

UGANDA / JUDGMENT

Rex v Mubaba (Criminal Case No. 17 of 1939) [1938] EACA 167 (1 January 1938)

[1938] EACA 167

COURT

East African Court of Appeal

BEFORE

Sheridan CJ

CASE / FILE NUMBER

Criminal Case No. 17 of 1939

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ORIGINAL CRIMINAL

Before Sir JOSEPH SHERIDAN, C. J.

REX, Prosecutor

\$\{v\}\$. MUNA s/o MUBABA, Accused Criminal Case No. 17 of 1939

Criminal Law—Murder—Defence of insanity—Penal Code sections 12 and 13—Running amok.

Accused was charged with the murder of his step-father Mubaba against whom he bore a grudge and whom he shot and killed with an arrow on 14th June, 1938; at the time of this killing the accused appeared to have run amok and he shot at others, two of whom he killed. Thereafter he left the district. There was evidence that as he shot the first arrow the accused called out words meaning "Look out for yourselves". The defence was a plea of insanity. When the accused was medically examined on 17th January, 1939, no signs of mental abnormality were observed. The further facts appear from the judgment.

Held (10-3-39).—(1) That the law on the subject of the defence of insanity under the Penal Code is in effect the same as the English law on the subject :

- (2) That the onus of proof of insanity lies on the accused, but that such onus is no greater than that which rests upon a plaintiff or defendant in civil proceedings;
- (3) That in order for a defence of insanity to succeed it must be shown that the accused was suffering from some disease of the mind at the time of the commission of the act complained of and that by reason of such disease he did not know the nature or quality of his act or that what he was doing was wrong;

\$(4)\$ (On the facts) that the killing was murder.

Phillips, Crown Counsel, for the Crown.

Burke for the Accused.

JUDGMENT.—The only question for consideration in this case is whether at the time the accused killed his step-father Mubaba, who had brought him up from childhood, he was legally insane. I pointed out to the assessors what had to be proved to establish a case of legal insanity and how the onus of proof which lay on the accused could be discharged, referring to the headnote in the case of *Re x v. Noor Mohamed Kanji*, 4 E. A. C. A. 34, reading: "That in case where the defence of insanity is raised the burden of proof is not higher than that which rests upon a plaintiff or defendant in civil proceedings" and also referring to the passage taken from *Clark v. The King* (Canadian Reports, Vol. 6, No. 4, p. 608) which was referred to with approval by the Privy Council in *Sodeman v. Rex* (1936, 2 A. E. L. R. 1138). The portion of the judgment I quoted reads: "It is generally speaking, sufficient if he (the party on whom the onus rests) has produced such a preponderance of evidence as to show that the conclusion he seeks to establish is substantially the most probable of the possible views of the facts". The law in this country

on the subject is contained in sections 12 and 13 of the Penal Code. Section 12 provides that "every person is presumed to be of sound mind and to have been of sound mind at any time which comes in question, until the contrary is proved", and section 13 that "A person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is through any disease affecting his mind incapable of understanding what he is doing, or of knowing that he ought not to do the act or make the omission". This in substance reproduces section 84 of the Indian Penal Code which was the law in force prior to the present Penal Code. Section 84 reads: "Nothing is an offence which is done by a person who at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law". And finally the law on the subject whether under the Penal Code or the Indian Penal Code is the same as the law of England. The accused has so far as the evidence shows no mental history nor is there any family mental history and the defence of insanity rests on his conduct at the time he killed Mubaba and two others and shot at other persons, together with the evidence of the doctor in cross-examination which reads: "I should say the examination of 17th January would not help in determining his mentality on 14th June. If he killed say three people without apparent reason there would be justification for saying he was apparently insane. If a man thought over a long period that he was grievously wronged it could result in a state of insanity. It would cause an obsession that he had been persecuted". What has to be proved in the first instance is that at the critical time when he killed Mubaba the accused was suffering from disease of the mind and as to that there is no medical evidence nor indeed any evidence. What is in evidence and has been part of the case for the defence is his having been very angry with his step-father for not having provided him with a wife and that on that score he cherished a grudge against him. There is the evidence of Nzeli, the mother of the accused and the deceased's widow, that at one time which she said was some years ago feeling on the subject between Mubaba and the accused rose so high that Mubaba was contemplating killing

the accused. The accused as I have indicated endorses that the feeling he had towards Mubaba was one of anger. For the purpose of examining the question as to whether the accused suffered from disease of the mind at the relevant time it is unnecessary to examine the evidence in greater detail. But even if it had been shown that the accused was suffering from disease of the mind it would have been necessary for him to satisfy the Court either that he did not know the nature or quality of his act or that he did not know it was wrong when he shot his step-father. There is nothing to suggest the former, everything points to the contrary. It cannot be said for a moment that when he fired the fatal shot he did not know that he was firing at a human being and that human being the person with whom he was so angry. Nor can it reasonably be said that when he fired he did not know that what he was doing was wrong. Because he ran amok immediately after killing Mubaba does not show that he was legally insane. There have been many cases in past years showing that such a contention has been consistently rejected. I myself tried at least two such cases and because the facts on this question of insanity are sufficiently similar to those in the present case, I incorporate the judgments herein. In the case of *Rex v. Chepkok arap Chepkitsho*

