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IN THE PRIVY COUNCIL

ON APPEAL FROM THE COURT OF APPEAL
FOR EASTERN AFRICA

No. 44 of 1946

UNIVERSITY OF LONDON
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INSTITUTE OF ADVANCED
LEGAL STUDIES

BETWEEN

VISHWANATH VISHNU DABHOLKAR

Appellant

15222

- and -

THE KING

,...

Respondent

RECORD OF PROCEEDINGS.

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17th January 1944.

ON APPEAL FROM THE COURT OF APPEAL
FOR EASTERN AFRICA

BETWEEN

VISHWANATH VISHNU DABHOLKAR Appellant

- and -

THE KING ... Respondent

RECORD OF PROCEEDINGS

No. 1.

CHARGE SHEET.

In His Majesty's
High Court of
Tanganyika at
Arusha.

No.1.
Charge Sheet
11th January
1944.

IN HIS MAJESTY'S HIGH COURT OF TANGANYIKA
AT ARUSHA.

Criminal Sessions Case No. 357 of 1943.

The King versus 1. Vishwanath Vishnu Dabholkar
2. Sadanand Shamrao Nadkarni
3. George Biazzos.

At the Sessions to be holden at Arusha on the
9th day of February, 1944, the COURT is informed
by the Attorney General on behalf of OUR LORD the
KING that VISHWANATH VISHNU DABHOLKAR, SADANAND
SHAMRAO NADKARNI AND GEORGE BIAZZOS are charged
with the following offences, that is to say :-

FIRST COUNT.

STATEMENT OF OFFENCE.

Vishwanath Vishnu Dabholkar and Sadanand
Shamrao Nadkarni. Using an instrument to procure
miscarriage of a woman contrary to section 141 of
the Penal Code.

In His Majesty's
High Court of
Tanganyika at
Arusha.

George Biazzos. Accessory before the fact
to the same offence contrary to section 21(d) of
the Penal Code.

Particulars of Offence.

No.1.
Charge Sheet,
11th January
1944 -
continued.

Vishwanath Vishnu Dabholkar and Sadanand
Shamrao Nadkarni on or about the 22nd day of July,
1943, in the Northern Province with intent to pro-
cure the miscarriage of a woman named Elonora Kopko
unlawfully used an instrument or some other un-
known means.

10

George Biazzos, on or about the 22nd day of
July, 1943, in the Northern Province counselled or
procured the said Vishwanath Vishnu Dabholkar and
Sadanand Shamrao Nadkarni, to commit the said offence.

SECOND COUNT.

STATEMENT OF OFFENCE.

Giving surgical treatment negligently and in
a manner likely to endanger life or to cause harm
contrary to section 222 of the Penal Code.

Particulars of Offence.

20

Vishwanath Vishnu Dabholkar and Sadanand
Shamrao Nadkarni on or about the 22nd day of July,
1943, in the Northern Province surgically treated
one Elonora Kopko in such a negligent manner as to
be likely to endanger her life or to cause her harm.

Signed at Dar es Salaam this 11th day of
January, 1944.

Sd. G.D.L. Carnegie.

AG. SOLICITOR GENERAL.

No. 2.
PROCEEDINGS.

In His Majesty's
High Court of
Tanganyika at
Arusha.

IN HIS MAJESTY'S HIGH COURT OF TANGANYIKA
at ARUSHA.

No.2.
Proceedings,
10th February,
1944.

Criminal Sessions Case No. 357 of 1943.
(Original Criminal Case No. 250 of 1943 in the
District Court of Arusha).

Rex versus 1. Vishwanath Vishnu Dabholkar
2. Sadanand Shamrao Nadkarni
3. George Biazos.

10

On Thursday the 10th day of February 1944 this
trial opened by me at Arusha at 9 a.m.

Accused duly committed by a Magistrate are
present on bail.

Names No.1 Vishwanath Vishnu Dabholkar
2 Sadanand Shamrao Nadkarni
3 George Biazos

Interpreters Nos. 1 and 2 understand English

20

No. 3 understands sufficient English
to follow the main case but
will apply later for an inter-
preter in giving evidence him-
self.

Notices all duly served say the accused.

Carnegie for Crown.
Reid (with him Bajwa) for all accused.

Accused No.1 pleads NOT GUILTY to 1st Count.
2 -do- -do-
3 -do- -do-

30

1 -do- 2nd Count.
2 -do- -do-

ASSESSORS: A.G. Patel Indian Hindu chosen (no
objection by Defence)
V.J. Kapur do. do.
L.P. Christianakis Greek

In His Majesty's
High Court of
Tanganyika at
Arusha.

No.2.
Proceedings,
10th February
1944 -
continued.

Duties duly explained, information explained,
pleas explained.

CARNEGIE opens for the Crown.

Gives a summary of the alleged facts and
calls 1st P.W.

MR. REID applies for a separate trial for 3rd
Accused

1. He will be prejudiced by the fact that
he was not present and not privy to
the operation.

10

2. Prejudice to the other two by the hear-
ing of the various conversations ad-
missible against him and him only

Woodroffe p.283 on point 1
Sohoni p.604 note 40 on point 2
Archbold 28 Ed.p.53.

MR. CARNEGIE quoted Section 250 of the Criminal
Procedure Code.

RULING AND ORDER That the application be refused
as to point 1 in that the res gestae are sub-
stantially one and the same.

20

As to point 2 that the Court will protect the
accused as from time to time required.

Mr. Reid applies for further particulars of Neg-
ligence.

RULING & ORDER. That further written particulars
be given by this afternoon. The charge to be
amended. No adjournment asked for on the under-
standing that technical witnesses will not be
called before tomorrow.

30

No. 3.

EVELYN ELIZABETH HOLLAND-SMITH.In His Majesty's
High Court of
Tanganyika at
Arusha.1st P.W. (No.13 in court below) EVELYN ELIZABETH
HOLLAND-SMITH, sworn states:-Prosecution
Witnesses.No.3.
Evelyn Elizabeth
Holland-Smith.
Examination.

10 I am in charge at times of the bakery at the
Polish Camp at Tengeru. It is 11 miles from
Arusha. I know 3rd accused. I know his tearoom
at Duluti 1 mile from the camp. I know Elonora
Kopka (identified). She lives in the Camp. Was
at the tearoom frequently for lunch last July. 3rd
week I saw No.3 there. He met me and said he
would like to talk to me. He said he was in great
trouble. I said I was sorry to hear it and if
there was anything I could do to help him I would
do it. He said it was about his girl Elonora. He
told me she had had an abortion. I got angry
with him. I received a certain impression. He
then assured me that he had never wanted an abor-
tion. He then said that it (meaning the abortion)
20 was under a threat of suicide by the girl. He
said he had agreed to assist her because of her
threat. I then asked if I could see the girl. I
had learnt from him that the girl was on the prem-
ises and with his permission I went into his bed-
room to see the girl. I knew the premises well
enough to know where the room was. I saw her in
bed. Another Polish woman, Stephania ? was sit-
ting on the bed. I spoke to Elonora in English
in Nos. 3's absence. She looked extremely worn
30 out dark rings under eyes, exceedingly ill. I
made a personal inspection of her body, with
special reference to what I had been told by both
No.3 and the girl. Her pulse was rather fast.
She struck me as having a temperature. I examined
her lower abdomen uncovered. She was bleeding
profusely from the vagina and I looked specially
for clots or pus. I saw neither. I then had a
second talk with her and left the room. Stephania
was there throughout. She was having spasms of
40 pain. From the lower abdomen. Obviously, I
then got and gave her a hot water bottle. Half
an hour after I had seen Elonora No.1 came to the
tearoom. Subsequently I found out who he was.

I had lunch that day just after getting and
giving the hot water bottle, somewhere round about

In His Majesty's
High Court of
Tanganyika at
Arusha.

Prosecution
Witnesses.

No.3.
Evelyn Elizabeth
Holland-Smith.
Examination -
continued.

15 or 20 past one. No.1 arrived that day in a little green saloon car. He seemed to know his way. He did not come in by the ordinary entrance but went straight and apparently un-directed to the room where I had seen and left the girl. No.3 was expecting the Doctor. After the Doctor No.1 arrived No.3 left the tearoom where he had been and went by an interior door into the same room as No. 1 and stayed there some 3 minutes and returned to the tearoom. The Doctor had gone in by an exterior door.

10

I then asked No.3 what the Doctor thought. He then told me that the Doctor was quite satisfied with the girl's condition, the pain she was suffering was to be expected, and that she would probably have more pain in the lower part of her back before the symptoms cleared.

I understood at my first conversation with No.3 that the abortion had taken place at Arusha and that he had been called upon to pay the sum of 500 shillings. He actually said so. He said it had taken place two days before. He told me during this talk that he was the father of the child that had been aborted. No.3 told me the Doctor was coming in reply to my telling him after I saw the girl that I thought that I wanted to take her at once before my lunch to Doctor Gold Stucker, the Doctor of the Hospital at the Camp to which the girl belonged. He said he had sent for the Indian Doctor and he might come at any minute. I said that if he had not come by the time I had had my lunch I was going to take the girl to Gold Stucker.

20

30

Cross-
examination.

XXd. Reid. Is not the door used by No. 1 to enter No.3's premises the nearer to Arusha which a person coming from Arusha would normally use ?

Answer. Yes, it is nearer Arusha, but No. 1 on this day did not come from that side. He came from the other side and passed the main tearoom door in his car. The car stopped where the bedroom door was the nearest door. The bleeding girl was laying on two cotton pads and had a towel between her legs, all saturated. A little while left, but a great deal

40

of blood. In the talk No.3 used the word "abortion".

Q: I put it to you that he did not use the word "Abortion"?

10 A: He did use the word. He may have used it with some reserved meaning. I can't say. I was not interested in what he told me except for the one purpose of getting the girl medical help as soon as possible. When I first heard she was ill I only worried about her.

When I heard there was a Doctor I ceased to worry about the girl. The 500/- was mentioned at the first talk. No third person heard our first talk.

Re X. No questions.

By the Court.

For Assessor 1 & 2. No questions.

do. 3.

20 I am quite convinced that No.3 was most reluctant to have any part in this. Once there was a Doctor I attached no importance to the matter.

By the Crown.

I never saw No.3 about this affair nor did I know the girl was pregnant until after whatever had happened had happened.

No. 4.

NEIL COLIN MACLEOD.

No.4.

Neil Colin
Macleod.
Examination.

30 2nd P.W. (1st in lower court) NEIL COLIN MACLEOD,
sworn, states:-

I am Inspector of Police stationed at Arusha. On 24th August last year, I interviewed the third accused. I asked him certain questions and got certain answers, to wit:-

In His Majesty's
High Court of
Tanganyika at
Arusha.

Prosecution
Witnesses.

No.3.
Evelyn Elizabeth
Holland-Smith.
Cross-
examination -
continued.

In His Majesty's High Court of Tanganyika at Arusha. Q: Can you give any information about an alleged operation performed upon one Elonora Kopko ?

Prosecution Witnesses.

A: No I cannot. I did not know she had such an operation until after she was admitted to the Camp Hospital.

Later he said:-

No.4. Neil Colin Macleod. Examination.

A: When Dr. Mogilnicki was treating the girl for fever as he thought before she went into the Camp Hospital, I told him that she was suffering from the after effects of such an operation.

10

Q: Was the girl staying at your premises for 48 hours before the operation ?

A: No.

He told me that she came down to apologise to him for having had the operation, and he said to me that it was none of his business as he did not know whether the child was his or not.

Cross-examination.

XXD. Reid. My recollection on the points mentioned is not "a little hazy". Starting with "illegal" we may have continued the talk just about an operation without an adjective. The word used by No. 3 was "Such an operation". I was clear as to what I was talking about. I think he was too.

20

Re-x. None.

No.5.

Walter Duncan. Examination.

No. 5.

WALTER DUNCAN.

3rd P.W. (21st in lower court) WALTER DUNCAN, sworn states:-

Assistant Superintendent of Police, C. I. D. stationed at Dar es Salaam. On 4.9.1943 I came to Arusha.

30

Next month on the 1.10.1943 I arrested the 3rd accused. That day No.1 made a statement to me.

The arrest of the 3rd accused was not made by me in person. No.1 told me that he had attended to a European girl at Duluti tearoom in July 1943. I recorded a statement (Mr. Reid. It should go in) (F 1 in lower court) made by No.1 on the 1.10.1943. Statement put in and read.

In His Majesty's High Court of Tanganyika at Arusha.

Prosecution Witnesses.

No.5.

On the 3.10.1943 I recorded another statement (F 2 in the lower court) by No.1. Put in and read.

Walter Duncan. Examination - continued.

10 On the 4.10.1943 I recorded a third statement by No.1 (F 3 below). Put in and read.

12.35. Court adjourned.

2.5. Court resumed.

Ex.A1.
Ex.A2.
Ex.A3.

20 Ex. A2 was the result of a note asking for an appointment sent me by the 1st accused who wished to make a further statement. The brevity was due to my advising him that he had better be brief. 9.10.1943 I went to the Native Hospital at Arusha. Mike the Native Dresser had given me information. Mike pointed out certain instruments. I am now selecting instruments exactly similar as the ones Mike showed me. I put in D1, D3 & D4. (all numbered the same as the Preparatory).

Ex.D1,D3 & D4.

D6 was the actual instrument used at the alleged operation so said Mike. D5 was said to contain other instruments actually used.

D6
D5

D2 is the sample I obtained of what D6 looked like in its youth.

D2

Above Exhibits D1 to D6 put in numbered and initialled.

30 Mike also pointed out to me 1st and 3rd instruments in Ex.D5 reading from small to large, two canisters of operating gowns sterile cotton and gauze, bottles containing chloroform and ether a mask used for anaesthetic administration a small portable operating table a douche outfit. He said all these had been moved by him on a certain date to the house of the 1st accused.

