

JOEL CHIKUBABE LUNGU v THE PEOPLE (1985) Z.R. 155 (S.C.)

SUPREME COURT
NGULUBE D.C.J., GARDNER AND MUWO, JJ.S.
23RD APRIL, 1985
(S.C.Z. JUDGMENT NO.10 OF 1985)

Flynote

Criminal Law and Procedure - Medical treatment by unqualified person - Injection - Tetanus - Whether culpable negligence.

Headnote

The appellant who was not a qualified medical practitioner administered an injection at the request of a patient's wife. The patient died and

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the post-mortem examination revealed that the cause of death was tetanus from an abscess on the right buttock which could have been caused by a prick from a sharp needle. There was no evidence as to whether the tetanus entered the wound as a result of lack of skill or care in administering the injection.

Held:

- (i) The case was distinguished from the case of *The People v Zulu* (1968) Z.R. 88 in that the deceased did not die as result of the substance which was injected;
- (ii) The mere giving of an injection by an unqualified person is not evidence per se of negligence to support a conviction for manslaughter.

Case referred to:

(1) *The People v Zulu* (1968) Z.R. 88.

For the appellant: In person.
For the respondent: L.S. Mwaba, Senior State Advocate.

Judgment

GARDNER, J.S.: delivered the judgment of the court.

The appellant was convicted of manslaughter; the particulars of the offence being that he unlawfully caused the death of Frederick Chibolya at Kabwe on the 11th August of 1982. The appellant was originally charged with murder but, at the conclusion of his trial, the learned trial judge found him not guilty of that offence and found him guilty, of manslaughter.

The evidence in support of the case against the appellant was that he was called upon by the deceased to treat him for venereal disease. It was not suggested that the appellant was a qualified

medical practitioner but he was consulted by the deceased for him to administer herbal treatment. The appellant gave the deceased some medicine for him to drink and, on the 4th of August, 1982, he complained to his wife PW2 that he was suffering pain from his affliction. The appellant was then requested to go to the deceased's house. The appellant duly arrived at the house on the 6th of August, and, according to PW2 the deceased's wife, administered an injection to the deceased. Thereafter the deceased felt pain where he had been injected and the appellant was called in again. As result he advised that a hot fermentation should be applied. On the 10th of August the deceased was so sick that he was taken to hospital and on the 11th of August he died.

At the trial the appellant gave evidence and called a witness to the effect that he had never given an injection to the deceased; but the trial judge, after examining the evidence, quite properly accepted the evidence of PW2 that the injection had been administered by the appellant.

The Doctor who performed the post-mortem examination was called to give evidence and stated that the cause of death was tetanus; that

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there was an abscess on the right buttock which could have been caused by a prick from a sharp needle and that the wound on the buttock was the cause of the tetanus.

Mr Mwaba on behalf of the State had indicated that he does not support this conviction, which is a very proper course for him to take. In the course of his judgment the learned trial judge referred to the case of *The People v Zulu* (1), and said that in his view the facts of Zulu's case were more or less similar. The evidence in Zulu's case was that a medically unqualified person had administered to the deceased in that case an injection of 10 cubic centimetres of chloroquine and within a few minutes the child receiving the injection died. There was evidence that the maximum safe dosage for that particular person was one-and-a-half cubic centimetres and the medical evidence was to the effect that the child died from cardiac arrest, that is, acute heart failure, following the overdose of chloroquine. In support of the conviction in that case Evans, J., called in aid the provision of what is now section 213 of the Penal Code which reads, so far as it is material, as follows:

"It is the duty of every person who, except in a case of necessity, undertakes to administer medical treatment to any other person, or to do any other lawful act which is or may be dangerous to human life or health, to have reasonable skill and to use reasonable care in doing such act, and he shall be deemed to have caused any consequences which adversely affect the life or health of any person by reason of any omission to observe or perform that duty."

The learned trial judge in that case found that, except for the pure mechanics of giving an injection, the accused in that case possessed no skill and used no care. He had no medical training and knowledge of the properties or usage of chloroquine or of its correct dosage. He therefore did not have reasonable skill and use reasonable care.

The case at present before us is distinguished in that the deceased did not die as a result of the substance which was injected. He died, according to the Doctor, from tetanus which entered the

wound in his buttock. There was no evidence as to whether the tetanus entered the wound as a result of lack of skill or care in giving the injection. The mere giving of an injection by an unqualified person is not in itself evidence of negligence to support a conviction for manslaughter. In default of evidence of negligence in this case there is no proof that the appellant failed in his duty under section 213 of the Penal Code to the extent that, by an unlawful act or omission amounting to culpable negligence, he caused the death of the deceased within the terms of section 199.

The appeal is therefore allowed, the conviction is quashed and the sentence is set aside.

Appeal allowed
