

UGANDA / JUDGMENT

Rex v Kulabirawo (Criminal Appeal No. 180 of 1947) [1947] EACA 44 (1 January 1947)

[1947] EACA 44

COURT

East African Court of Appeal

BEFORE

Edwards CJ, Graham Paul CJ, Nihill P

CASE / FILE NUMBER

Criminal Appeal No. 180 of 1947

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COURT OF APPEAL FOR EASTERN AFRICA

Before NIHILL, C. J. (Kenya), SIR G. GRAHAM PAUL, C. J. (Tanganyika) and EDWARDS, C. J. (Uganda)

REX, Respondent (Original Prosecutor)

KULABIRAWO, Appellant (Original Accused)

Criminal Appeal No. 180 of 1947 -

(Appeal from decision of H. M. High Court of Uganda)

Criminal procedure—Age of accused—Section 25 (2) Uganda Penal Code.

After the appellant had been convicted of murder, but before passing sentence, the learned Judge found himself in doubt as to whether or not the appellant was under eighteen years of age. He accordingly called additional evidence on this point.

Held (19-8-47).—The decision to call such evidence was right.

Appellant absent, unrepresented.

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

JUDGMENT (delivered by NIHILL, C. J.).—The appellant, who is a youth, was put out of a beer party for misbehaving, whereupon when at the door he attacked the deceased with his walking-stick, hitting him three times on the head and fracturing his skull. The learned Judge directed himself properly on the question of provocation and we agree with his finding that circumstances

of the appellant's attack upon the deceased does not bring it within any of the exceptions which could reduce the killing to manslaughter. We have ourselves inspected the weapon used. It is a stick with a heavy end and any person using it with force upon the skull of another person must have intended to kill or at least had the knowledge that he would cause serious injury.

After the Court had found the appellant guilty the learned Judge not being satisfied as to whether he was under or over the age of eighteen postponed sentence in order to call an expert medical witness. The learned Solicitor General for Uganda took the point that no provision existed for the taking of such evidence. On the contrary, we think it was incumbent upon the learned Judge, because of the responsibility placed upon him by section 25 (2) of the Uganda Penal Code, to call such evidence for he could not pass either sentence of death or make an order for detention under section 25 (3) until he was so satisfied.

In this case, after calling further medical evidence, the learned Judge remained in doubt as to whether the appellant was under eighteen, and so rightly ordered him to be detained during the Governor's pleasure.

The appeal is dismissed.

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