

UGANDA / JUDGMENT

Bray v Rex (Criminal Appeal No. 251 of 1949) [1949] EACA 50 (1 January 1949)

[1949] EACA 50**COURT**

East African Court of Appeal

BEFORE

Edwards CJ, Graham Paul CJ, Gray CJ

CASE / FILE NUMBER

Criminal Appeal No. 251 of 1949

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COURT OF APPEAL FOR EASTERN AFRICA

Before Sir Graham Paul, C. J. (Tanganyika), Edwards, C. J. (Uganda), and SIR JOHN GRAY, C. J. (Zanzibar)

GEORGE JAMES BRAY, Appellant (Original Accused)

REX, Respondent (Original Prosecutor) Criminal Appeal No. 251 of 1949

(Appeal from decision of H. M. Supreme Court of Kenya-Thacker, Ag. C. J.) Summing up-Omission.

The learned Judge omitted to sum up part of the medical evidence for the defence, he recalled the jury and dealt with the omission.

\$Held\$ (1-11-49).—The course taken by the Court was not criticizable as its effect was to give prominence to part of the defence.

Appeal dismissed,

Twelftree for the Appellant.

Southworth, Crown Counsel (Tanganyika), for the Respondent.

JUDGMENT (delivered by SIR G. GRAHAM PAUL, C. J.).—There is no doubt whatever that there was ample evidence in this case upon which the jury, properly directed, could have arrived at their verdict of guilty. The only question before this Court is whether there was such misdirection as would justify this Court in setting aside the verdict.

The first point is that the learned trial Judge did at first omit from his summing-up any reference to a portion of Dr. Carothers' evidence which was most important from the point of view of the defence. The learned Judge, however, realized the omission while the jury were out considering

their verdict and after they had been out for 35 minutes he recalled them and dealt only, and very fully and fairly, with the omitted evidence. The effect of that procedure on our minds and we think on the minds of the jury was to underline and give rather undue prominence to one small portion-albeit an important portion of the evidence.

Indeed if the omitted evidence had been important evidence for the prosecution and the jury had been recalled to hear it given this undue prominence, that might have been subject for criticism on appeal, and in our view the effect where as here it was important evidence for the defence was essentially in effect to underline it and give it undue prominence in the minds of the jury.

We are unable to believe that the jury having considered this case for 35 minutes could have omitted to consider fully the evidence of Dr. Carothers. When they were recalled and this evidence was underlined to them by the trial Judge it would not take the jury long to say, "We have already considered that", and to proceed to their verdict accordingly. We find therefore nothing sinister in the fact that after hearing this evidence given such prominence the jury did not find it necessary to go out for an absence of more than the five minutes shown by the record.

As regards the other point that the learned Judge in his summing-up dealt with the defences of insanity and intoxication in the wrong order and so caused confusion in the minds of the jury, we are not impressed by this argument. The summing-up began by saying that there were three possible verdicts on the evidence, (1) Guilty of Murder, (2) Guilty but insane, and (3) Manslaughter because of the absence of an intention to kill or do grievous bodily harm. We see nothing wrong either in logic or common sense in dealing with the possible verdicts in that order which the learned Judge consistently did throughout the summing-up.

The learned Judge in the course of his summing-up made abundantly clear to the jury where and to what extent the *onus* of proof lay \$(a)\$ as regards the defence of insanity, and \$(b)\$ as regards the defence of drunkenness. We think that matter was very clearly put to the jury.

Regarding the summing-up as a whole, as on appeal we must regard it, we consider that it was exhaustive, fair, and correct. If the learned Judge had not recalled the jury to put before them the portion of Dr. Carothers' evidence there might have been some ground for criticism though, even then, having regard to the whole evidence in the case it is by no means clear that the omission would have been fatal to the verdict. We consider that on the whole evidence before them no reasonable jury could possibly have come to any other verdict than the one which they returned, namely guilty of murder.

We see no reason to interfere with the verdict and the appeal is dismissed.

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