40 I put in a plan of the native hospital and its immediate vicinity, put in and marked A4. (C in court below) This shows the house of the 1st accused: 135 paces from A to B on the plan. I produce A5 (B in court below)

Ex.A4.

Ex.A5.

XXD. None.

Re-Xd. None.

In His Majesty's
High Court of
Tanganyika at
Arusha.

No. 6.

ROMAN MOGILNICKI.

Prosecution
Witnesses.

No. 6.

Roman
Mogilnicki.
Examination.

4 P.W. (16th in Lower Court) ROMAN MOGILNICKI, sworn, states:- I am a qualified medical practitioner diploma of Zagreb-Bosen my second diploma - assistant medical officer Tengeru Polish medical camp.

31st July, '43 No.3 came to see me to ask me to see Elonora Kopke who was very ill. I went. I took precaution and saw her pale and green yellow in bed. I examined her - 105° temperature. I suspected abortion and later found a condition compatible therewith, at first it might have been malaria. The peritonitis was clear at the 2nd investigation. She stayed 4 or 5 weeks in hospital - peritonitis and general septic infection - originating in the uterus. 10

Cross-
examination.

XXD. I made no vaginal examination. External examination convinced me of the abortion: stiffened muscles on both sides showed that. I treated her with atebirin and other malarial specifics. The girl showed me a white tablet. I don't know what it was. Evacuation of the uterus is the proper treatment. General description given of dilation and removal of foetus, curette to clear. 20

Re-examined.

RE XD.

By the Court.

There is no reason for hiding such an operation from the constituted authorities - protecting the girl's name per chance. 30

No. 7.

Gerhard Hermann
Goldstucker.
Examination.

No. 7.

GERHARD HERMANN GOLDSTUCKER.

5 P.W. (17th in Lower Court) GERHARD HERMANN GOLDSTUCKER, affirmed states - medical officer at Tengeru Polish Camp. 3rd August, 1943, last witness Mogilnicki reported to me re a woman in the camp. I saw her. Elonora Kopke; (produced

in Court and identified). I examined her externally. Breasts were swollen and pregnancy dilation marks on the skin. I unhesitatingly found a condition of past pregnancy. Generally she had pelvis peritonitis post abortion. There was about a 7 day infection.

XXD.

In His Majesty's
High Court of
Tanganyika at
Arusha.

Prosecution
Witnesses.

No.7.
Gerhard Hermann
Goldstucker.
Examination -
continued

No. 8.

MIKE MCHUKOROJI.

No.8.
Mike Mchukoroji.
Examination.

10 6 P.W. (No.8 in Lower Court) MIKE MCHUKOROJI, As
interpreter Saada Salum Omar as interpreter being
the sworn High Court interpreter in English and
Swahili, sworn states:-

20 Head dresser last July, 1943, Native Hospital,
Arusha, worked under No.1. I helped in an opera-
tion at his house. He came at 9.30 to inspect as
usual - he gave me some instruments in the theatre
and told me to take them to his house. I see the
instruments in Court. I pick out D1, D6, D4, D3,
D5 - D2 I do not know. I sterilized them and took
them round to his house. He asked me to bring a
table from the theatre in Arusha - the small ulcer
cleaning place. Also 2 drums of clean kit as usual
- gauze - cottons - clothes. Also chloroform. Then
he asked me to wait outside for a little. When I
went again I saw a person lying on the table - a
woman.

30 He asked me to pull up the legs and an instru-
ment kept the legs apart. Then a piece of cloth
was put over private parts and the Dr. gave me a
douche to clean her private parts.

By the Court: I am as it were theatre hand in
The Native Hospital. I have helped at operations
on Native Indian and white women. There was no
difference in this operation in the Dr.'s house from
an operation in the hospital - not that I could see.

In His Majesty's
High Court of
Tanganyika at
Arusha.

Prosecution
Witnesses.

No. 8.
Mike Mchukoroji.
Examination -
continued

In Chief (continued). Dr. cleaned up this woman with douche and gauze and there was matter on the gauze black and white came together smelling badly - this was done twice. He then used D1, D3, D4 and D6. D6 was lint covered for an inch or two. He also used D3 and curetted with it. He douched again and fluid and blood came out. Then we bandaged her parts and thighs, I returned everything to its place and then returned home; except the table and buckets: I shifted them at 6 a.m. next morning. I left about 11 p.m. There was no one else there. She was chloroformed by No. 2. He stayed there but confined his work to the chloroforming. Woman was in upper khaki clothes. I saw Dr.'s wife at the operating room. It was open and they kept the keys. The light did not give enough light to tell if the woman was an African or European. I mean the woman operated upon. Dr. No. 1 provided the key and opened the operation room.

10

20

Cross-
examination.

XXD. There was another woman in the room where we operated. Neither Dr. told me to keep secrecy about this operation. The table is normally kept clean and sterilized. We clean soon after unless there is else to do. And we put a rubber on top of the table when we operate - and it was put on this time; all three of us wore usual sterilized gowns. Dr. and I wore sterilized rubber gloves. The gauze etc. was properly sterilized.

Re-examination.

RE XD. I did not see the 1st or 2nd accused wear masks. I did not. I usually see sisters wearing masks - not doctors.

30

By the Court: I would not volunteer information about an operation, but would tell if asked. I have never been warned not to talk, ever at all, or on this occasion.

My hours are 6 to 12 noon, 2 to 4 p.m.; one inspection in the evening: I was helping the man who was on leave. With an operation all rules are suspended.

40

I have not seen a single European woman operated on in the Native Hospital except this one: I saw an operation in the European Hospital when helping in the theatre in case of need.

Court adjourned 4 p.m.

11.2.1944 Court resumed 9 a.m.

No. 9.
STANLEY FORREST.

In His Majesty's
 High Court of
 Tanganyika at
 Arusha.

7 P.W. New Witness, Notice and Service all in order.

Prosecution
 Witnesses.

STANLEY FORREST, sworn states:-

I am an M.B. & C.H.B. Medical Specialist in Govt. employ in Tanganyika and Acting Deputy Director of Medical Services. No.9.
Stanley Forrest.
Examination.

I have examined and treated many cases of incomplete abortion. I see Exhibits D1 to D6.

10 D1 is a vaginal Speculum i.e. one can with its use see into the vagina.

D2 is a Urethral Sound i.e. for use in male operations on the penis and beyond.

D3 is a double ended uterine curette i.e. used for scraping and cleaning the lining of the uterus.

D4 are vulsellun Forceps i.e. for holding pulling down and exposing the neck of the uterus with a view to whatever operation is required.

20 D5 is a set of Hegar's Dilators i.e. for use in dilating the mouth of the uterus.

D6 is a uterine sound i.e. to sound the uterus or womb for diagnostic measurements, also to determine the direction and position of the uterinus.

For the purpose of incomplete abortion operations D1, D3, D4 and D5 may be required, all or any, though not necessarily.

D2 is never necessary.

30 D6 is never necessary. I have never found its use needed. Except in the hands of an expert it could be dangerous. It is diagnostic not operative. It is however the best and usual tool for one specific purpose, to wit for reapturing the membrane which has to be reaptured to start an abortion. In the case of an incomplete abortion that membrane is usually already reaptured. In exceptional cases it may still be intact. Abortion takes place either

In His Majesty's
High Court of
Tanganyika at
Urusha.

Prosecution
Witnesses.

No.9.
Stanley Forrest.
Examination -
continued.

because of local or general disease, or because of interference. In the case of disease the membrane may be still intact. In the case of interference the membrane is reaptured intentionally and abortion usually follows without assistance.

Re DUTIES OF A MEDICAL OFFICER:-

a. On receiving a case of incomplete abortion. If there was any suspicion of any past criminal interference he would call some registered practitioner into consultation. If after that it was considered suspicious the facts would be reported jointly by the two to the Police; that is what I would do and that is what any man in the employ of the Govt. here ought to do. Both Nos. 1 and 2 are licensed not registered practitioners and both are in Govt. employ, in my Department. There are general warning instructions circulated annually I believe with the list of Registered and Licensed Practitioners. One section touches upon the conduct of practitioners when dealing with cases of abortion generally. I will attempt to obtain a copy and hand it in. I hear the quotations read out from Taylor's Med.Jur. Ed.9 Vo.2, page 141.

10

20

1. Labour may be induced only

"to save the life of the mother or to save the life of the child".

2. "The golden rule is never to empty a uterus without first having a second professional opinion as to its necessity".

With those quotations I fully agree.

30

The professional opinion of No.2 would in this case amount to a second professional opinion.

The two Nos. 1 and 2 were in my opinion under two clear duties.

1. In this Country they should have called in a white Doctor before operating on a white woman.

2. They should have reported the operation.

I am prepared to assume that under the circumstances of this case, with which I am sufficiently

40

familiar, that No.2 not being actually stationed in Arusha, and only here en passant, might be excused for assuming that No.1 would make the necessary report.

In His Majesty's High Court of Tanganyika at Arusha.

10 There were two European Doctors at the Polish Camp at which Elonora Kopke stayed. These men are responsible for the health of the camp. A woman suffering from abortion had no reason to go to a Doctor in Arusha unless there was a desire for concealment. If she thought she would get better treatment elsewhere she might go elsewhere. I can understand the woman not telling the Police Camp Doctors that she was going elsewhere, but I can not understand the two Indian Doctors at any rate No. 1 not reporting to the Doctors of the camp as a matter of etiquette.

Prosecution Witnesses.

No.9.
Stanley Forrest.
Examination - continued.

Re NEGLIGENCE:-

Sepsis precautions in a case such as this fall into certain groups:-

- 20 a. Pre-operational. There should have been an enema given before a general anaesthetic.

The parts should have been shaved.

The parts affected and surrounding should have been painted with some adequate disinfectant.

An operation of this type would not be done in the womans old clothes. That would add a possibility of sepsis.

- 30 The whole atmosphere of the private house where the operation took place must be assumed not to be a septic.

- b. Operational.

If the operation is abortion then the sound No.D6 is an excellent tool for the purpose.

If it is for incomplete abortion then that tool is an improper and risky tool.

If Mike is right in his statement put to me that the light was insufficient for him to distinguish the race or colour of the woman operated on

In His Majesty's High Court of Tanganyika at Arusha. and whose legs he saw in his capacity as dresser then the light must have been inadequate. This would have been taking an unnecessary risk.

c. Post-operational:-

Prosecution
Witnesses.

A woman operated upon as this woman was at say 9 p.m. should have been put to bed and kept in bed for two or three days under observation and treatment. To do otherwise is negligent.

No. 9.
Stanley Forrest.
Examination -
continued.

XXD. (postponed by agreement for Defence Consultation)

Cross-
examination.

Court adjourns 10.50 a.m.

10

Court resumes 11.30 a.m.

Ex.A6
Cross-
examination.

XXD. I put in the instructions referred to in my earlier evidence with special reference to section 10 of the "warning". Both Nos. 1 and 2 appear in the list and would in ordinary course receive a copy. This draws their attention to sections 141, 142, and 143 of the Penal Code.

There are no instructions re reporting. The warning is general. There are no other Departmental Instructions.

20

By virtue of their local licenses the two Drs. concerned in this case are fully entitled to perform proper abortive and "incomplete abortion" operations. They are allowed private practice for profit if not interfering with their official duty. There is nothing to prevent them treating Europeans who wish them to do so. They can treat patient and consult in their own homes if they so desire.

"Incomplete abortion" may call for no treatment, or a minor operation or a major operation. General anaesthesia if applied would indicate a major operation.

30

"Curetting" is not a normal treatment for incomplete abortion.

The facts in this case as put to me by you i.e. "enlarged os, membrane extruding" amount to Incomplete abortion.

Treatment for that is emptying of the uterus. No curetting. In normal abortion no instruments are

required at all. Dilation enough to admit the fore finger will enable the whole uterus to be emptied by the Sawing movement of the examining finger. Then you usually douche out. Very few would use a curette for a diseased uterus in these cases; none would use it for a normal uterus. The sepsis which would be indicated by smell if any present would indicate sepsis and that would call for more or less operational care.

In His Majesty's
High Court of
Tanganyika at
Arusha.

Prosecution
Witnesses.

No.9.

Stanley Forrest.
Cross-
examination -
continued.

10 In the absence of any outside disease which is not suggested here, the presence of the small and black and white matter deposed to I understand by witness Mike, would show that there was not an immediately prior abortion but would point an abortion say two days before, certainly 24 hours earlier.

Sepsis is a matter of development and would not be caused by that day's acts.

20 Evacuation is not necessarily the immediate operation but it is better to wait a little perhaps a day or two before acting. A question of the severity of the symptoms. If the ovum is out as a fact then the uterus must be emptied if it cannot empty itself. The speed of the operation in this case seems to me to be suspicious. Why not give a little time? Why not try an enema which might cause automatic action. I find this operation suspiciously precipitate.

30 I do not agree that the treatment given was the best. I would have treated the sepsis first and not plunged into an abortion or incomplete abortion operation. That does not necessarily mean more than waiting a few hours. (Deposition of Dr. McQuillan; P.W.22 in Court below put in in order to be used for cross-examination) under s.265A of Criminal Procedure Code.

Ex.A7.

Court adjourns 12.30 p.m.

Court resumes, 2 p.m.

Deposition of Dr. MacQuillan read.

40 I have heard the deposition read. I agree that the uterine sound could be used as set out in the deposition to get depth dimension and position

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High Court of
Tanganyika at
Arusha.

Prosecution
Witnesses.

No.9.
Stanley Forrest.
Cross-
examination -
continued.

of the uterus, but I do not consider it as common practice in cases of incomplete abortion. It is quite customary to use the curette for cleaning walls of the uterus. But most obstetricians would not use it in cases such as this. The curette might be used in a very obstinate case. I disagree absolutely with Dr. MacQuillan's words that "curetting is the only way". The finger is the safer. I am not an obstetrician, no special degree.

