

R. v. KALEBAILA.

HIGH COURT CRIMINAL CASE No. 54 OF 1942.

Murder—not murder if some act intervenes—intention necessary—reduction to manslaughter.

The accused picked up a piece of wood to strike a native named Ponyela but the wood slipped from his hand and struck Juma and killed him. The Court held that the slipping of the wood was an intervening factor sufficient to reduce the offence from murder to manslaughter as there was no evidence that the accused intended to kill or cause grievous harm to Ponyela.

Law, C.J.: The assessors have rejected accused's defence. For my part I am unable to say that it is untrue. It has, in my opinion, a ring of truth about it and to that extent it must be accepted. It is clear from Tutatuta's evidence, which corroborates accused's story in that respect, that accused intended to strike Ponyela with a small stick in the first instance. That intention was frustrated because the stick was taken away from him. It is reasonable to suppose that when he used the larger piece of wood, Ex. A, he still had the same intention. He appears to have picked up the piece of stick nearest to him. It is also reasonable to believe that he could have struck Ponyela with Ex. A had not something occurred to alter that happening. Ponyela was sitting next to him at the fireside and there would have been no difficulty in striking him with Ex. A whereas it could not have been so easy to strike deceased, Juma, with it who was sitting on the other side of Ponyela. Had the accused struck at Ponyela with any particular design and hit Juma in error, simpliciter, he would undoubtedly have been responsible for a similar injury then caused to Juma. But in this case something intervenes. Accused says in striking at Ponyela with Ex. A it slipped from his hands and struck Juma instead. That accused intended to cause some kind of harm to Ponyela there is no doubt, but it is not possible to say that he intended to kill Ponyela or to cause him grievous harm resulting in death in view of the manner in which Juma met his death. His intention to cause harm to Ponyela was an unlawful act and accused must therefore accept the responsibility of causing harm to Juma or to anyone else for that unlawful act notwithstanding the stick having slipped from his hands for reasons not attributable to any other person's act. I find some difficulty in saying that accused was not in a degree suffering from the effects of his five-hour drinking bout earlier that day. It is true that Tutatuta was able to go off to his garden after midday to do some work there. But the drink led to a quarrel and struggle between accused, Ponyela and Juma in the afternoon. I do not believe that the accused's mind had settled to normal by the evening. It was again provoked by insulting language from Ponyela. That fact must have revived the accused's anger. He was evidently a quick-tempered man. I feel that the effects of the drink, coupled with the other circumstances of the day,

must be taken into consideration as indicating that accused had not the specific intention of causing the death of Ponycela much less of Juma. For these reasons I am not satisfied that the charge of murder has been proved against the accused. I find him guilty of the offence of manslaughter.