

R. v. LUHILA.

A CRIMINAL REVIEW CASE OF 1936.

Person setting stakes as trap on public path with intent to cause harm to any person using path—no evidence in support of conviction for unlawful wounding under Penal Code section 208 (1)—evidence of unlawful act whereby harm caused to some person under Penal Code section 214—power of High Court on review under Criminal Code sections 300 and 309 to alter finding and enter judgment of guilty under Penal Code section 214—sentence too severe in circumstances—Criminal Procedure Code section 187 (2) requires accused's admission of guilt to be recorded as nearly as possible in words used by him.

The High Court has power on review under Criminal Procedure Code section 300 and section 309—(a) to alter the section under which a Subordinate Court has entered a conviction and to substitute a conviction under another section; (b) to reduce the sentence passed by the Subordinate Court.

Where an accused person admits the truth of the charge, his admission shall be recorded as nearly as possible, in the words used by him (Criminal Procedure Code section 187 (2)).

Francis, J.: There is no evidence in law sufficient to sustain a verdict of wounding under section 208 (1); but there is a case under section 214 and the charge might have been laid, that he on or about the 10th April, 1936, set certain sharp pointed stakes as a trap on a public path going towards the village of Katulu with intent that they should cause harm upon any person coming in contact therewith thereby committing an unlawful act whereby harm was caused to one Indura Likulu contrary to Penal Code section 214.

The act described is one provided for in England under the Offences against the Person Act, 1861, section 31 (*Archbold* 28th Edition, page 971) which is not repeated in our Code.

Accordingly I propose to alter the finding under section 208 by entering a verdict of guilty under section 214.

Moreover in view of the following facts that (a) this is one of the first offences recorded in the district; (b) there is no previous conviction in evidence against the accused; and (c) the sentence has included one of corporal punishment, already awarded, I think the imposition of the maximum term of imprisonment permitted by law is too severe. This being my view, I propose to reduce the term to one of three months.

Before acting, however, I should be glad if the Attorney-General might be given an opportunity of submitting such observation as he thinks fit.

Please request the Magistrate in future not to use the expression "cuts". The proper word is that found in the law—"strokes".

I notice that the plea of the accused is recorded by the word "guilty". I do not suggest in this case that the accused did not use in his language an equivalently abbreviated expression; but I would remind the Magistrate that the Criminal Procedure Code, section 187 (2) requires—and for very good reason—that the accused's admission shall be recorded as nearly as possible in the words used by him, those words of course being translated literally into English.

As to paragraph 8 of the Magistrate's memorandum the law does not empower me to act as he would desire.