10

Dr. MacQuillan is a B.A.O. of Dublin. I believe that that is included in the general Dublin degree. I agree that if the cervix cannot be sufficiently dilated you would have to use a curette. Expectant treatment is not what I have advised. I agree that it is not suitable. In the absence of sepsis I would delay for some 12 hours. What I would not do is to rush into the operation at once. I am prepared to state definitely that in the case here the operation was precipitate.

20

Absence of the enema might cause pollution of the field of operation. It is the practice. Faeces might or might not come.

Absence of shaving makes sterilization harder.

Painting destroys germs and is necessary, disinfectant only hold them in check.

The Dress of the patient may have added to the dangers of sepsis.

I do not know why D6 was used. With lint it might be used for many purposes. For removing blood clots it would be unsuitable. A forceps should be used lest the lint be left behind. D6 might conceivably be used for disinfecting the uterus if the lint was dipped in iodine.

30

Home treatment might be admissible after an operation only if the home was adjacent and under easy observation.

In view of the evidence here of sepsis, there was more need for observation.

I consider that to comply with the patient's wish to go home would in this case have been negligence. I would have got myself covered. There

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is so much risk of sepsis in the tropics that these cases must where possible be done in hospital. I have known of a few cases where the operation has been done in private houses in this country. I have never heard of a case where it was done in a private house and the patient immediately removed elsewhere. Except this case.

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Tanganyika at
Arusha.

Prosecution
Witnesses.

It might be that cases in the Hospital are moved to their own houses in the neighbourhood.

No.9.

Stanley Forrest.
Cross-
examination -
continued.

10 Q. Here the patient was removed 10 hours after the operation and was visited by her doctor the same evening and again about midday the following day - was that negligent ?

Ans. If those were the only visits to an admittedly septic patient, then there was negligence. She should be visited daily for a week. I don't know what the treatment was. A visit is not necessarily treatment.

20 If a patient refused after a second visit to go to hospital what would you do ?

Ans. I would carry on treatment; I would not feel I could wash my hands of her.

The presence of other Doctors to whom the facts were not reported is irrelevant.

Re X: Discharge may go on throughout pregnancy.

Re-examination.

The finger properly used gives less danger to sepsis than the instrument.

By the 2nd Assessor.

30 Q. Should the Doctor treat first and report second or report 1st and treat second ?

Ans. With a European he should have reported to the European Hospital. If there was something urgent to be done he would do it first and report later. If not urgent he would report first and then treat.

Q. Is there any difference in law between a Native, Indian or European Practitioner ?
Ans. No.

40 Q. Can the patient go to whom she pleases?
Ans. Yes.

In His Majesty's
High Court of
Tanganyika at
Arusha.

No.10.

MIKE MCHUKOROJI (recalled)

Prosecution
Witnesses.

6th witness Mike RECALLED.

There was a very weak electric light in the operation room that is the weak light I talked about.

No.10.
Mike Mchukoroji
(recalled).

Carnegie reads and puts in the statements of the three accused made before the Lower Court. These having been duly certified under section 211(4) Cr. Procedure Code, are received in evidence A8, A9 and A10 and are authenticated by my signature. Intd. W.S.

10

Prosecution closes. Intd. W.S.

Upon the application of Mr. Reid No.2. is found Not Guilty on both counts and discharged, all three assessors agreeing.

Upon the application of Mr. Reid for the discharge of No.1 application refused.

The remaining accused Nos. 1 and 3 are informed by me of their rights under section 267 Cr.Procedure Code.

20

Mr. Reid and both accused understanding the position elect to give evidence themselves under oath, and state that they have witnesses to call.

Court adjourns 4 p.m.

12th 2.1944 9 a.m. Court resumes.

12th 2.1944 9.5 Court adjourns.

" " 10.15 Court resumes.

No. 11.

VISHWANATH VISHNU DABHOLKAR.

In His Majesty's
High Court of
Tanganyika at
Arusha.

Defence
Witnesses.

No.11.

Vishwanath
Vishnu
Dabholkar.
Examination.

No.1 accused called to give evidence on his own behalf:- sworn states:- (Hindu affirmation)

Vishwanath Vishnu Dabholkar. I am a Sub-Assistant Surgeon in the service of the Government. 14 years service. Came to Arusha in June, 1943. In July 1943 I performed an operation on the girl Elonora Kopke. On 22.7.1943 No.3 came to see me, between 8.30 and 9 a.m. He wanted to consult me. The patient he said was suffering from bleeding and pain in the abdomen and feverishness, for three or four days. I arranged with No.3 for the patient to be brought to me. At about 9 p.m. that day while we were dining No.3 and two ladies came to my house. One was said to be the patient. That day I did not find out or ask the patient's name, nor that of the other woman. Both women were apparently Europeans. I told them to wait. I finished my meal. Then I went into consultation. After consultation in which it appeared that the patient could talk a little English. I took the patient into another room for examination. I got the history of the case in part from No.3 and in part from the patient. I examined the patient first externally superficially where affected and then with due aseptic precautions internally. I diagnosed a partially expelled foetus. No.2 (now discharged) was staying with me. I agree with his statement put in here as far as his share in this matter is concerned. After we two Drs. had agreed on the condition and what was necessary I conveyed our opinion to No.3 alone. I told him an operation was necessary. He presumably then saw the patient and came back and instructed me to get on with the operation as the patient was in pain. I took it he was conveying to me her consent and that he was instructing me to proceed. On this day the 22nd terms and fees were never discussed with No.3 or with any one else concerned in the matter. No.3 left after giving the girl's consent. I did not see him again until Duluti the next day, at about 7 a.m. I then gave instructions to Mike and we two doctors performed the operation. The equipment brought from the Hospital was instruments, sterilized drums, douche, can, chloroform and operation table. Everything used was sterilized. Sterilized in the Hospital and then

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In His Majesty's
High Court of
Tanganyika at
Arusha.

Defence
Witnesses.

No.11.
Vishwanath
Vishnu
Dabholkar.
Examination -
continued.

brought over to the house. Proper aseptic pre-
cautions were taken during the operation. I
removed an unexpelled part of the ovum. I then
curetted. Without being positive I think that
the pregnancy was about a three months one. That
ovum would be about the size of an ordinary hen's
egg. I can give no idea how much of that ovum
had remained in the uterus. The position was
complicated with a lot of blood clot. It is the
practice to have a pail into which all these pieces
of parts drop automatically and we leave it there
for washing. I curetted with Ex.D3. Then I
douched cleaned the part with iodine put a
sterilized pad on and bandaged the patient. The
operation took about 20 minutes from when the
patient went under chloroform; the patient had
had no abundant growth of hair; it was as if she
had been recently shaved: I did not shave her
myself. I painted the parts. No. 2 confined
himself to the anaesthesia. Mike helped me as a
theatre attendant, the other lady who had come
remained in the room for the whole operation. The
patient was then put to bed in the same room. She
came to in about 10 minutes. I then gave her an
injection of streptocide and a little later one
of pituitrin; the first is to fight sepsis the
second to contract the uterus and thus stop bleed-
ing. A little later I gave her some coffee.
This was for the heart. Then I went to bed, she
being apparently about to go to sleep. The other
woman also slept there in the same room. In the
morning at about 6 a.m. I took the patient to
Duluti to No. 3's house in my car. I gave her
one more injection of pituitrin before starting.
The patient at Duluti entered No. 3's bedroom and
lay down on his bed, a double bed. I then gave
the patient into her charge 6 powders of ergot
with instructions to take one powder three times
a day ergot contracts the uterus. I also handed
her two sedative tablets; Dovers powders. Then
I left.

I visited the patient again that day that
evening. 7 to 8. I examined her. She had
improved. She had changed her dressing during
the day. She had changed dressings three or four
times. The last she had taken off showed blood
but not excessively. I gave her another inject-
ion of Streptocide. I also gave her orally 4 or
5 M & B (Sulphanilamide) 2 then and 2 next morn-
ing. These were against possible sepsis.

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I returned on a note from No.3 at about noon, next day.

In His Majesty's High Court of Tanganyika at Arusha.

Defence Witnesses.

No.11.
Vishwanath Vishnu Dabholkar.
Examination - continued.

10 No.3 on my arrival in the presence of the patient told me that the abdominal pain was more, and that there was an increase in bleeding. I examined her. I found nothing extraordinary. I asked to see what was left of the medicines I had given and was shown none. I am mistaken I found something extraordinary. The patient appeared to feel sick. With increased pain in the abdomen, which I attributed to these powders. The increased pain and bleeding was consistent with her having taken an overdose of Ergot. It did not require any special treatment. An overdose caused by taking six ergot powders should clear up in about 12 hours.

20 I considered the position satisfactory and I left saying I would send some medicine from Arusha. A messenger from the tearoom went with me. I gave him a medicine; a sedatine mixture and more M & B. Before I left I told the patient I was not coming back, unless I was required. I was not called back again. I never at any time suspected sepsis in the patient; except during the operation when I suspected some slight sepsis. On that suspicion I gave her this subsequent antiseptic treatment. I received a fee for the work of 200 shillings from the third accused. He paid me some time after, which was also when we agreed on the fee. He paid me cash; he had it on him; I really expect to be believed when I say that we never had any previous talk on fees.

30 XXD: I was told on the 22nd that she was European did not get her name nor was I told where she was nor did I ask anything but to tell No.3 to bring her to me. It did not occur to me to ask, because she was to come in as I told him to bring her.

Cross-examination.

The Court adjourns 12 noon.

The Court resumes 9 a.m.

One assessor missing. Court adjourns.

40 Court resumes 9.15. All assessors present.

Absence explained. Excuse accepted.

XX of No.1 continued:-

In His Majesty's
High Court of
Tanganyika at
Arusha.

Defence
Witnesses.

No.11.
Vishwanath
Vishnu

Dabholkar.
Cross-
examination -
continued.

I did not regard No.3's statement that the woman was bleeding from the vagina as serious. Even though it was said to have been for 2 days. I fixed no time for her to come in. I fixed no time because I was there any time. No.3 knew where to find me as he was a patient of mine before. When she was brought at 9 p.m. I did not enquire who she was or whence she came. I never ever reported anything to any body. I never made a report because there was no necessity.

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By the Court: If I had wanted to make a report I could not have made a report as I did not know her name or where she lived. I first found out about her name when Duncan came to my house on the first of October. I first found out where she really lived when Duncan saw me and told me that she was of the Polish camp. Before the operation No. 3 told me that if he didn't come in the morning I should take her to his house. If he did not come by six I was to take her.

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I have never before arranged that a patient shall leave at a special time fixed by me before the operation. I took her away at 6 a.m. because No.3 had not come for her. The hospital boys come on duty at 6.30 and 7 a.m. I went early because I had to go back. I did not take her away early to get her away unnoticed.

XX (Contd.) I did not get her personal consent in writing for a general anaesthesia because I did not think it necessary.

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I did not obtain any consent for the removal of the instruments. Consent is not necessary. Consent for me to use Hospital equipment chloroform and dressings for a case in my private practice was not necessary. During the last 14 years while running hospitals I have freely used Government stuff for my private practice. We are compelled by a standing order to pay a fee for these facilities. The entry is made on the day and at the end of the month it is all put together.

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It is a question of my moral duty to pay a fee. No entry was made in this case in July, August or September. Duncan came to me on 1st Oct. By standing orders a 10% fee is charged for the use of the theatre. I did not hold the operation in the house to save this fee. I held it

there for my convenience. I regarded myself in respect of this operation as liable for the 10% fee. I was paid in or about the 29 July. I did not pay or enter my 10% while I remembered about. Later I forgot all about the matter. I would have entered it in October if I had remembered.

10 Mike went off duty normally at 6 p.m. I had not arranged for him to be back at 9 p.m. I went with him to select instruments and left him to sterilize. Mike was not there accidentally, he was doing a round for another man. It was luck not pre-arrangement.

I selected all the instruments produced in this Court except D2. I agree that if one wants to use it for that purpose D6 the uterine sound is the best instrument for inducing abortion. I do not agree with Dr. Forrest that in an incomplete abortion the use of D6 is not only unnecessary but dangerous.

20 The first instrument I used was D6. I used it to inspect not for any other purpose. No I did not use it to abort. It is the instrument to abort. I used it first and used it to touch the mouth of the uterus and not to abort but to disinfect the mouth with a piece of lint wrapped round it before I could put my finger in. It is not a dilater, it is a usual instrument. I cannot say whether when I selected it I had cleaning in mind. I pushed it up with a little bit of lint wrapped on it. For an abortion I would have used it bare. I never
30 went in deep enough to have broken the membrane if it had still been there. I cannot say what caused this incomplete abortion. It might have been disease. The organs were quite healthy. It might have been malaria. I did not treat her for malaria. I had never used D6 in this way before. I could have cleaned with sponge forceps or long bladed forceps. Both were in the Hospital. I knew from examination that the membrane was in my opinion broken. I knew that I would have to clean the mouth of the
40 passage. I knew that I would not have to break the membrane. I cannot explain why I took the instrument usually used to break the membrane and not the instrument to clean and then used the one as I had ever used it before to clean the mouth. I must have overlooked the matter. It is usual when I operate in the Hospital to have a female attendant present. I do not do this when I operate in my own house.

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High Court of
Tanganyika at
Arusha.

Defence
Witnesses.

No. 11.
Vishwanath
Vishnu
Dabholkar.
Cross-
examination -
continued.

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Tanganyika at
Arusha.

Defence
Witnesses.

No. 11.
Vishwanath
Vishnu
Dabholkar.
Cross-
examination -
continued.

I had no tray to catch the contents of the uterus. I sent the stuff that came out into the tin, later I had a casual look at it after the water from douching was also in the tin bucket, but I never felt it or examined. I think that what came out was part of a three months ovum but I never examined it at all. I did not examine because I was satisfied that everything was out.

