuds also arise from this constellation. Furthermore, the judgment elaborates in detail on the family conflict in question, which had existed for years, and examines very precisely (also in the light of the expert's statements) to what extent each individual defendant still feels influenced by the views of his home region and still feels affected by the long-standing conflict between the two families.

Literature related to the main issue(s) at stake:

General legal literature on the topic

- Baumeister, Werner. 2007. *Ehrenmorde -- Blutrache und ähnliche Delinquenz in der Praxis bundesdeutscher Strafjustiz*. Münster: Waxmann.
- Krais, Julia. 2009. *Blutrache und Strafrecht. Einfluss des Blutrachemotivs auf Unrecht, Schuld und Strafzumessung*. Hamburg: Dr. Kovač.
- Kudlich, Hans and Ilker Tepe. 2008. "Das Tötungsmotiv Blutrache im deutschen und im türkischen Strafrecht". *Goltdammer's Archiv* 155: 92--103.
- Küper, Wilfried. 2006. "Blutrache, Heimtücke und Beteiligung am Mord". *Juristenzeitung* 61: 608--613.
- Nehm, Kay. 2005. "Blutrache -- Ein niedriger Beweggrund?" In Jörg Arnold et al. (eds), *Menschengerechtes Strafrecht. Festschrift für Albin Eser zum 70. Geburtstag*, 419--429*.* München: Beck.
- Varol, Kadir. 2016. *Ehre-Ehrenmord-Blutrache*. Hamburg: Dr. Kovač.

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Suggested citation of this case-law comment:

Tellenbach, Silvia (2024): An insidious act of blood vengeance and its cultural background, Department of Law and Anthropology, Max Planck Institute for Social Anthropology, Halle (Saale), Germany, CUREDI033DE023, https://doi.org/10.48509/CUREDI033DE023.