

UGANDA / JUDGMENT

Rex v Magombe (Criminal Appeal No. 70 Of 1941) [1941] EACA 52 (1 January 1941)

[1941] EACA 52

COURT

East African Court of Appeal

BEFORE

Gamble, J. (Uganda), Sheridan, (C.J. Kenya), Webb CJ

CASE / FILE NUMBER

Criminal Appeal No. 70 Of 1941

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COURT OF APPEAL FOR EASTERN AFRICA $\frac{1}{\sqrt{2}}$

Before SIR JOSEPH SHERIDAN, C. J. (Kenya), SIR HENRY WEBB, C. J. (Tanganykia) and GAMBLE, J. (Uganda)

REX, Respondent

$\mathbf{v}$

DAUDI MAGOMU S/O ANDEREA MAGOMBE, Appellant

Criminal Appeal No. 70 of 1941

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

Manslaughter-Criminal negligence-Intravenous injection by medical orderly of a drug which should have been administered by intramuscular injection-Mens Rea.

Appeal from conviction of manslaughter where the appellant, a medical orderly in charge of a dispensary, had given an intravenous injection of a bismuth preparation which was only safe if given intramuscularly, and thereby caused the death of the patient. Appellant was authorized to give injections. There was some evidence that the appellant had been instructed that such injections should be given intramuscularly, but no evidence that he had been told or had reason to believe that the intravenous injection would have a poisonous effect likely to cause death.

Held (14-5-41).—That it was not established that the appellant had been guilty of criminal negligence.

Appellant in person.

McKisack, Crown Counsel, for the Crown.

JUDGMENT (delivered by SIR HENRY WEBB, C. J.).—We are not satisfied that it was proved that the appellant was guilty of criminal negligence. He had been employed for some years as a medical orderly and had had occasion, in the course of his duties, to give injections of N. A. B., which are properly given intravenously, and also injections of bismuth, which are given intramuscularly. Some months ago the use of N. A. B. was discontinued, but there was no evidence before the Court that at any time the appellant was ever told that, as is the case, an intravenous injection of bismuth would, in the words of Dr. Snell, "have a marked poisonous effect,
liable to be fatal: indeed usually fatal". Dr. Snell thinks that his instructions would, or at all events, should have been to give bismuth intramuscularly, but the appellant says that he was told to give the injections in the buttock and in the arm (i.e. intravenously) alternatively. Crown Counsel submits that, if the appellant was told to give these injections into the buttock, then any deviation from these instructions would amount to criminal negligence, because the appellant must be considered as having taken a risk as to the effect of a drug without having taken the precaution of ascertaining its nature and effects. In our opinion this is putting the standard too high, at all events in such a case as the present. In **Chamberlain** (10 Cox C. C. 486) the accused was a quack doctor who had volunteered to treat the deceased: here the appellant was giving a treatment which it was his duty to give, and it was only in his method that he erred. It seems to us that a person like the appellant would be most unlikely to appreciate the danger of giving an intravenous injection of bismuth, or, indeed, that there would be any danger, unless explicit instructions to that effect had been given to him; he might well think that an intramuscular injection would merely be more effective. For instance, when one is given a medicine "to be taken after meals", it would be extremely

unlikely to occur to one, we think, that if one inadvertently took it before a meal the result would be fatal. And if the medicine was of such a kind one would certainly expect the medical practitioner to do more than merely to put the conventional direction on the label. In saying this we wish it to be clearly understood that we are far from suggesting that in fact the instructions given to the appellant were inadequate; all that concerns this Court in the present case is the question whether or not it was proved that the appellant had received such instructions as to the absolute necessity of injecting bismuth only into the muscle and not into a vein as would cause his deviation therefrom to amount to criminal negligence. Crown Counsel admits that this evidence was wanting and therefore we are of opinion that the conviction must be set aside and the appellant released from $\frac{1}{2}$ imprisonment on this charge.

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