By the Court: I can give no reason why I did not examine what came away. I see that if I knew that this was the remains of an induced abortion in a healthy woman there was no need for me to examine the remains that came away. I agree that if this was an abortion caused by some natural causes it was my duty to examine and find out. I say it is hard to find out. Yes I admit that by not examining I made it impossible to find out. I see the Dilemma. I put it down to a possible error of judgment. 10

XX Court: These cases call as a rule for two or three days in bed but there is not much danger in moving the patient to bed in No.3's house, about 11 miles off. The road I admit was bumpy the car a 5 seater DeSoto. Re after treatment. I suspected that the patient had taken three ergot powders at once. It would cause a damming up and a flood later. From the point of view of sepsis I must admit that it would have been safer to have the operation in the hospital either Native or White. I agree that this type of incomplete abortion calls for more precautions against sepsis than an ordinary operation. 20 30

On 1st Oct. I made a statement to Duncan. I heard it read out in Court.

I wish to explain why I said so many clearly inaccurate statements in the Ex.A1. On 1st Oct. Duncan asked if I had attended any lady patient at Duluti. I said yes. He asked me to make a statement. He told me Mr. Biazzos No.3 was arrested the same day. I made an appointment for that night so as in the meantime to clear my work. I was frightened. I tried to recollect what I could. I had a few drinks and went to see Duncan. I gave some answers not remembering the sequence of events. My intention was to tell every thing. I did not mention about the operation because I was afraid. I was afraid because I was connected with No.3. I do not exactly know why I was afraid. On the 3 40

Oct. I made A2. I made a third statement on the 4th of Oct. Then I told all I knew.

Re X: No questions.

10 Assessor No.2. I have had one European patient before this. Not this class of case. The white and black clots that have been talked about were normal mucous and black blood clots. They did not make me suspect a sepsis already developed. I did not see sepsis but I took precautions. The operation itself took 20 minutes. The patient was not longer than 40 minutes under. I could abort in half an hour or more.

By the Court. I was satisfied that the whole matter was innocent. On the day I made my first statement A1 I had no idea of covering up No.3 or the woman.

In His Majesty's High Court of Tanganyika at Arusha.

Defence Witnesses.

No.11.
Vishwanath Vishnu Dabholkar.
Cross-examination - continued.

Re-examination.

No.12.

HELENA TOMASZDZESKA.

No.12.
Helena Tomaszdzeska.
Examination.

1 D.W. (4 P.W. in Court below)

20 Victoria Konigsberger sworn as Polish English interpreter and vice versa.

30 HELENA TOMASZDZESKA sworn states:- I live in Tengoru Camp. In the same hut as Elonora Kopke and another. We have lived like this for some 18 months. I remember Elonora being ill last year and going to hospital. Prior to that she was not in her hut for one or two nights. Prior to that she was ill; she was in fact never in satisfactory health, and at this time especially I saw nothing special. Apart from ordinary menstrual stains on bed clothes I who washed her bed linen noticed nothing. There were blood stains on the two days before Elonora went away. No difference from ordinary menstrual spots. I have seen Elonora take medicine. One pill appeared to be Atebrin. The other pill was brown. I saw her return after her two nights absence. She was on foot.

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Arusha.

XXd. No questions.

By Assessor No.2. I did not know Elonora
before we were billeted together in camp.

Defence
Witnesses.

Others. No questions.

Case for No.1 Accused closed.

No.12.

Court adjourns 12.15.

Helena
Tomaszdweska.
Cross-
examination.

Court resumes 2 p.m.

Case for defence of accused No.3 opens.

No.13.
George Biazos.
Examination.

No.13.
GEORGE BIAZZOS.

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No.3 Accused called to give evidence on
his own behalf Sworn states:-

GEORGE BIAZZOS. I admit accompanying
Elonora Kopke on the night of July 22nd to the
house of No.1. Before that evening I did not
know that she was pregnant. On the 20 July I
went to her house in the Polish Camp at 5 p.m.
She was lying on her bed. She said something
to me. Because of what she said I called again
next afternoon after 4 p.m. She repeated her
statement. On the 22nd at her request, I went
to No.1, and found him in his house. I told
him of a lady suffering from pains, fever and
bleeding and asked his advice. He said he must
see the lady. I left. On return to my house
I received exhibit All. All (Exh.H. in Lower
Court). This letter worried me. I visited her
again at once. As I started to go I saw her
to my surprise with a lady companion.

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She Elonora was looking very bad and made
another statement to me. I explained certain
difficulties to her. I had no car. No car
I could get. $\frac{3}{4}$ hour later a military lorry
arrived in my place. I asked for a lift for
all 3. It was given. At Arusha we went to
see No.1 at about 8.40 p.m. I knocked. No. 1

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answered. I said I had brought the lady of whom I had talked in the morning. He left us seated on the verandah. He came back in say 10 minutes. He took me and the patient into a room on the right hand side. He asked her what was the matter. She explained pains in the back and front. She also said there was a little fever and in the meantime a little bleeding. No.1 took her alone into another room. I waited. In about 15 minutes the Dr.No.1 came back alone. He said the lady was pregnant, and had had an abortion. He said she must be cleaned. A small operation was needed. She must stay all night to be done. Then the girl entered and I explained to her what the Dr.had said.

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The girl wanted anything done that would stop the pain. She then got the other woman to stay the night with her. The Dr. explained that this was also the opinion of a 2nd Dr. who was in the house. He told me I need not stay. He told me she must stay the night but that tomorrow she would be all right. He agreed to bring her out to my place if I was not there by 6 a.m. as I might not be able to get a car.

20

At 7 a.m. the next morning the girl arrived at my house with the companion and No.1 I asked all concerned and got satisfactory replies as to the position. I gave my bed to the girl. The Dr. produced medicines. Two pills were to be taken at once and were. Six powders were to be taken three a day after meals. The Dr. came again that night. He made an injection. He said he was satisfied. She was talking and laughing and looking better. Next day, I found the three papers of powders lying empty on the table at about 7.30. I talked about it to her. I was worried. At 10 a.m. she started vomiting. More pains were complained of. I sent a message asking the Dr. to come as soon as possible instead of at 4 p.m. as previously arranged. She and I were both feeling nervous and worried. At 12 or 12.30 Mrs. Holland-Smith and Mr. Alexander arrived. I was glad to see their car. I made a statement to Mr. Alexander who was a fellow Greek. I repeated then to Mrs. Holland-Smith. I told her please to help me give me an idea about my girl she is in trouble. She had an abortion, but the word of abortion was not used. I made a slipping down motion with my hands, and she had understood readily for Mr. Alexander to whom I had explained,

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In His Majesty's
High Court of
Tanganyika at
Arusha.

Defence
Witnesses.

No.13.
George Biazos.
Examination -
continued.

In His Majesty's
High Court of
Tanganyika at
Arusha.

Defence
Witnesses.

No. 13.
George Biazos.
Examination -
continued.

explained to her. I had used the Greek word for abortion to Mr. Alexander. I did not use a word in Greek implying criminal intent but I used the word for a natural miscarriage. I told her she had been to the Dr. at Arusha for treatment. She asked why I had done that. I don't know what she meant for neither the girl nor I had any idea that the girl was pregnant although it was the third month.

Re. Mrs. Holland-Smith's conversation (read not to me from her evidence) Elonora was my girl. I was responsible for her pregnancy though I did not know of it. The fact that Mrs. H-Smith got angry with me must have been that she thought that there had been an abortion when actually I was only talking about a miscarriage. The assistance I talked about was taking my girl to the Doctor's. I said that if this miscarriage had not fortunately happened Elonora would have been beside herself because she could not live in that camp with a baby, if she was unmarried. I could not marry the girl for I am married but separated these 8 years with one child living with my mother. 10 20

I did say to a third person when Mrs. H-Smith was there that the treatment would cost me 500 shillings. I said I had brought her to the Doctors of Arusha.

When I said to Mrs. H-Smith that abortion had taken two days before I meant "that we were now on the safe side as she had been to the Doctor's two days before", the Dr. came I confirm this statement of the treatment that day. That was his last visit. Some 7 to 10 days later I paid No. 1 200 shillings for his work. No. 1 said it was too difficult for him to come out after the visit of the 24th. but that if emergency arose I must call him. He never suggested going to the camp hospital. Next day 25th I think a Sunday the girl left for the camp apparently alright. She walked. I thought she was recovered enough to go. Two days after this I saw her walking about in the camp. I mentioned these matters to Costas Zikakis. 30 40

Cross-
examination.

XXd. 24th August. I had a talk with Inspector McLeod. He asked about an operation, not about an illegal operation. I said I did not know anything about such a kind of operation. I meant

that I did not know anything of a criminal abortion of a relieving the girl by force.

McLeod's actual words were "What happened to Elonora". Ans. "The only thing which I know, to call 5 doctors to save her life, and if I was not watch her she was die today, and I don't know what happened to her". He then asked about a criminal operation. Ans. "I don't known such an operation".

- 10 Q. "Are you the father of the child". Ans. "I admit it is the child but without certainty or responsibility". Q. "Can you make her speak as she is your girl". Ans. "As soon as is permitted to me to see her and to have a conversation with her I am going to do my best". I had to find out from the girl what had happened. Until the investigation started I had no suspicions. As to the pregnancy I was using preventatives. I did not tell McLeod that I had told Mogilnicki
- 20 that the girl had had an illegal operation.

I did not tell McLeod that the girl came to apologise to me. I did tell him I did not know whether the child was mine or not.

Re X. No questions.

Assessors and Court. No questions.

Court adjourns 4 p.m.

Court resumes 9 a.m.

Case for No.3 closed.

In His Majesty's
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Tanganyika at
Arusha.

Defence
Witnesses.

No.13.
George Biazos.
Cross-
examination -
continued.

15.2.1944.

No.14.

PROCEEDINGS.

No.14.
Proceedings.
(continued)

30. Carnegie for the Crown draws attention to the powers under section 173 of the Criminal Procedure Code and to sections 365 and 368 of the Penal Code.

Reid for the accused:-

In His Majesty's
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Tanganyika at
Arusha.

No.14.
Proceedings -
continued.

Re No.1 Count 1.

Evidence of No.2 (put in) shows no intent of abortion. Submits that it is quite clear that an abortion had taken place before the girl came to Arusha. Helena supports this and supplies a possible reason to wit two kinds of pills and two days of bleeding. Mike confirms. Forrest also confirms. Also Dr. MacQuillan. This is uncontradicted. Charge fails.

Conviction on suspicion cannot follow.

10

Re. accessory. Mrs. Holland-Smiths evidence is not admissible against accused No.1.

Rex vs. Mali Kiza s/o Lusota 8 E.A.C.A., p.25. The non report can be assigned to cupidity. The false statements in A1 to panic. Not enough evidence to tell No.1 that there has been an abortion.

No.1 Count 2:- No reasonable case; based on Forrest's evidence as to certain omissions being risky.

20

No.1 said there had been painting; proper aseptic precautions. The points were not put to Mike.

do. do. the other Drs.

Dr. MacQuillan was not asked to give his opinion.

The danger of removal is only stated as a matter of opinion. The way accused did the operation was reasonable.

do. subsequent treated the girl was proper.

30

Re No.3:

If there was a conspiracy to abort to which he was privy there is no evidence of achievement.

Carnegie refers to sections 219, 220 of the Penal Code.

Court sums up to the assessors. The points to decide are

In His Majesty's High Court of Tanganyika at Arusha.

- A. Was there an abortion? caused by some one illegally or a miscarriage?
- B. Did No.3 know about it before?
- C. Did No.3 know about it after?
- D. Did he help after the abortion to cover it up?

No.14.
Proceedings - continued.

10 The above points are all as regards No.3 whom I take first because he comes first into the picture in point of time. I quote you the points out of the evidence of the first two Crown together with No.3's answers unto these points.

The opinion of the three assessors is

Assessor No.1 It was a miscarriage.

No.3 Never knew about it all without some doubt.

Assessor No.2 There is no evidence that anything illegal occurred. I think he knew of the miscarriage after it occurred.

Assessor No.3 I think it was a miscarriage. I think after the miscarriage he helped her.

Courts sums to the assessors re No.1

On count 1 all three assessors having already expressed their opinion that in this case criminal abortion has not been proved adhere to that opinion. Consequentially they find accused not guilty on Count 1.

30 Count 2. I sum up on Count 2.

The Count stands as read; plus the words "to wit. that he failed to take proper aseptic precautions".

A. Do you think that the operation took place under less aseptic conditions in the Dr.'s home than it would in the hospital?

In His Majesty's
High Court of
Tanganyika at
Arusha.

No.14.
Proceedings -
continued.

B. Why did he have the operation in his house and not the hospital?

C. Do you think he was as careful as he should have been?

D. Did he inspect what came away?

E. Was he careless to fix the time for lying down before the operation was done and he knew the results?

Answer to question A.

Assessor No.1 I think the operation would have been safer in the hospital. 10

Assessor No.2 Like No.1 Assessor I will not differ from medical opinion.

Assessor No.3 It would have been safer in the hospital.

Answer to question B.

Assessor No.1 For his own convenience.

Assessor No.2 For his own convenience and so as not to operate on white woman in a Native Hospital. 20

(N.B. It has transpired since the case started that this Assessor went bail for accused No.3).

Assessor No.3 I have no idea.

Answer to question C.

All. We think he was as careful as he should have been.

Assessor No.3 I leave the question to the Court. I do not like to give an opinion on a medical point. 30

Answer to question D.

All. He did not.

Answer to question E.

Assessor No.1 I think it was wrong.

No.2 I think it was a right decision as the operation was so tiny a one.

No.3 How can I say?

This concludes the part of the assessors. The names of the assessors are respectively

No.1 A.G. PATEL

No.2 V.J. KAPUR (went bail for Accused No.3)

No.3 L.P. CHRISTIANAKIS.

IN HIS MAJESTY'S HIGH COURT OF TANGANYIKA AT ARUSHA.

No.14. Proceedings - continued.

10

No.15.
JUDGMENT.

No.15.
Judgment.

IN HIS MAJESTY'S HIGH COURT OF TANGANYIKA AT ARUSHA.

