Privy Council Appeal No. 44 of 1946

Vishwanath Vishnu Dabholkar - - - - - *Appellant*

v.

The King - - - - - - - - - - *Respondent*

FROM

THE COURT OF APPEAL FOR EASTERN AFRICA

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 12TH JANUARY, 1948

Present at the Hearing:

LORD UTHWATT
LORD OAKSEY
SIR JOHN BEAUMONT

[*Delivered by* LORD OAKSEY]

This is an appeal by special leave from the judgment of the Court of Appeal for Eastern Africa confirming the appellant's 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 and affirming the sentence of three months' hard labour passed upon him by the High Court of Tanganyika at Arusha on the 15th February, 1944.

The appellant is a Licentiate of the College of Physicians and Surgeons of Bombay, India, and has been registered with the Bombay Medical Council, India, since 1926. He was employed as a Sub-Assistant Surgeon by the Medical Department of the Tanganyika Government from 1929 till the 15th February, 1944, when his service was terminated by the Government owing to the conviction out of which this appeal has arisen.

The count upon which the appellant has been found guilty was as follows:—

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.

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

Section 222 is as follows:—

> "222. 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—
>
> (*a*) drives any vehicle or rides on any public way; or

(*b*) navigates, or takes part in the navigation or working of any vessel; or

(*c*) does any act with fire or any combustible matter, or omits to take precautions against any probable danger from any fire or any combustible matter in his possession; or

(*d*) omits to take precautions against any probable danger from any animal in his possession; or

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

(*f*) dispenses, supplies, sells, administers or gives away any medicine or poisonous or dangerous matter; or

(*g*) does any act with respect to, or omits to take proper precautions against any probable danger from any machinery of which he is solely or partly in charge; or

(*h*) does any act with respect to, or omits to take proper precautions against any probable danger from any explosive in his possession

is guilty of a misdemeanour."

It is not necessary to restate the facts in detail since the only questions argued before their Lordships' Board were first, whether the Court of Appeal were right in holding that it was not necessary for the prosecution to prove the same high degree of negligence under section 222 as in a prosecution for manslaughter and, second, whether there was any evidence upon which the Courts in Eastern Africa were entitled to convict the appellant under sub-section (*e*) of the said section.

Their Lordships are of opinion that the Court of Appeal were right in the interpretation put upon section 222. The negligence charged in that section is not necessarily as grave, either in its nature or its consequences as in the offence of manslaughter. The analogy between this section and section 11 of the English Road Traffic Act, 1930, is, in their Lordships' view, a true analogy and just as in the case of *Andrews* v. *Director of Public Prosecutions* [1937] A.C. 576, the House of Lords explained the different degrees of negligence which the prosecution must prove to establish the offences of manslaughter and dangerous driving, so in the case of section 222 the degree of negligence differs in cases of the felony of manslaughter and in cases of misdemeanour under section 222. The circumstances dealt with in the sub-sections of section 222 are all circumstances which in themselves involve danger and, although the negligence which constitutes the offence in these circumstances must be of a higher degree than the negligence which gives rise to a claim for compensation in a Civil Court, it is not, in their Lordships' opinion, of so high a degree as that which is necessary to constitute the offence of manslaughter.

On the second question their Lordships are of opinion that there was evidence and, in particular, the evidence of Dr. Forrest and the witness Mike, which justified the conviction of the appellant and that no case of miscarriage of justice has been established.

Their Lordships will therefore humbly advise His Majesty that this appeal shall be dismissed.

(59297) Wt. 8013—20 90 1/48 D.L. G. 338

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[DELIVERED BY LORD OAKSEY]

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