

UGANDA / JUDGMENT

Rex v Nswazalugudo and Another (Criminal Appeals Nos. 94 and 95 of 1945) [1945] EACA 21 (1 May 1945) [1945] EACA 21

COURT

East African Court of Appeal

BEFORE

Gray CJ, Manning J, Sheridan CJ

CASE / FILE NUMBER

Criminal Appeals Nos. 94 and 95 of 1945

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COURT OF APPEAL FOR EASTERN AFRICA

Before Sir Joseph Sheridan, C. J. (Kenya), Sir John Gray, C. J. (Zanzibar) and
MANNING, $\hat{J}$. (Uganda)

REX, Respondent (Original Prosecutor) v.

(1) ASA NSWAZALUGUDO and (2) YOZEFU KIDEMU, Appellants (Original Accused)

Criminal Appeals Nos. 94 and 95 of 1945

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

Criminal Law—Murder—Common intent—Effect of drunkenness.

Both appellants were convicted of the murder of the deceased. The second appellant struck the deceased on the head with a hoe, inflicting an injury from which he subsequently died. The first appellant was in a partially drunken condition at the time and he chased the deceased out of the house and caught hold of him. The conviction of the first appellant was based on an alleged common intent rendering him responsible in law for the fatal blow struck by the second appellant.

Both appellants appealed.

Held $(26-4-45)$ \$.—(1) In deciding the question of common intent it is right to consider the drunken condition of the accused as affecting his capacity to see or appreciate what is happening.

- (2) The facts of this case were insufficient to justify with legal certainty an inference that the first appellant aided and abetted the second appellant in the killing of the deceased.

Conviction of first appellant set aside. The appeal of the second appellant is dismissed.

Appellants present, unrepresented.

Hobson, Crown Counsel (Uganda), for the Crown.

JUDGMENT (delivered by SIR JOSEPH SHERIDAN, C. J.).—Against the second accused Yozefu there is the affirmative evidence of the two Batoro witnesses, Yosamu and Fabiano, that he struck the deceased on the head with a hoe. The resulting injury was such that the skull was penetrated and fractured (Dr. Mwanjale). The cause of death was abscess on the brain following this injury, which according to the medical evidence (Dr. Wiltshire) fractured the skull and so let in bacteria. An operation was performed, but the victim of the assault died after a period of three months. The evidence of the two eye witnesses referred to in conjunction with the medical evidence is sufficient to convict the second accused Yozefu of murder. The case against the first accused Asa is based on an alleged common intent making him responsible in law for the fatal blow struck by Yozefu. This accused was never seen to possess any weapon at the material times. Can it be said that he saw, or if he did see, appreciated the nature of the earlier injuries or how exactly they were caused to the deceased inside or just outside the house? In examining this question it is right to consider his partially drunken condition as affecting his capacity to see or appreciate what was happening. Granted that he did chase the deceased out of the house and caught hold of him, this fact, in the circumstances of the case, is insufficient to justify with legal certainty an inference that he aided and abetted the second accused Yozefu in his act of coming up and striking the deceased with the hoe. The appeal of Yozefu, the second accused, is dismissed and the appeal of the first accused, Asa, is allowed and he is acquitted.

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Prepared on 13 October 2026 · Esheria