Criminal Sessions Case No.357 of 1943
(Original Criminal Case No.250 of 1943
in the District Court of Arusha).

R e x Prosecutor.

versus

1. Vishwanath Vishnu Dabholkar)
2. Sadanand Shamrao Nadkarni) Accused.
3. George Biazos.)

J U D G M E N T.

This is a case in which three accused were charged the first two with two counts the third with one.

20

In His Majesty's
High Court of
Tanganyika at
Arusha.

No.15.
Judgment -
continued.

For reasons of chronology I deal with the case against No.3 first. No.2 has already been discharged for lack of a prima facie case. The charge against No.3 one GEORGE BIAZZOS is that he was accessory before the fact to an alleged crime of criminal abortion said to have been performed on one Elenora Kopko by the other two accused. The three assessors are of the opinion that no illegal operation occurred.

As far as the case against No.3 is concerned I am of the opinion that that fact is proved beyond all reasonable doubt. 10

I base this finding of fact in the case against him upon the evidence of the first two witnesses for the Crown coupled with No.3's own admissions in the box.

Judging by the demeanour and pitifully obvious shufflings and prevarications of the 3rd accused when giving his evidence I am satisfied that he would have told any lie that he thought might have helped his case. He agreed in a rather clever way with the evidence of the first two Crown witnesses as far as he dared, never actually challenging their veracity, but attempting by carefully thought out near paraphrases of their evidence to give the twist that would give the different meaning to their evidence. I do completely accept the account given by Mrs. Holland-Smith of what happened. She is the one person in this case who is not connected in the way of duty with the prosecution or the administration or the sordid group of people who formed the caste of the tragedy - this Court has had to enquire into. Mrs. Holland-Smith's evidence was clear. "Girl Elenora. He told me she had had an abortion. I got angry with him." She continues, explaining the anger, which is inexplicable if he had said "Miscarriage" or acted "Miscarriage" as he tried to explain in his evidence:- 20 30

"I received a certain impression. He then assured me that he had never wanted an abortion: He then said that it (meaning the abortion) was under a threat of suicide by the girl. He said that he had agreed to assist her because of her threat." 40

His distorted explanation of this conversation, I do not accept, he is obviously trying to work his way away from what is clarity itself.

The reason I do not find him guilty of being an accomplice before the abortion, is because on the evidence I am not certain that the abortion was not started by the girl, not very successfully.

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Tanganyika at
Arusha.

10 The accused's statement made to Mrs. Holland-Smith "the abortion had taken place at Arusha pay the sum of 500 shillings. He actually said so. He said it had taken place two days before" may have been as the accused understood it. He was probably uncertain between an abortion and an incomplete abortion. I have a doubt as to whether the abortion occurred before the girl came to him or at Arusha. He must have the benefit of that doubt.

No.15.
Judgment -
continued.

I find him not guilty of the greater crime of being accessory before the fact. I find him guilty of the lesser crime of being accessory after the fact.

He helped the girl, and hid the facts as far as possible from McLeod of the Police.

20 He said in his evidence "If this miscarriage had not fortunately happened Elenora would have been beside herself" and I meant "that we were not on the safe side as she had been to the Doctor's two days before." His attitude is clear: he is covering up what he called an abortion on the 24th July and a miscarriage at the trial.

I now come to the case against Accused No.1. The two charges are one for abortion on the 22nd July at Arusha, and the one for negligence in his surgical actions. I will not set them out at length.

30 First, as to the abortion, I am not prepared to use Mrs.Holland-Smith's evidence against this man. In my mind I must dismiss part of it.

As far as it connects No.1 as the Doctor attending the woman Kopko it is of course available.

40 In this case I have only a limited amount of evidence, and I also have a doubt as to whether the operation he performed was an abortion or an "incomplete abortion." He must have the benefit of that doubt. I take it therefore that he performed what is known as an incomplete abortion; this act may be the clearing up of an abortion actually in being and badly performed, or of a miscarriage.

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No.15.
Judgment -
continued.

Now which was it. If it was a miscarriage then there was no normal reason why No.1 should have been afraid of what he had done, leaving aside for the moment any question of negligence under the 2nd count.

He had another medical man there. he performed a normal operation, or, as I say, I must take it that he did. Why did he conceal the fact that he used Government property and not made the correct acknowledgment for it. I am prepared to put that down to cupidity, which will no doubt earn its own reward Departmentally. 10

Why did he operate in his house and not in the Hospital again. I suspect on the evidence to keep the matter as private as possible. But suspicion is not enough. Perhaps the motive was cupidity again.

But in the actual account of the operation, as given by Mike and by the Doctor No.1. himself, I find myself up against a most curious circumstance. 20

If this Doctor was innocently operating to clear up a miscarriage, he must have had some human curiosity, and he ought to have had, it was his duty to have, some professional curiosity as to the cause of the miscarriage.

He had the minimum, he says himself, for he is on record as saying that there were no marks of tampering on the private parts. This may have warranted an assumption that it was a miscarriage and not an abortion, but it did not warrant his incredible lack of interest in the cause of the miscarriage. The woman was his patient, and a paying patient at that, and he had the mystery in his hand. He cleared the vagina with his finger, he brought out what may well have been the whole ovum, but which I must assume, whether in whole or in part, was already started on its tentative separation from the body. 30

But instead of looking at it for indicia, instead of using it for diagnosis, instead of eliminating those causes of miscarriage which must surely potentially lie in the separated portion for inspection by the skilled, he absolutely neglected his duty, mixed the product of the womb, 40

with the rest of the by-product of the operation, and, as he admitted himself, lost what he called the unlikely chance of diagnosis from the ovum by turning all diagnosis into an impossibility. Now what of the mind of the man that did this extraordinary action. Did he really imagine that this was a miscarriage. If he did, he acted as I cannot believe any Doctor would act. What was the motive?

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No.15.
Judgment -
continued.

10 There is just one set of facts that fits the set.
If he knew that this was not a miscarriage, in the
sense that is, was a subspecies of miscarriage known to
the law as criminal abortion, and if he knew that he
was playing an alleviating role in the second act of
this unpleasant drama, there would cease to be any
reason whatsoever to inspect analyse or study what
still remained to be aborted. The Court has only
his word for the statement that there were no marks
of abortion, no penetrations of an improper character.
20 Accused No.2 only made an external examination as far
as visual opportunities were concerned. He felt in-
side but did not look inside. At the operation he
was only anaesthetist and kept to his job. For that
reason he has been discharged at the end of the Crown
case. What was to be seen was to be seen only by
No.1 and he was at great pains to see the minimum, at
any rate as far as ovum and placenta were concerned.
I am persuaded by his evidence that this was so, I am
persuaded there was some thing to see.

30 Now as to sepsis: Mike describes septic condi-
tions: Mike was a semi-skilled assistant: the
Doctor dithers between sepsis and asepsis in his
evidence.

"The black clots were black blood they did not
make me suspect a sepsis." "I did not see sepsis
but I took precautions." "It might have been di-
sease". "It might have been malaria." The organs
were quite healthy."

40 While quoting let me quote him on the earlier
point. "I think that what came out was part of a 3
months ovum but I never examined it at all. I did
not examine it because I was satisfied that everything
was out." Note that this is final if the Practitioner
is cleaning up an abortion, but not if he is
cleaning up a miscarriage: it is final if he knows
the cause and knows it is not recurrent: it is not
final if the cause may be disease.

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No.15.
Judgment -
continued.

He continues "I can give no reason why I did not examine what came away. I see that if I knew that this was the remains of an induced abortion there was no need for me to examine the remains that came away. I agree that if it was an abortion caused by natural causes it was my duty to examine and find out. I say it is hard to find out. Yes I admit that by not examining I made it impossible to find out. I see the dilemma. I put it down to a possible error of judgment."

10

The Doctor seems to have missed all chance of finding sepsis, to have avoided looking for disease, to have acted to put it at its lowest most curiously.

His actions are the actions of a man who knows that he is cleaning up a criminal abortion and not a miscarriage. The only evidence that there were not marks on the uterus is his: against that is the fact that despite his antiseptic inoculations and his M & B the woman developed post abortive septicaemia: a condition he missed.

20

Now what happened after this: the months passed. His actual relations with No.3 and the girl had been

July 22nd No.3 in the morning

No.3 and the girl plus an operation in the evening.

July 23rd The girl taken to No.3 in the early morning.

Examination of the girl at No.3's house in the evening.

30

July 24th A visit at about 1 p.m.

All either very innocent; or, with knowledge that he was being an accessory after the fact, and if so a most valuable accessory, and incidentally a most expensive one he used that most excellent relationship to hide away and to lie about the abortion when necessary.

The course taken by No.1 in his first statement to the police is a masterpiece of evasion see Exhibit A1. in this trial. He did not know that Mrs. Holland-Smith saw him at noon at Daluti, No.3's

40

home. He stated that he "received a note" - and this is given as being the beginning of the relationship "about noon" - these two words are true if referred to the 24th. But, not knowing of Mrs. Holland-Smith, he arrives "at the Tea Room about 8 p.m.": a slice of fact borrowed from the 23rd. Then Biazzos at Daluti is asked "why he had sent for me" and the answer is "severe pain in the back and in the lower abdomen" and "bleeding from the vagina" borrowed from Biazzos' explanation on the morning of the 22nd. The Doctor then "found" she had very little English. All the paraphernalia of a first visit, a new discovery, an apprehended difficulty: all perversion of fact in a man who had performed an "incomplete abortion" on the day before he ever visited Daluti at all, and had had the lady with "little English" - sleeping in his house and being brought by him in the early morning of the 23rd to Daluti.

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No.15.
Judgment -
continued.

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He then examines her: and finds inter alia, and mirabile dictu, the "small piece of membrane protruding from the vagina" the very piece that he and Nadkarni had separately found on the night 22nd at Arusha, that they had argued about, vide Nadkarni's statement Ex. A.9. the very piece that had persuaded No.1 that he was only alleviating a miscarriage that had started, and was not starting a miscarriage illegally. Here is the membrane two days late, still in site. But the next statement, is either the greatest lie in this case, or is an amazing and unexpected diversion into the real obscure truth.

40
"I formed the opinion that she was in the act of having a miscarriage." Now if this was the visit in answer to the note that was paid when Mrs. Holland-Smith was there, then this is a splendid lie: but may it not be the truth: there is no date fixed in this disingenuous statement: this visit may be the visit no one knew about: it may be the beginning: of the two speculations I accept the one that it is purely a defensive lie: the other suggests but does not prove. Again I must give the accused the benefit of the doubt.

But he cannot have it both ways: If he was not there when the miscarriage was coming obviously and necessarily before the cleansing operation at Arusha then he is committed out of his own mouth, to an atrocious mis-statement: "a miscarriage" "in the act" from a womb he had cleared 2 days before. Now why this lie?

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No.15.

Judgment -
continued.

All previous covering up might have been explained by the desire of the professional man to keep the lady clear. That is now ruthlessly abandoned. She is given her miscarriage, but elsewhere than Arusha, later than Arusha. Obviously to protect one person only. No.1.

A few lines lower occurs a curious remark. Biazzos has sworn for what it is worth, but little, that he did not know the girl was pregnant. Says the Doctor:-

10

"In reply to a question of mine Biazzos told me the woman had been 3 or 4 months advanced in pregnancy."

Probably true but more likely to have been borrowed from the early morning visit of Biazzos to Arusha on the morning of the 22nd, if indeed, not from an earlier visit of No.1. to Daluti.

Again lower down "I did not ask who the woman was." Phenominal in a medical man - close to irregularity. Probably this phrase is first cousin to "got it from a man 'Ive never seen before or since" in Receiving Cases.

20

Again "I said it would not be possible for me to continue treatment": a clear intention shows that this should be read as the beginning and the end of the relationship. Again "my fee - 21/-" - to cover up a fee of 200/-. a deliberate careful calculated lie. Again "No suspicion of abortion" but next sentence "I did enquire how the symptoms commenced ... he ignored the question." And the Medical man, with suspicions, leaves the question ignored: impossible! Again "I had not seen this woman before": a curious tribute to the half light at Arusha. This was the woman he drove from Arusha to Daluti in the dawn of the 23rd: unless it was the first visit, and there was a first visit to Daluti, no one has heard of except by this accident, and it is coincided with the on coming of the "miscarriage."

30

If that latter were the case this Court would find No.1. guilty of abortion not at Arusha but at Daluti.

40

I prefer to find him merely a liar.

One last statement "I usually keep notes of my cases: as I said I could make no further visits to this case I made no note of it."

In His Majesty's
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Arusha.

A borrowing from the 24th; but there has been produced to this Court no note whatsoever, even of the operation. There has never been a note.

No.15.
Judgment -
continued.

10 Though it has striven hard to find some excuse to which it could pin a reasonable doubt, this Court is not prepared to believe for one moment that No.1 did not know that he was operating on a case which at some stage was an illegal abortion and which operation he was prepared at all costs to conceal.

Subsequently he admitted the rest of the treatment and the operation, but I do not for one moment believe that he has done other than shape the facts to save himself. He is a man who should have known better, but he is a suave and clever liar and I find him guilty of being at the least, an accessory after the fact.

20 Just as the existence of receivers make thieves, so the existence of men who will prostitute their skill to cover up abortions, makes for abortion. I take a far more serious view of this case than I do of the erotic adventures of No.3.

30 As to Count 2 against No.1 it is said that he took risks over sepsis. Even the assessors to whose assistance and guidance I am in debt almost as little as is possible, felt that an operation in a Hospital is preferable to an operation in a Doctor's private house. Cadit questio where there is no choice, here there was abundant choice. No.1 operated under conditions more septic than were necessary either to hide the whole affair or to save 10% on the fee, probably both. His motives are irrelevant here. the fact of a great septic risk is proved: he has given evidence denying that he has been guilty of various lapses from the hygenic as set out by Dr. Forrest: I do not believe him wherever he clashes with Mike: Mike seems an honest semi-skilled native: He told the truth as far as he had seen it: or noticed it.

