

Rex v Chikokonya
1938 SR 122

High Court of Southern Rhodesia, SALISBURY

1938. July 26.

BLAKEWAY, J.

Flynote

Criminal law --- Murder by poisoning --- Killing one person by means adopted to kill another --- Mistake --- Intention --- Employment of second means when first known to have failed of its purpose --- Drunkenness.

Headnote

Accused obtained poison from one L. for the purpose of killing his wife. The next day he took the poison to a kraal where his wife lived, entered the hut which she usually occupied and which he thought she would occupy that night, and put some of the poison into a pot containing drinking water. He then discovered that he and his wife would be sleeping in another hut that night, as visitors to the kraal would be using her hut. During the night he arose and put poison in the water in the second hut. His wife did not take any of the poisoned water but a man whom the accused did not intend to kill died as a consequence of taking some of the poisoned water in the first hut. Accused gave evidence of his drunkenness, but this was not supported by circumstantial or other evidence.

Held, that as the accused intended to murder his wife and by mistake killed another person he was guilty of the murder of that person.

Case Information

Criminal trial on an indictment for murder.

The facts appear from the judgment.

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E.W.G. Jarvis, for the Crown, on the facts.

L.M.N. Hodson, for the accused: If anyone lays poison for one person in order to kill him and by mistake succeeds in killing another he is guilty of murdering that other. See Hailsham, *Laws of England*, Vol. IX, para. 738. But accused knew his wife would not take the poison in the first hut. He abandoned his intention to kill by means of that poison and was only culpably negligent in regard thereto. See *Rex v Tshabala* [1921 AD 13](#) at p. [18](#)).

Jarvis replied.

Judgment

BLAKEWAY, J.: In this case the accused is charged with the murder of Makachi by administering poison. The facts are that on the 16th May, a Saturday, the accused was at the kraal of Machingaifa, the father of his wife, he having arrived late in the evening. His wife Mapfudza lived at this kraal, having left the accused since the beginning of this year. Some trouble had arisen between them and it appears that she would no longer allow him to have sexual intercourse with her. He did, however, from time to time visit her at this kraal and occupied a hut with her there. At the time in question the deceased Makachi, with his wife and others, was visiting Machingaifa, and he occupied Mapfudza's hut which had been assigned to him and his wife. When the accused arrived on the Saturday night he went directly to this hut and, as he admits, put some poison into a pot of drinking water that was there. He then sat down and spoke to Makachi, who arrived later. The accused was told by his wife that they were to sleep in another hut and he left Makachi's hut and went with his wife to the hut belonging to Mcharo. He asked his wife to have relations with him. She refused, and after that he put poison in a pot of water in her hut and admits that his intention was to kill her. He had been trying to get his lobola back from her father unsuccessfully and he says he became angry because he had been deprived of his wife and had lost his lobola. Unfortunately, the deceased, Makachi, drank the water which had been first poisoned and had some meat which had been cooked with water from that pot. He vomited several times and was taken to hospital, where he died after some days. The cause of death was arsenical poisoning, and there is no doubt that he died from the poison that was placed in the water by the accused.

As I said, the accused admits that his intention was to kill his wife, Mapfudza. On the previous day he went to Longone, who

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was in possession of locust poison, and according to his own statement he asked for poison, telling him he wanted it to kill his wife. He found Longone drinking beer and he afterwards drank and became drunk. Later Longone gave him some poison which he wrapped in a leaf and carried to his own kraal on the Friday and concealed it near the kraal under a scone. The next day he says that he drank beer at his own kraal alone from eleven o'clock in the morning until three in the afternoon and then thought about killing his wife. He walked to Machingaifa's kraal, a

distance of several miles, and immediately poisoned the water in the hut in which he expected his wife to sleep.

I have mentioned that in some detail because the accused now states that he acted in this manner because he was drunk. The Court is not able to accept his evidence on the point. He was not drunk on the Friday when he went to get the poison and the intent to kill his wife was not arrived at in a state of intoxication. He kept his intention alive until the following evening, and the Crown witnesses say that he was not drunk when he arrived. Even if he had been drinking it was at three o'clock on the Saturday and he was not in such a state of intoxication as not to know what he was doing. He was sober enough to poison the water deliberately and to know that he was not to sleep in his wife's hut but in another hut. He asked her to have intercourse and when she refused he got up and poisoned the water. The Court cannot, on those facts, find that he was so drunk as not to know what he was doing.

Mr. *Hodson*, who appears for the accused, has asked the Court to find that when the accused went to the kraal of Machingaifa he went to the place where he thought his wife was asleep and when he found that she was sleeping elsewhere he put poison in that other hut, and the submission is that when the accused placed the poison in the second hut he abandoned the intention to poison his wife with the water which he poisoned first; that this was merely an attempt which failed and the new intention came about when the water was poisoned again. That being so he relied on the case of *Rex v Tahabala* [1921 AD 13](#) as being applicable to the present facts. That case, however, is quite different. The facts in that case were that the accused placed the poison in a certain place not intending that anyone should partake of it. His intention was to administer it at a later convenient time to one Zwartland. Unfortunately, one Springaan took it. It was held that the accused could not be convicted of administering poison to Springaan

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with intent to do grievous bodily harm on those facts. However, *Solomon, J.A.*, at page 18, says this: "Now it is clear from the statement of facts by the learned Judge that the accused had no intention of administering poison to Springaan. His object in putting poison into the porridge, or gruel, in the can was to offer it to Zwartland, against whom he entertained ill-feeling. Unfortunately, however, he deposited the can at a place in the engine house where Springaan and Tom were accustomed to put their food, and Springaan, by mistake, drank some of the contents, thinking that it was his own food. Now, if the accused had placed the can there intending that Zwartland should partake of the poisoned porridge he would have been guilty of administering poison to Springaan, notwithstanding the fact that he did not intend the latter to take the gruel." The passage quoted by Mr. *Hodson* from 9 *Hailsham*, para. 378: "If anyone shoots at or stabs or lays poison for or does any other act with the malicious intent to kill one person, and by mistake kills another person by means of such act, the person who does the act is guilty of the murder of the person killed," is applicable to the present case. The Court has not been able to perceive from the evidence any fine distinction on the part of the accused in the first poisoning of the water and the second. He came there with the fixed intention of killing his wife. By mistake he killed Makachi. In those circumstances the accused is found guilty of murder.