

Vishwanath Vishnu Dabholkar Vs. the King

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Court : Privy Council

Decided On : Jan-12-1948

Reported in : AIR1948PC183

Judge : LORD UTHWATT, LORD OAKSEY & SIR JOHN BEAUMONT

Appeal No. : Privy Council Appeal No. 44 of 1946 (From East Africa)

Appellant : Vishwanath Vishnu Dabholkar

Respondent : The King

Advocate for Pet/Ap. : S.P. Khambatta and H.J. Umrigar, for Appellant; Frank Gahan, for The King. Solicitors for Appellant, T.L. Wilsan and Co.; Solicitors for the King, Burchells.

Judgement :

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 S. 222 (e) 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 15 - 2 - 1944.

[2] 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 15 - 2 - 1944, when his service was terminated by the Government owing to the conviction out of which this appeal has arisen.

[3] 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 Nadkarni 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.

[4] 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 of 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."

5 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 S. 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.

6 Their Lordships are of opinion that the Court of Appeal were right in the interpretation put upon S. 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 S. 2, English Road Traffic Act, 1930, is in their Lordships' view, a true analogy and just as in (1937) AC 576,1 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 S. 222 the degree of negligence differs in cases of the felony of manslaughter and in cases of misdemeanour under S. 222. The circumstances dealt with in the sub-sections of S. 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.

[7] 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.

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

Appeal dismissed.

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