40 If there was no other negligence this Court finds that it is negligence for a Surgeon removing an Ovum with the proper eye on sepsis not to examine most carefully that ovum. It may be true that in this case it was not negligence, because No.1 knew it was a

In His Majesty's
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—————
No.15.
Judgment -
continued.

healthy if criminally aborted remnant. But that is just the dilemma a criminal often finds himself in.

The use of the uterine sound instead of the usual forceps, is a pregnant variation: either the sound was used because the operation was then and there illegal, or the wrong instrument was negligently used on a woman who subsequently developed all the peritoneal symptoms of one who has been wrongly pierced in the uterus.

I attached no importance whatever to No. 1's statement that the insertion made with the sound was only a little one. It was the negligent use of the wrong instrument a piercing instrument opening with any misuse the road to peritonitis which this Court takes as localised super sepsis in these cases of maternity or induced miscarriage. On this count also I find the accused guilty. 10

Sd. Will Stuart.

15. 2. 44.

At Arusha,
Circuit Court. 20

On Count 1.

I accordingly find the accused Vishwanath Vishnu Dabholkar guilty under Section 141 and Section 368 of the Penal Code of being an accessory after the fact to the crime of unlawfully procuring a miscarriages of the woman Kopko.

I find the said accused not guilty of the crime of unlawfully procuring a miscarriage as alleged.

I find the accused George Biazos guilty under Section 141 and Section 368 and not guilty under Section 21(d) all of the Penal Code. 30

Second Count.

I find the accused Vishwanath Vishnu Dabholkar guilty of negligence in terms of Section 222 of the Penal Code. And I convict the accused accordingly.

1. Vishwanath Vishnu Dabholkar

A. Under Section 141 and Section 368 carrying a penalty under Section 369.

B. Under Section 222, carrying penalty under Section 34.

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High Court of
Tanganyika at
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No.15.
Judgment -
continued.

2. George Biazzos

Under Section 141 and Section 368 carrying a penalty under Section 369.

1st Accused:

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Says "I don't want to say anything more" as to allocutus put to him separately for the two counts.

2nd Accused:

"My Lord under the circumstances which I was which I found myself I thought my best steps was to take the girl to the Government Office thinking I done my duty to save the girl's life which as an honest man to face the responsibilities. That's all."

20

Mr. Bajwa. In mitigation.

No.1. Submits a young man with a family a wife and children.

6 months' hard labour 1st Count.

3 months' hard labour 2nd Count.

To run concurrently.

No.3. (now No.2.)

3 months' or 400/- and 7 days' hard labour.

30

I have sentenced No.1 very lightly because I have carefully deleted from my mind the suspicions of his actions which I have felt, but have discarded, not only in my findings of fact, but subconsciously in my sentences.

Sd. Will Stuart.

J U D G E.

No. 16.

MEMORANDUM OF APPEAL.

In His Majesty's
Court of Appeal
for Eastern
Africa.

IN HIS MAJESTY'S COURT OF APPEAL FOR EASTERN AFRICA.

No.16.
Memorandum of
Appeal, 4th
September 1944.

"Copy of Memorandum of Appeal submitted to the Court of Appeal for Eastern Africa from the Judgment of the High Court in Cr. Case No. 357 of 1943."

VISHWANATH VISHNU DABHOLKAR Appellant
VS.
REX Respondent.

MEMORANDUM OF APPEAL

10

I, VISHWANATH VISHNU DABHOLKAR, being dissatisfied with the conviction & sentences passed by H.H. Justice Will Stuart on convictions under sections 368/369 read with section 141 Penal Code and 222(e) Penal Code, beg to appeal on the following grounds:-

1. The learned Judge has erred in law & fact in convicting the Appellant as an accessory after the fact, without having any proof on the record of the principle offence, for which the Appellant could be accessory after the fact, having been committed at all.

20

2. The Appellant was tried & acquitted of the offence of unlawfully procuring a miscarriage of the woman Elenora Kopko. As his conviction for an accessory after the fact, on an indictment charging a man as a principle felon only is illegal. The learned Judge has erred in not following the principle.

3. In the absence of any evidence on the record that the Appellant had the knowledge that an illegal abortion had taken place at some stage before the patient came to him, the learned Judge has misdirected himself in finding on a point of fact that the Appellant knew that he was operating on a case which at some stage was an illegal abortion.

30

4. The finding of the learned Judge that "he (Appellant) was prepared at all costs to conceal this operation" is not warranted by any evidence on the record. Even this point does not go so far as to prove that the Appellant did any over act amounting to assist the felon in order to enable

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her to escape punishment.

5. Without having found all the necessary ingredients making up the offence under section 368 P.Code as conclusively proved the learned Judge has erred in arriving at the conclusion that the Appellant is at least guilty as an accessory after the fact.

Second Count.

10 6. The charge is laid down is bad in law as it does not disclose the particulars or items of negligence which the Appellant had to meet and the defect amounts to material irregularity which is most likely to occasion failure of justice and has in fact occasioned failure of justice in this case.

7. The finding by the learned Judge that the operation was performed at great septic risk is contrary to & not supported by the evidence on record.

20 8. The learned Judge has held against the weight of the evidence & misdirected himself in finding on a point of fact that the instrument D-6 (Uterine Sound) was negligently used on a woman who subsequently developed all the peritoneal symptoms of one who has been wrongly pierced in the uterus.

9. The finding by the learned Judge that the use of the Uterine Sound in the circumstances proved in this case was negligence is contrary to & not justified or supported by the evidence on record.

30 10. In the presence of the evidence of the Appellant and Mike P.W.6, the learned Judge ought to have held that the instrument D-6 (Uterine Sound) is an instrument to inspect and that it was used for the purpose of disinfecting the mouth with a piece of lint wrapped round it & the learned Judge further ought to have held that the Appellant was a competent man & did what he thought best then in his position.

11. The learned Judge has erred in Law in giving a finding of negligence on the part of the Appellant on a point (in not examining the ovum) which is neither a part of the charge nor the particulars of negligence given by P.W.No.7 (Dr.Forrest).

40 12. The learned Judge has erred in fact & law in finding the Appellant guilty under section 222(e);

In His Majesty's
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No.16.
Memorandum of
Appeal, 4th
September 1944 -
continued.

In His Majesty's
Court of Appeal
for Eastern
Africa.

He has also failed to direct himself adequately or at all with regard to the quantum or degree of negligence required to justify the conviction under section 222(e) of the Penal Code.

No.16.
Memorandum of
Appeal, 4th
September 1944 -
continued.

13. The evidence, also held by the learned Judge of Mrs. Holland-Smith was not admissible against the Appellant; The joint trial of the Appellant with accused No.3, George Biazos, was prejudicial against the Appellant & bad in law.

14. The learned Judge erred in not drawing an inference against the prosecution in view of the fact that material witnesses who had given the evidence in the lower Court, as they appeared to support the defence, were not called by the prosecution. 10

15. That the accused was entitled to the benefit of doubt in view of the evidence of Dr. MacQuillan whose evidence was admitted under section 265-A, of the Cr.P.Code.

16. That in so far as the evidence of the two prosecution witnesses (medical) the accused is entitled that such evidence as is favourable to the accused should & must be construed in favour of the accused & benefit thereof given to the accused. 20

17. That the learned Judge erred in asking the accused questions which were in the nature of dilemma and the Appellant respectfully submits that the limits laid down by section 165 of the Evidence Act. were exceeded. 30

18. The findings by the learned trial Judge are insufficient to justify the conviction & the Appellant therefore prays that the appeal be allowed and the conviction and the sentences of the lower Court be set aside & quashed.

Dated 4th September, 1944. Sd. V.V.Dabholkar.
Appellant.

No. 17.
PRESIDENT'S NOTES.

In His Majesty's
 Court of Appeal
 for Eastern
 Africa.

V. V. DABHOLKER ... Appellant
 versus
 REX ... Respondent

No.17.
 President's
 Notes.

17.8.44. Sheridan,)
 Whitley,) C.JJ.
 Gray.

A.B. Patel for applicant.

10 R.M. Doshi for Crown.

Patel.

Dabholker & Nadkarni.

Both acquitted at trial of procuring mis-
 carriage under Sec.141 P.C.

Dabholker convicted under Sec.368 access-
 ory after fact.

Biazzos convicted and tried under Sec.368
 and acquitted on appeal.

Applicant has served his sentence.

20 Rule 23 Court of Appeal Rules (Eng.)

23 Cr.A.C. 150 Rex v. Van Dyn.

Rex v. Sloan & anr. 39 T.L.R.

12 Cr.A. Rex v. Pitman.

R.M. Doshi.

6 Cr.A.R.158.

2.11.44. Sheridan, C.J.
 Whitley, C.J.
 Mac Roberts, J.

In His Majesty's
Court of Appeal
for Eastern
Africa.

Inamdar for accused.

Carnegie for Crown.

Inamdar.

(1) Accessory after fact to an alleged
abortion 222(e).

Appeal of Biazzos.

Four conditions for accessory after
fact.

(1) No finding that an illegal abortion
committed.

10

(2) That the accused was aware of this.

(3) That he received or assisted the
person who committed the offence.

(but no personal assistance).

Rex v. Chapple.

9 C. & P. 355.

and 173 E.R.866.

P.1442 Archbold 31st Ed.

32 L.J. M.C.66. Queen v. Pollon

(1444 Archbold)

20

12 Cr.A.R.62 Rex v. Pitman.

3 Chitty's Statutes 277.

R v. Quinter 25 Cr.A.R.32.

No evidence that it was an actual abor-
tion.

? Applicant merely failed to find out
cause of miscarriage.

Failed to find out sepsis. Should a
surgeon try to remove the cause of
trouble - and not waste time in look-
ing for origin of trouble.

30

No.17.
President's
Notes -
continued.

In His Majesty's
Court of Appeal
for Eastern
Africa.

3.10.44.

No concealment.

Court and Bar as before.

Inamdar continues.

What is the evidence against an unknown person.

Evidence of 2nd accused.

Pages 128, 129 & 130.

Page 21. Page 22.

Finding of fact that there was a miscarriage not supported by the evidence.

If X in box (unknown) would an illegal abortion have been proved?

Carnegie on first point.

"personal assistance."

King v. Lovy ..(?) Overruling Chapple's Case, 7 Cr.A.R.6.

Any assistance whatever in order to help etc.

Rex v. Kabwiri & oths. 10 E.A.C.A. 98-100.

Distinction between Biazos and this case.

Why conceal facts from police?

Concealed major part from police.

Glaester Medical Jurisprudence P.317.

Medical Jurisprudence.

(a) History of woman.

(b) Examination of her body.

(c) Aborted material available.

P.14. Dr. Forrest.

No.17

President's
Notes -
continued

10

20

In His Majesty's
Court of Appeal
for Eastern
Africa.

No.17.
President's
Notes -
continued.

P.25

The woman did
develop peritoni-
tis (post abortion
due to operation).

Inamdar.

In reply on first point.

What object had accused in assisting an
unknown felon.

(1) Afraid (2) drunk (3rd) Who did?

Dr. MacQuillan's evidence - P.113.

Negligence.

P.6 of judgment.

Risks over sepsis. Used wrong instru-
ment and dangerous to use.

10

P.12 Mika's evidence.

See Dr. Forrest's evidence - D6 lint
covered.

P.13. Dr. Forrest - 18.

19,

Dr. MacQuillan's - 112 at 114 - 116.

Was finding that D6 might have caused a
puncture?

P.11.

P.17.

20

(No allegation of negligence in use of
curette).

No finding on if D6 lint covered.

2 days after operation by accused girl
seen walking to camp. (p.28).

P.29.30.31.

Sepsis.

House presumed to be cleaned - patient
not willing to go to hospital

P.116 - patient had lost lot of blood.

In His Majesty's
Court of Appeal
for Eastern
Africa.

P.117. -----

S.222(e)

Injections given to prevent sepsis.

No.17.
President's
Notes -
continued.

Instrument sterilized - wore operating gown
- disinfectant sheet used - private parts
disinfected - sterilized gloves used.

Bateman case (a manslaughter case).

What was substantial negligence.

10.

Rex v. Williamson.

172 E.R.579.

Rex v. St.Long 756-761.

Rex v. Crick 175 E.R.835.

Rex v. Markuss 176 E.R.598.

22 Hailsham 319.

Carnegie.

(1) Use of uterine sound P.14.

20

What the Judge has directed his mind to the
use of the D.6 he has not and this all
important on the medical evidence to the
only evidence that of accused and Mika as
to have in fact used.

Pages 15 & 16 Dr. Forrest.

17.18 & 19.

Removed 11 miles after operation. Septic
precautions not taken - particularly necess-
ary and yet didn't even take ordinary pre-
cautions.

This was
sepsis before
patient came
to accused.

30

From non-examination of woman - Judge
inferred accused concluded it was an incom-
plete abortion

In His Majesty's
Court of Appeal
for Eastern
Africa.

No.17.
President's
Notes -
continued.

Degree of negligence.

Acted in such manner as to be likely to cause
harm.

Inamdar.

2nd operation.

23rd. Accused visited her.

24th. Visited and found in good mood but
gave injections for sepsis.

Treated for sepsis.

Bucket kept. (?)

10

No.18.
Second Judge's
Notes.

No. 18.
SECOND JUDGE'S NOTES.

Chapple 9 C.& P. 355. 173 E.R.866.

Chitty St. 277.

Glaester Med. Jurisprudence.

Examination of material when available.

No.19.
Third Judge's
Notes.

No. 19.
THIRD JUDGE'S NOTES.

2nd Nov. '44. Sheridan. President.
Whitley, C.J.
Self.

20

Inamdar for Appellant.

Carnegie for Crown.

In His Majesty's
Court of Appeal
for Eastern
Africa.

Inamdar. Reads memo of appeal.

1st Count. Accessory after the fact to an illegal abortion.

