

UGANDA / JUDGMENT

Rex v Singh and Others (Cr. Apps. Nos. 20-22 of 1939) [1938] EACA 166 (1 January 1938)

[1938] EACA 166

COURT

East African Court of Appeal

BEFORE

Lucie-Smith, J. (Kenya), Sheridan CJ

CASE / FILE NUMBER

Cr. Apps. Nos. 20-22 of 1939

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APPELLATE CRIMINAL

Before SIR JOSEPH SHERIDAN, C. J. AND LUCIE-SMITH, J.

REX. Respondent (Original Prosecutor) v

(1) SAHIB SINGH, (2) HAZARA SINGH, AND (3) HARNAM SINGH, Appellants
(Original Accused)

Cr. Apps. Nos. 20-22 of 1939

Criminal procedure-Visit by Court to scene in absence of accused-Practice.

Appellants were convicted of an assault causing grievous bodily harm on a dark night. It appeared from the judgment that the magistrate by himself had visited the locus in quo on a dark night and it was clear that this visit did in some way or another influence his judgment but in what way or to what extent was not clear.

\$Held\$ (1-3-39).—That it is necessary as a matter of practice that the accused person and his counsel should be given an opportunity of visiting the locus in quo in any case in which such a visit is considered necessary and decided upon and also that the result of such visit should be recorded on the Magistrate's return to court so that the prosecution or defence may be in a position to examine or cross-examine on any point recorded as a result of the visit. (Convictions and sentences set aside and a retrial ordered.) (Babbon Sheikh v. Emperor (37 Cal. 340) considered.)

Mangat for the Appellants.

Dennison, Crown Counsel, for the Crown.

JUDGMENT.—There is an important question of principle involved in this case. The learned magistrate by himself visited the locus in quo and presumably as a result of his visit made certain deductions. What they were is not stated for nothing is on the record. The result of his visit did it is clear in one way or another influence his judgment, in what way or to what extent we cannot say. It may be that when he went to the scene he entertained some doubts as to whether a conviction should be had, but on that we cannot speculate. In the case of *Babbon Sheik v. Emperor* (37 Cal. 340) it was laid down that "Where the magistrate did not merely view the place of occurrence for the purpose of following or understanding the evidence and testing it in respect of the features of the locality, but imported into his judgment matters of opinion and inference based on circumstances not on the record, and did not place thereon the results of his local inspection" he "had committed an error of jurisdiction which may have materially prejudiced the accused and that therefore the conviction was bad in law". In the present case while we are left in a state of uncertainty as to whether and to what extent the visit to the scene may have weighed with the magistrate, our opinion is that the conviction cannot stand. The convictions and sentences are set aside, a new trial ordered before Mr. Rudd, who doubtless will take into account the period the accused persons have been in custody in the event of one or more of them being convicted. We should like to place on record the necessity as a matter of practice of an accused person and his counsel being given an opportunity of visiting the *locus in quo* in any case where such a visit is considered necessary and decided upon, and also of the result of such visit being recorded on the magistrate's return to court, so that the prosecution or defence may be in a position to examine or cross-examine on any point recorded as a result of the visit.

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