

UGANDA / JUDGMENT

Rex v Francesco (Criminal Appeal No. 214 of 1945) [1945] EACA 31 (1 January 1945)

[1945] EACA 31**COURT**

East African Court of Appeal

BEFORE

Gray CJ, Sheridan CJ, Whitley CJ

CASE / FILE NUMBER

Criminal Appeal No. 214 of 1945

Source: ulii.org · Research copy typeset by Esheria. Not court-issued or certified.

COURT OF APPEAL FOR EASTERN AFRICA

Before SIR JOSEPH SHERIDAN, C. J. (Kenya), SIR NORMAN WHITLEY, C. J. (Uganda),
and SIR JOHN GRAY, C. J. (Zanzibar)

REX, Respondent (Original Prosecutor)

PARADISCO FRANCESCO, Appellant (Original Accused)

Criminal Appeal No. 214 of 1945

(Appeal from decision of H. M. Supreme Court of Kenya)

Criminal Law—Murder—Provocation—Malice aforethought—Section 189, Penal Code—Record of summing up to Jury—Section 169 (4) and Section 170 (2), Criminal Procedure Code.

The appellant was once assaulted by a number of persons, of whom the deceased was one. On seeing the deceased, whom the appellant regarded as the ringleader of his assailants, twelve months after the incident, he picked up a piece of wood which was lying close by and hit the deceased with it on the head, face and back, with the result that the deceased died. The appellant's defence was that he had no intention of killing the deceased and merely wanted to break his arm.

The appellant was convicted of murder and appealed.

**Held* \$(13-9-45)\$.—(1) That the incident some twelve months previous to the killing lacked the element of suddenness which is one of the essentials of legal provocation.*

- (2) That by section 201 P. C. an intention to cause grievous harm constitutes malice aforethought which if death ensues renders the offender guilty of murder.

Appeal dismissed.

Modera for the Appellant.

Todd, Crown Counsel (Kenya), for the Crown.

JUDGMENT (delivered by SIR JOSEPH SHERIDAN, C. J.).—The accused, an Italian internee, was charged with and convicted of the murder of a fellow countryman. He was tried by a Judge sitting with a Jury. In this appeal the killing is not disputed, but counsel for the appellant has submitted that the case is manslaughter and not murder. The appellant, his counsel and, most important, this Court, have been handicapped by the absence of any record of the summing up to the Jury. It is provided by section 169 (4) of the Criminal Procedure Code that in a trial by Jury the Court should record the heads of the charge to the Jury and by section 170 (2) that "in trial by Jury a copy of the heads of the charge to $\frac{1}{2}$ the Jury shall on the application of the accused person be given to him without delay and free of cost".

In the present case it is alleged that there was a misdirection on two points of law: (1) as to provocation, and (2) as to malice aforethought. As to the first point, whatever the direction, if given, may have been, we are able to say after reading the record that the appeal cannot succeed on that ground, for it is abundantly clear that the provocation complained of referred to an incident some twelve months previously to the killing and so lacked the element of suddenness, which is one of the essentials of legal provocation. Regarding the second point, it is complained that "the learned trial Judge omitted to direct the Jury adequately as to the nature of the intent which in cases of this kind is an essential ingredient of the crime of murder". The killing happened quite suddenly on the accused seeing for the first time in twelve months, the deceased, the man whom he regarded as the leader of a number of persons who had assaulted him twelve months before, with the result that he was detained in hospital for 14 days. Seeing the deceased, the accused picked a stout piece of wood which was lying close by and with it fatally assaulted the deceased. According to the medical evidence the deceased appeared to have received a severe blow on the head with a heavy instrument, also one on the face and two on the back. Cause of death was a fractured skull and cerebral haemorrhage. This injury was clearly caused by the blow on the head. The accused, who gave evidence, said that he did not intend to hit the deceased on the head. He said: "All I wanted to do was to break an arm. I did not intend to hit him on the head but on the shoulder. The furthest I wanted to go was to have him breaking an arm. I meant to give him a bit more than he gave me". In short, the accused put forward the defence that he had no intention of inflicting the grievous harm, the head injury, which caused death—that his intention, at the worst, was to break the deceased's arm. In our view of the law, as to malice aforethought as laid down in section 201 of the Penal Code, even if the Jury were satisfied that the accused's intention was limited to breaking the deceased's arm and that he did not intend to hit him on the head, but did so unintentionally while aiming at his arm with the intention of causing grievous

harm, the proper verdict would be murder under the Code, the consequences thereafter being a matter for the Executive to consider. In the present case, therefore, our view is that even if there had been no summing up a verdict of murder, on the evidence, was inevitable.

On the facts of the present case it is clear that the accused, on seeing the deceased, was seized with a blind fury and, being determined to pay off an old score, seized hold of a formidable and definitely lethal weapon, which we have had the opportunity of seeing and handling, and violently struck the deceased with it on the head, the face and twice on the back, felling him and continuing to strike him when he was on the ground. The accused's own words are eloquent of his intention: "Tintori did not say anything before I hit him. He did not insult me by word or gesture. I was not possessed of my own will, that is why I hit him on the ground. I was angry at the sight of him". With that evidence before them and the medical evidence, however much the accused may have protested: "I did not want to hurt him", once more we say that a verdict of guilty of murder must have resulted. The appeal is dismissed.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://ulii.org/akn/aa/judgment/eaca/1945/31/eng@1945-01-01>

CASE PAGE <https://chat.esheria.ai/case-law/uganda/rex-v-francesco-criminal-appeal-no-214-of-1945-1945-eaca-31-1-january-1945-unknown-topic-unknown-court-1945>

Prepared on 14 October 2026 · Esheria