2nd Count. Sec.222(e) P.C. Reckless and negligent accused.

No.19.
Third Judge's
Notes -
continued.

On 1st Count. 4 conditions laid down in R. v.
of what constitutes accessory after
the fact.

10

No finding that an illegal abortion had been performed.

(Note. But he did find him guilty of being an accessory after the fact to Sec.141 or 142 P.C.).

"Assist" one must assist personally the known felon.

After discussion counsel agrees that one can assist an unknown felon.

173 E.R.866 (1840).

32 L.J. (M.C.) 66 R. v. Pollon.

20 12 C.A.R.62 R. v. Watson.

No evidence as to whether this was an abortion at all.

He concluded it was because,

(1) He failed to find the cause of miscarriage.

(2) He failed to find sepsis.

Definite finding of abortion p.5 Judgment.

He is not certain that the woman did not do it herself, P.I. Jt.

3rd October, 44.

30 , Court and Counsel as before.

In His Majesty's
Court of Appeal
for Eastern
Africa.

No.19.
Third Judge's
Notes -
continued.

Inamdar continues.

See p.130 Magis. proceedings.

Finding that this was a criminal abortion is not supported by the evidence.

End of argument on 1st Count.

Carnegie.

Chappel overruled by Levy 7 C.A.R. 61.

"Any assistance"

10 E.A.C.A. 98 at p.100.

Glaestor 7th Ed. p.17.

10

On negligence. Took all aseptic precautions on the operation itself -

Quotes evidence:-

- R. v. Bateman 19 C.A.R.8.
- R. v. Williamson 172 E.R.579.
- R. v. Long 172 E.R.756 - 761.
- R. v. Crick 175 E.R.835.
- R. v. Markuss 176 E.R.158.
- 22 Hailsham 319.

Carnegie.

20

No.20.
Judgment, 10th
November 1944.

No. 20.
JUDGMENT.

VISHWANATH VISHNU DABHOLKAR Appellant
(Original accused No.1)

versus

REX Respondent
(Original prosecutor)

J U D G M E N T.

The accused, a Government Sub Assistant Surgeon, complains that he was wrongly convicted by

30

the High Court of Tanganyika (a) of being an accessory after the fact to an attempt to procure an abortion contra the provisions of Sections 141/368 Penal Code. The Sections, in so far as they are material, read as follows:-

In His Majesty's
Court of Appeal
for Eastern
Africa.

10 "Any person who, with intent to procure miscarriage of a woman, whether she is or is not with child, unlawfully administers to her or causes her to take any poison or other noxious thing, or uses any force of any kind, or uses any other means whatever, is guilty of a felony, and is liable to imprisonment for fourteen years."

No.20.
Judgment, 10th
November 1944 -
continued.

"A person who receives or assists another who is to his knowledge, guilty of an offence, in order to enable him to escape punishment, is said to become an accessory after the fact to the offence;"

20 and criminal negligence contra Section 222(e) Penal Code which provides "Any person who, in a manner so rash or negligent as to endanger human life or to be likely to cause harm to any other person:-

(e) gives medical or surgical treatment to any person whom he has undertaken to treat."

30 At the trial he was formally charged with having attempted to procure an abortion but was acquitted on that charge but convicted of the offence referred to at (a) in accordance with the provisions of section 173(2) of the Criminal Procedure Code. It has been conceded by the Crown that his conviction cannot be related to a known felon but learned Crown Counsel has argued that his conviction which relates to an unknown felon should be upheld. We agree that there may be circumstances in which such a conviction can be had. The question in this appeal is whether those circumstances exist in the present case. The answer to the question depends on whether the accused assisted an unknown felon in order to enable him to escape punishment, this being one of the essentials to be proved under the local law, which is identical with English law, before a conviction can be had. We have been unable to find any evidence whatever on which to rest a finding that the accused had any such purpose. In doing what he did surely his purpose was to carry out an operation on a woman on whom it was alleged an illegal operation had already been performed contrary to section 141 and relieve her

In His Majesty's
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for Eastern
Africa.

—————
No.20.
Judgment, 10th
November 1944 -
continued.

suffering. It has not been contended that the operation which the accused was found to have performed and admitted having performed was illegal. The operation was performed with secrecy, the purpose of which might have been to prevent others from knowing the woman's moral plight or a desire on the part of the accused that his superiors might not know that he had carried out the operation which was performed with Government equipment in his house and not the hospital, and not with the purpose of assisting an unknown felon to escape punishment. We would add that one of our difficulties has been that the ingredients of section 368 are not considered in the judgment and there is no specific finding as to whom the Appellant is supposed to have assisted to escape punishment. It is not reasonable to suppose that he did or omitted to do anything throughout in order to assist an unknown felon to escape punishment.

10

The appeal in so far as his conviction on the first charge is concerned is bound to succeed and the conviction and sentence in respect of that charge are quashed.

20

As for the conviction on the charge of negligence, it is convenient here to set out the charge as framed "giving surgical treatment negligently and in a manner likely to endanger life or to cause harm contrary to Section 222 of the Penal Code."

Particulars of the offence are as follows:-

"Vishwanath Vishnu Dabholkar on or about the 22nd day of July 1943, in the Northern Province surgically treated one Elonora Kopko in such a negligent manner as to be likely to endanger her life or to cause her harm".

30

Mr. Reid for the accused applied for further particulars at the commencement of the trial. His application was granted, the further particulars being directed to be given by the afternoon. It is to be assumed that the further particulars were accordingly given from the evidence which was adduced as to the conditions in which the operation was carried out. The learned Judge after taking the opinions of the assessors on the first count of charging the accused with attempting to procure an abortion recorded "Count 2. I sum up on Count

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2. The Count stands as read plus the words 'to wit that he failed to take proper aseptic precautions.' " So far as we can gather from the charge without the addition to which we have referred the negligent surgical treatment refers to the use by the accused of an instrument known as the uterine sound in carrying out the operation. As to this the learned trial Judge towards the end of his judgment says " The use of the uterine sound instead of the usual forceps is a pregnant variation: either the sound was used because the operation was then and there illegal, or the wrong instrument was negligently used on a woman who subsequently developed all the peritoneal symptoms of one who has been wrongly pierced in the uterus." On this charge of negligence and with the acquittal of the accused on the charge of having performed an illegal operation, it is with the question whether the wrong instrument was negligently used by the accused we have to concern ourselves. The accused admitted that the uterine sound was an instrument used for abortions, but said that he did not use it for that purpose but for the purpose of disinfecting the mouth of the uterus before putting his finger in and that the instrument had a piece of lint wrapped round it. For an abortion he said that he would have used it bare. Mika, the hospital dresser who attended at the operation and whose evidence impressed the learned Judge said that the uterine sound was "lint covered for an inch or two." Dr. Forrest, Acting Deputy Director of Medical Services, said "I do not know why D 6 (uterine sound) was used. With lint it might be used for many purposes. A forceps should be used lest the lint be left behind. D 6 might conceivably be used for disinfecting the uterus if the lint was dipped in iodine." There is no reference in the Judgment to the important fact that the uterine sound was not used bare but with lint wrapped round it. It seems to us that if it be accepted that the uterine sound was not used for its primary purpose to abort (and the accused was acquitted of the offence of attempt to procure an abortion), the instrument may be used for the purpose of disinfecting the uterus if it has lint wrapped round it and the lint is dipped in iodine. There is no evidence as to whether iodine was used or not. Then the learned Judge refers to the woman having developed all the peritoneal symptoms of one who had been wrongly pierced in the uterus. This inference on the evidence is open to criticism. It is in evidence that the woman had returned to the camp on foot

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No.20.
Judgment, 10th
November 1944 -
continued.

In His Majesty's
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No.20.
Judgment, 10th
November 1944 -
continued.

after 2 nights absence (evidence of Helena Tomaszewska). And the evidence of Biazzos is that "Next day 25th I think a Sunday the girl left for the camp apparently alright. She walked. I thought she was recovered enough to go. Two days after this I saw her walking about in the camp". It seems to us that this evidence of the girl walking about so soon after the operation indicates that the peritoneal symptoms subsequently found may well have been due to her own indiscretion in walking about rather than to a pierced uterus. 10

The charge of negligence depending on the amendment - that the accused failed to take proper aseptic precautions requires careful consideration. The accused performed the operation in his private house and it is clear that it would have been better and safer to have performed it at the hospital. This much he admits himself and Dr. Forrest's opinion was that "the whole atmosphere of a private house must be assumed not to be aseptic" and also said that an operation of the kind should not be done in the woman's old clothes. We think it desirable to quote further from Dr. Forrest's evidence. Referring to sepsis precautions in cases of the kind falling into certain groups he said. "(a) Pre-operational. There should have been an enema given before a general anaesthetic. The parts should have been shaved. The parts affected and surrounding should have been painted with some adequate disinfectant If Mika is right in his statement put to me that the light was insufficient for him to distinguish the race or colour of the woman operated on and whose legs he saw in his capacity as dresser then the light must have been inadequate. This would have been taking an unnecessary risk. 20 30

A woman operated on as this woman was at say 9 p.m. should have been put to bed and kept in bed for two or three days under observation and treatment. To do otherwise is negligent..... The sepsis which would be indicated by smell if any present would indicate sepsis and that would call for more not less operational care..... The speed of the operation in this case seems to me to be suspicious. Why not give a little time? Why not try an enema which might cause automatic action? I find this operation suspiciously precipitate. I do not agree that the treatment given was the best. I would have treated the sepsis first and not plunged into an abortion or 40

incomplete abortion operation. That does not necessarily mean more than waiting a few hours. I am prepared to state definitely that in the case here the operation was precipitate.

In His Majesty's
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Absence of the enema might cause pollution of the field of operation. It is the practice. Faeces might or might not come. Absence of shaving makes sterilization harder. Painting destroys germs. and is necessary, disinfectant only holds them in check. The dress of the patient may have added to the dangers of sepsis.....

No.20.
Judgment, 10th
November 1944 -
continued.

I consider that to comply with the patient's wish to go home would in this case have been negligence.... There is so much risk of sepsis in the tropics that these cases must where possible be done in hospital. I have known of a few cases where the operation has been done in private houses in this country. I have never heard of a case where it was done in a private house and the patient immediately removed elsewhere. Except this case. It may be that cases in the hospital are moved to their own houses in the neighbourhood". Dr. Forrest was then asked "Q. Here the patient was removed 10 hours after the operation and was visited by her doctor the same evening and again about midday the following day - was that negligence? Ans. If those were the only visits to admittedly septic patient, then there was negligence. She should be visited daily for a week."

Later at the end of July the woman's condition became serious and she was 4 or 5 weeks in hospital with peritonitis and general septic condition originating in the uterus.

The learned trial Judge said with regard to the charge of negligence "As to Count 2 against No.1 it is said that he took risks over sepsis. Even the assessors..... felt that an operation in a hospital is preferable to an operation in a doctor's private house. Cedit questio where there is no choice, here there was abundant choice. No.1 operated under conditions more septic than were necessary either to hide the whole affair or to save 10% on the fee, probably both. His motives are irrelevant. A great septic risk is proved. He has given evidence denying that he has been guilty of various lapses from the hygienic as set out by Dr. Forrest."

In His Majesty's
Court of Appeal
for Eastern
Africa.

No.20.
Judgment, 10th
November 1944 -
continued.

Having carefully considered the evidence we are of the opinion that the charge of criminal negligence against the accused was proved. The operation which he performed was one calling for every precaution to guard against the risk of sepsis. It should unquestionably have been performed in the hospital where the patient after the operation should have been kept and carefully watched for some days (See Dr. Forrest's evidence and also Dr. McQuillan's deposition in which he said "If I operated on such a case in the hospital, I would keep the patient in hospital for several days"). No reason deserving of consideration as to why the operation was not performed in the hospital was advanced. The circumstances in which the operation was performed, the failure adequately to guard against further sepsis, for sepsis was already present when the woman came to the accused, and the failure to give adequate treatment after the operation constituted criminal negligence in our opinion. The negligence is not likely to endanger the life of the woman was the least likely to cause her harm. We would even go so far as to express the opinion that had the woman died, the accused might possibly have been convicted of manslaughter by negligence. For a conviction under section 222(e) Penal Code it is not necessary that the negligence should be of that high degree which is necessary for a conviction for manslaughter. Something of a lesser degree is all that is necessary, just as in motor car offences, a high degree of negligence is necessary to convict of the felony of manslaughter (Bateman's case) as distinct from the lesser degree of negligence required to sustain a conviction for dangerous driving (Andrews' case).

We allow the appeal from the conviction and sentence in respect of the first charge that of being an accessory after the fact. The appeal in respect of the conviction and sentence on the second charge of negligence is dismissed.

10.11.44. Sd. Joseph Sheridan
Sd. N. H. P. Whitley.
Sd. B. A. K. McRoberts.

I hereby certify that this is a true copy of the original.

Sd. J. A. Vakil.
AG. DY. REGISTRAR.
H. M. Court of Appeal for Eastern Africa.
11.11.44.

No. 21.

PETITION FOR SPECIAL LEAVE TO APPEAL TO
HIS MAJESTY IN COUNCIL.

(not printed)

In the Privy
Council.

No.21.
Petition for
Special Leave
to Appeal to
His Majesty
in Council.
4th February
1946.
(not printed)

No. 22.

ORDER OF HIS MAJESTY IN COUNCIL GRANTING
SPECIAL LEAVE TO APPEAL.

No.22.
Order of His
Majesty in
Council grant-
ing Special
Leave to Appeal.
18th April 1946.

AT THE COURT AT BUCKINGHAM PALACE

The 18th day of April, 1946.

