

MUNKALA v THE PEOPLE (1966) ZR 12 (CA)

COURT OF APPEAL

BLAGDEN CJ, DOYLE JA, DENNISON J

15th FEBRUARY 1966

Flynote and Headnote

[1] Criminal law - Provocation - 'Suddenness' required.

For provocation to reduce murder to manslaughter, it must be 'sudden'.

[2] Criminal law - Self-defence - Preventive action not included - Section 18 of penal code construed.

Striking down the deceased in order to prevent him from endangering the defendant and his relations in the future does not constitute killing in self-defence.

Statute construed:

Penal Code (1965 Cap. 6) s. 18.

Sardiwalla, for the appellant

Hamilton, State Advocate for the respondent

Judgment

By the court: In this case the appellant, Petro Edward Munkala, was convicted by the High Court at Livingstone of the murder of his elder brother Jamu Simuyandi, near Sikate Village, Kalomo, on 12th September, 1965, and sentenced to death.

The appellant had four children of whom two died in 1965, one shortly after the other, the first from a brain tumour and the other from a bleeding disease. There was a mourning ceremony carried out on each occasion, and on the first of these occasions the appellant accused the deceased of having caused his child to die. His accusation was that the deceased had bewitched his child. There was a quarrel, but the appellant and the deceased were separated. On the occasion of the second mourning ceremony, the appellant without any warning attacked the deceased with an axe and killed him. He freely admitted having done so subsequently to the police, and gave as his motive that the second child had been killed by the deceased's bewitching him.

At the appellant's trial he put up two defences: first, that he was acting in defence of himself and his other children; and second that he was provoked. Both these grounds were put forward again in the appellant's grounds of appeal, but [1] his counsel has abandoned the ground of provocation and indeed there would have been little point in his pursuing it any further, as from the evidence it was quite clear that this was no case of *sudden* provocation.

[2] In regard to self-defence, Mr Sardiwalla has argued that the appellant had a strong and honest belief in witchcraft. This we fully accept. Mr Sardiwalla has also submitted that that belief was

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BY THE COURT

reasonable, having regard to the appellant's status in life, and the community to which he belonged. There have been a number of decisions on this very point, but I do not propose to go into them since it seems to me that the defence of self-defence fails on a more obvious ground. When the appellant struck down the deceased neither the appellant nor anyone else was being attacked by the deceased in any way. What the appellant was doing, in effect, was to strike down the deceased to prevent him from bewitching his other two children or himself in the future. His position was in no way different to that of a person who, fearing that some enemy is going to kill him, anticipates that event by shooting his enemy first himself. That action does not measure up to self-defence, the law in regard to which, by virtue of s.18 of the Penal Code, is the law applicable in England.

In our view there is no substance in the grounds put forward in this appeal. The appellant was properly convicted and the appeal is accordingly dismissed.

Appeal dismissed

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