

UGANDA / JUDGMENT

Rex v Kagoriki (Criminal Case No. 207 of 1944) [1945] EACA 63 (1 January 1945)

[1945] EACA 63

COURT

East African Court of Appeal

BEFORE

Lucie-Smith, J. (Kenya)

CASE / FILE NUMBER

Criminal Case No. 207 of 1944

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ORIGINAL CRIMINAL

BEFORE LUCIE-SMITH. J.

REX: Prosecutor

 $\mathbf{v}$

NJEROGE s/o KAGORIKI. Accused Criminal Case No. 207 of 1944

Criminal Law—Manslaughter—Section 197 Penal Code—Criminal negligence— Collision between motor vehicle and train at level crossing.

The accused was the driver of a lorry which came into collision with a train at a level crossing at night. Four of the passengers of the lorry were killed. It was proved that the accused was aware of the existence of the crossing and actually saw a red light at the crossing when he was approaching it. He was charged with manslaughter by negligence.

Held (24-4-45).—(1) That to constitute criminal negligence establishing a crime of manslaughter the negligence must be of such a gross reckless and inexcusable nature as to amount to a crime against the state.

(2) That the failure of the accused (1) to satisfy himself after seeing a red light that the crossing was clear and (2) to see the approaching train constituted such gross negligence.

Accused convicted of manslaughter.

Russell for the Crown.

Cresswell for the Accused.

JUDGMENT.—From their opinions I am afraid the assessors have not grasped the important point in this case and that is not "Was the accused unlucky" but "Was the accused criminally negligent thereby causing the death of the four deceased".

I have set out the facts as I find them in my summing up and there is no need for recapitulation. From those facts and in accordance with the maximum *Res ipsa loquitur* I have no doubt that accused was negligent and grossly negligent firstly in not satisfying himself after seeing the red light that the crossing was clear and secondly in not seeing the approaching train if he did in fact look to his right and left before attempting to cross.

I find the accused guilty of manslaughter on all four counts.

ALLOCUTUS.—I ask court to take into consideration that I have been very unfortunate as I lost some of my friends. I was helping them home.

SENTENCE.—While for some reasons sympathizing with the accused the fact remains that he is criminally responsible for the death of four of his fellow human beings. There are too many deaths and serious injuries occurring owing to negligent handling of motor vehicles and drivers must be made to realize that they owe a duty to their passengers and the public.

I sentence the accused to 18 months imprisonment with hard labour on each count, sentences to run concurrently. The accused's certificate of competency is suspended for three years from this date.

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