10

PRESENT

THE KING'S MOST EXCELLENT MAJESTY

LORD PRESIDENT MR. SECRETARY LAWSON
VISCOUNT SAMUEL MR. ISAACS

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 11th day of April 1946 in the words following viz.:-

20

"Whereas by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of Vishwanath Vishnu Dabholkar in the matter of an Appeal from the Court of Appeal for Eastern Africa between the Petitioner Appellant and Your Majesty Respondent setting forth (amongst other matters): that the Petitioner desires to obtain special leave to Appeal from the Judgment of the Court of Appeal for Eastern Africa

No.22.
Order of His
Majesty in
Council grant-
ing Special
Leave to Appeal.
18th April 1946 -
continued.

dated the 10th November 1944 confirming his conviction of negligence under Section 222 (e) of the Tanganyika Penal Code while quashing his conviction of being an accessory after the fact to an attempt to procure an abortion under Section 368/369 read with Section 141 of the Code and affirming the sentence of three months' hard labour passed upon him by the Sessions Judge of Tanganyika dated the 4th September 1944: that it is submitted that there is no evidence to support the finding of criminal negligence: that no particulars on the charge of criminal negligence were supplied as required by section 235(1) of the Code: and humbly praying Your Majesty in Council to grant the Petitioner special leave to appeal from the Judgment of the Court of Appeal for Eastern Africa dated the 10th November 1944 and for such further and other relief as to Your Majesty in Council may seem fit:

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"The Lords of the Committee in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and in opposition thereto Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioner to enter and prosecute his Appeal against the Judgment of the Court of Appeal for Eastern Africa dated the 10th day of November 1944:

30

"And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioner upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondent) as the Record proper to be laid before Your Majesty on the hearing of the Appeal."

40

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually observed obeyed and carried into execution.

Whereof The Governor or Officer administering the Government of Tanganyika Territory for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

sgd. G.E. LEDBITTER

In the Privy Council.

No.22
Order of His Majesty in Council granting Special Leave to Appeal.
18th April 1946 - continued.

PART II.

EXHIBITS AND DOCUMENTS.

EXHIBIT A.11.

LETTER - ELEONORA to GEORGE.

Exhibits and Documents.

A.11.
Letter,
Eleonora to George, 22nd July 1943.

10 Dear George,

I am very sick I have fibber strong paid and plendi blad come, Please George help me. I am coming yours place and we go to Doctor in Arusha.

Chirio

Sgd. ELEONORA

22.7.43.

Exhibits and
Documents.

A.1. STATEMENT by ACCUSED to POLICE.

A.1.
Statement by
Accused to
Police, 1st
October 1943.

EXHIBIT A-1 ADMITTED AT THE TRIAL.

STATEMENTS BY DR. DABHOLKAR TO POLICE.

1.10.43. 8/35 p.m. Dr. V.V. Dabholkar, Indian,
Govt. S.A.S. Arusha, states:

"I have been S.A.S. Arusha Hospital since June 1943. During the last week of July this year I received a note from Biazzos of Duluti asking me to come & visit him. I received this note about noon so far as I can remember. He had been a patient of mine previously and I knew he had a tea room at lake Duluti. I left for lake Duluti on that day at about 7 p.m. or a little later by car. I went alone. I arrived at tea room about 8 p.m. I saw Mr. Biazzos and asked him why he had sent for me. He took me into a room adjoining the main dining hall and explained to me that he wished me to attend a lady who was in bed in this room. She was alone. Biazzos told me that this woman had severe pain in the back & in the lower region of the abdomen: He also explained that she had bleeding from the vagina. I questioned the woman as to her symptoms but found she apparently knew very little English. She had no fever but the pulse was rapid. When I pressed in the abdominal & lumbar region she indicated she experienced strong pain. There was considerable active bleeding from the vagina but no signs of clots or pus. There was however a small piece of membrane protruding from the vagina. As a result of my examination I formed the opinion that she was in the act of having a miscarriage & I gave her an injection of pituitrin & a sedative. I also gave her six powders of ergot with instructions to take one three times a day for two days. In reply to a question of mine Biazzos told me the woman had been 3 to 4 months advanced in pregnancy. I advised him that the woman should be taken to Hospital for treatment. I did not ask who the woman was. I told him it would not be possible for me to continue the treatment at that place. I considered her condition as "very ill". I did not ask if any other medical man had attended her. I did not report my having attended this case to Dr. Macquillan. I am not supposed to. I felt I

had no further responsibility after having advised Biazzos to get the woman taken to Hospital. Biazzos paid me my fee that night in cash Shs.21/-. I had no suspicion of the case being one of abortion. I did inquire of Biazzos how the symptoms had commenced and when but he ignored the question. I did not inquire what nationality this woman was and I had not seen this woman to my knowledge. I would I think recognise this woman if I saw her again. She was a young woman of 20/22 years approximately.

Exhibits and Documents.

A.1.
Statement by
Accused to
Police, 1st
October 1943 -
continued.

I do not know who brought the note from Biazzos to my house. It was found by me on my desk in my office & I never asked who brought it. I had at that time the same car as I have now. I have never loaned my car to any person at any time. I do not know whether or not Biazzos is married and I did not ask him that night if the woman in question was his wife. I remember having a conversation with Dr. Macquillan about a woman who was there in the Tengeru hospital suffering from septicaemia; he merely mentioned he had been visiting that Hospital and had seen such a case. He made no mention during that conversation about abortion connected with the case in question or about abortion at all, generally or otherwise nor do I remember him referring to any D. & C. operation. I do not remember whether or not he asked me that day whether I had any European patients or whether I had attended any since I came to Arusha. I do ~~remember him saying that~~ day that did I ever have a case where it was necessary to make an abortion to be sure to have another doctor in consultation with me. I have never visited lake Duluti tearoom on any occasion other than the one I have referred to here. I prescribed nothing more to this woman than what I have described. I am of the opinion that the miscarriage was not completed at the time I examined the woman. I made no dressings and made no attempt to make an internal examination. The bed linen showed traces of blood at the time of my examination of the woman. I made no note of the case and no note of the receipt of the fee. I usually keep notes of my cases but as I had said I could make no further visits to this case I made no note of it. I have attended to about 20 European cases since about the latter part of June; I have no complete record of these cases. All these cases have been private patients of mine. The conversation with Dr. Macquillan which I have

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Exhibits and Documents.

A.1.

Statement by Accused to Police, 1st October 1943 - continued.

referred to lasted only about five minutes. I did not connect the case he mentioned with the case I attended to as described at the tea room.

Recorded by Signed W.Duncan A.S.P. At this stage the witness states he does not wish to sign this statement.

Statement recorded in the presence of Suptd. Jenkinson & read over to the witness in his presence.

Sd. W.Duncan A.S.P.

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A.2.

Further statement by Accused, 3rd October 1943.

A.2. FURTHER STATEMENT by ACCUSED.

3/10/43:- 7 p.m. Dr. V.V. Dabholkar further states,

I now recollect that I had seen the woman I attended as described in the foregoing statement before the occasion in question (the witness now states that he would prefer to postpone making any further statement in this matter till tomorrow).

Recorded by Sd.W.Duncan A.S.P. Statement as above recorded in the presence of Suptd. Jenkinson & read over in the presence of the witness.

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Sd. W. Duncan A.S.P.

Note:- Witness makes an appointment for 2 p.m. tomorrow and pleads is at present to confused to make a statement. I am, in any event of the opinion that Dr. Dabholkar is too confused (with drink) to be capable of making a statement and even had he expressed a desire to continue I feel that under the circumstances and considering the gravity of the matter I could not have recorded a statement from him in his present condition. (Suptd. Jenkinson is in agreement with me). Sd. W.Duncan A.S.P.

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A.3. FURTHER STATEMENT by ACCUSED.Exhibits and
Documents.

4/10/43. 2 p.m.:- Dr. V.V. Dabholkar further states:-
Further to my statements to 1st & 3rd inst. I state
as follows:-

A.3.
Further
statement by
Accused, 4th
October 1943.

10 During the last week of July of this year Mr. Biazos who was known to me came to my house one morning at about 8/30 or 9 a.m. a to see me. He explained that a lady was sick and he wished to consult me about her. I asked what was the matter with her & he explained that for two or three days she had been bleeding from the vagina & had pains in her lower abdomen & back. I informed him that I must see the patient before I could prescribe anything for her. He said he would bring the patient to me. At about 9 p.m. the same day he came to my house and brought two European women with him. I did not see a car or other conveyance and I did not ask how they got to my house. Biazos pointed out of these two women to me as the patient he had spoken of in the morning and I understood that the other woman was the friend of the patient. I took the patient into my examination room and made a superficial external examination. I found the lower abdomen tender with occasional contractions of the uterus; pain in the loins, pulse rapid & symptoms of general weakness. There were signs of slight temperature. I then proceeded to make an internal examination (vaginal examination). I found there was persistent internal bleeding accompanied by pain a few clots of blood were in the passage. The opening of the uterus was dilated & soft with a portion of membrane therein. From these two examinations I came to the conclusion that the patient's condition could be described as "incomplete abortion". As Doctor Nadkarni was staying with me at the time I called him into consultation with me & requested him also to examine the patient. He did so and confirmed my conclusions. We then jointly informed Mr. Biazos of our opinion of the case & told him as there was internal bleeding with a portion of membrane protruding from the uterus it was necessary and desirable to make an operation to completely empty the womb. Biazos then went into the examination room to explain about the treatment to the woman. He returned and told us that the woman said she was in pain and we should do what was necessary. We then agreed to carry out the necessary operation. Biazos then

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Exhibits and Documents.

A.3.
Further statement by Accused, 4th October 1943 - continued.

left my house, requesting me that if he did not come back before morning I should bring both the women to his house at lake Duluti. Dr. Nadkerni & I then proceeded to carry out the operation. We carried out the operation in my sitting room on the table. The other woman was present throughout. The patient was chloroformed by Dr. Nadkerni & I proceeded to operate in normal manner e.g. the passage was douched, the opening to uterus was manipulated by finger & the membrane removed. I then passed a finger inside the uterus to remove any of the remnants of contents of the uterus. I then softly curetted the uterus, douched & packed it with sterile gauze. I added an external dressing. The whole operation took about 25 minutes. An injection of Streptocide was given immediately after the dressing was completed. A portion of placenta & a part of ovum was removed from the womb. These with blood stained swabs etc. were placed in a sanitary pail and this was placed outside the house. The patient after the operation was completed, was placed on a bed in the same room (sitting room) and came to under half an hour. I then gave her an injection of pituitrin and later she fell into a natural sleep. Mr. Biazos did not return to my house that night and at about 6 a.m. I took both girls in my car to his house at lake Duluti. I saw Biazos at his house & told him the operation had been completed. The patient walked from the car into the house. On that day at about 7/30 or 8 p.m. I returned to Biazos' house & saw the patient. I examined the dressings. The patient told me she had removed and changed the dressings several times. There was a little bleeding & some clots of blood on the dressing but her general condition had improved. I gave a sedative & a few powders of ergot with instructions for taking one three times a day for two days. On the following day at about noon I received a note from Biazos asking me to come & visit the girl that day, saying she was not so well. A native boy brought this note to me and I went in my car to Biazos' house at about 2 p.m. I did not take the boy who brought the note with me. That day the patient complained of pain in the abdomen & weakness. There was no more than normal bleeding & I told her that there was nothing in her condition to be alarmed about & should she feel anxious about her condition she should arrange to be admitted to a hospital. I never saw the patient again and since I considered she was making a normal recovery & I received no

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Exhibits and
Documents.

A.3.

Further
statement by
Accused, 4th
October 1943 -
continued.

10 further report about her. There was no mention
made of a fee on the night of the operation.
About a week or ten days after my last visit to
the patient Mr. Biazzos came to see me and we
settled on a fee of Shs. 200/- for the operation
& visits. This was wholly inclusive. I have
not given any part of this fee to Dr. Nadkarni,
because I have not seen him since he left here
for Mbulu where he is now stationed. I never
inquired who the patient was or her nationality.
I do not know if Biazzos is married or not. I
think I would recognise the patient if I saw her
again. I do not think I would recognise the
girl who accompanied her on the night of the op-
eration. My wife has no training in midwifery
but she has assisted me in maternity cases.
She did not assist me in any way during this op-
eration. It is my opinion that the girl's preg-
nancy had existed for about $3\frac{1}{2}$ months before the
20 operation. I did not mention anything about this
operation to Dr. Macquillan at the time or sub-
sequently. When Doctor Macquillan had a con-
versation with me at a date subsequent to this
operation I did not connect the case he referred
to with the patient I have referred to in this
statement. I had no suspicions about the patient
when she was brought to me e.g. I did not think
that there had been an attempt at abortion. Biaz-
zos explained to me that the girl had been bleed-
30 ing & in pain for two or three days before she
came to me. I definitely never asked Biazzos who the
patient was and how she stood in relationship to
him, if any. Dr. Nadkarni did not ask me so far
as I remember whether or not I knew the patient.
It did not occur to me to take the patient to
the operating room of the native or european
hospital. I did not consider that there was
any necessity to do so.

40 I now wish to say that the original state-
ment made by me is inconsistent with the facts
because I could not then clearly recollect all
the information required by the questions put to
me at that time. I did not sign my original
statement because I wish to be more certain of
the information I should give. Fee of Shgs. 200/-
was paid to me in cash. I did not keep the note
which the native brought to me from Biazzos the
day following the operation. I do not know how
the remains of the placenta etc. removed by me

Exhibits and
Documents.

A.3.

Further
statement by
Accused, 4th
October 1943 -
continued.

from the patient were finally disposed of. I am
of the opinion that a portion of the foetus was
lost from the womb before the patient came to
me.

Recorded & read over to
the deponent by W.Duncan,
A.S.P. in presence of
Suptd. Jenkinson.

Sd. V.V. Dabholkar.
4/10/43.

IN THE PRIVY COUNCIL

No. 44 of 1946.

ON APPEAL FROM THE COURT OF
APPEAL FOR EASTERN AFRICA.

BETWEEN

VISHWANATH VISHNU DABHOLKAR
Appellant

- and -

THE KING Respondent

RECORD OF PROCEEDINGS

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