unreported, Criminal Case No. 119 of 1920, tried by me at Eldoret on the 15th March, 1921, I delivered the following judgment: "The accused, an askari with an exceptionally good character returned from safari on or about the 19th November, 1920, and discovered that a woman with whom he had been living of whom he was fond but who was not his wife had been taken to the house of one Musa. the European constable's cook. The evidence is that he found Musa and the woman in bed together and that the woman refused to come out. In these circumstances the accused armed himself and fired different shots into Musa's hut. According to himself he was angry for two reasons, the first and the principal being the incident of infidelity on the part of the woman, and the second the fact that the European constable had reprimanded him for omitting to visit a certain farm. After firing into Musa's hut the accused ran amok. This does not mean that he became insane in the legal sense; it means in this case that he was so angry that he threw off all restraint and set about shooting indiscriminately, his object being as he said in his statement to shoot men. In other words he gave free rein to his anger and made up his mind to shoot whomsoever crossed his path. In the course of his angry career he shot the deceased, a Public Works cart boy with whom he had no quarrel. It is admitted by the accused that he did shoot this boy and there is no doubt as to his having killed the boy. His defence of insanity has not, in my opinion, been proved. It appears clear that he knew what he was doing when he killed the boy and he must have known that his action was wrong. I sentence the accused to be hanged by the neck until he is dead".

In the case of *Re Mogo Chesubol* unreported, Criminal Case No. 75 of 1929, tried by me at Kitale on the 9th April, 1929 I delivered the following judgment: "The accused is a Sebei (Uganda) native who ran amok on the 12th May, 1929, on Mr. Weller's farm about six miles from Kitale. He killed twelve persons and attempted to kill a thirteenth. He admits having done so and in the course of a long statement made before the magistrate he attempted to justify his actions by showing that he had been called a wizard by different people and refused food and intercourse by his wife. Considering his case from the point of view of insanity, he cannot to my mind be

excused. Before a person can be excused for crime on that ground he must not only be proved to the satisfaction of the Court to be suffering from a diseased mind but that condition must have produced in him either an incapacity of knowing the nature and quality of his act or of distinguishing right from wrong. In this case that burden of proof has not been discharged. He appears to have been a man who acting under a grievance, real or imaginary, killed the woman with whose death he is charged in this case. The fact that he killed other persons does not establish his insanity. Of his having been called a wizard there is no evidence except his own statement nor am I prepared to hold that a man being called a wizard constitutes such grave and sudden provocation as in law lessens the gravity of his act. True it seems peculiar that the accused who for six years previously had conducted himself, according to Mr. Weller, in a perfectly normal manner, should suddenly embark on a course of destruction, as he did. Usually cases of this kind have their origin in a grievance against a particular person. I can remember two such cases, one of a Nandi askari, who conceived a grievance against a superior native officer with the result that he killed him and then armed with a rifle ran amok killing others and eventually giving himself up at Kapsabet when, to the best of my recollection, his ammunition was expended. This case was tried by me at Eldoret in 1920 or 1921. The other case was one of a similar nature and was tried by Hamilton C. J. in Nairobi previously. In a case of the kind under consideration what a Court has to consider is whether insanity in the legal sense, that is as defined by section 84 I. P. C. which embodies the law as laid down in England in MacNaughton's case, has been established. I find the accused guilty of the murder of the woman Kasenwa, the mother of Tarokwa, and sentence him to be hanged by the neck until he is dead. I notify him that he has thirty days within which to appeal. During his imprisonment the medical authorities will have ample opportunity of considering his mental state".

Both cases went to the Court of Appeal for Eastern Africa. In the first case the learned judges in dismissing the appeal said: "The learned judge dealt with the plea of insanity in the proper way and we agree with the opinion he formed on that defence", and in the second case they also dismissed the appeal and in doing so said: "The Court agrees with the view of the facts taken by the learned trial judge".

Other cases in which the same defence was raised where the accused ran amok are Rex v. Karanja Masai, tried by Hamilton C. J. in Nairobi in 1915 (no record of an appeal having been lodged), Rex v. Abdulla bin Kalensiga, No. 63/1919, tried by Pickering J. at Eldoret Sessions (dismissed on appeal Criminal Appeal No. 2/1920), and Rex v. Kiprono arap Rogat, Criminal Case No. 47/1931, tried by Dickinson J. at Kisumu on 15th May, 1931 (no record of an appeal having been lodged). In all these cases the defence of insanity was unsuccessfully raised. In the present case I find that the defence of insanity fails and find the accused guilty of murder.

Editorial note.—Accused appealed to the Court of Appeal for Eastern Africa which on 24th April, 1939, dismissed the appeal in the judgment following.

JUDGMENT.—The only possible defence in this case is that of insanity. That question was most fully and carefully considered by the learned Chief Justice, who tried the case, and he properly directed himself as to the law. We agree with him that the defence of legal insanity was not established and on the evidence we consider that the conviction was a proper one. The appellant has no doubt been kept under observation since the trial so that those concerned may be fully informed as to his present mental condition. The appeal is $\frac{1}{2}$ dismissed.

$\ddot{} \frac{1}{2} \cdot \frac{1}{2}$ N. H. P. WHITLEY, C. J. L. C. DALTON, C. J. F. C. GAMBLE, J.

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