

EAST SEA PROT
11908

11908
REC'D
REC'D 12 MAR 15

ORDER OF J. O. HUGHES
JUDGE OF GOVIND WARDEN THAYER

1915

3rd February

d on 25th July 1914. Encloses certified
file. Appeal to Court of Appeal
11th. Has confirmed sentence
forthwith.

copy of
of dear

Full name
1915

Hand in
to G. added.

The Judge did not fit
must help for the Accusers, who were
presumably both to assist a fellow
countryman

Put by ?

H. J. G.

12/05/15

I do not think that the hearing of an appeal
in a capital case should be delayed for more
than 20 days - time after trial & sentence.
It was more than 5 months in this case -
Under the heading of Court (240) the Court of Appeal
held 2 ordinary sessions each year
beginning in even after 1st month & 1st
respectively as shall be found

Am? 170 26 March 15

Next subject Paper

28482/15

of [unclear] to be [unclear] they take criminal
appeals in capital cases first then ought
not to have been much more than 3
months delay, but even this would have
been excessive

In England under the Criminal Appeal
Act 1907 in the case of a conviction
involving sentence of death or corporal
punishment the appeal may be
"heard & determined before a bench
of three or five judges" (see 70)
and this principle should also be
applied in [unclear] & [unclear]

In [unclear] under the Rules of Court (340 f.)
& special sessions may be held at any
time when it may be considered
desirable by the Senior Member of
the Court, and unless it was
impossible to get the agreement
of 3 judges, I think there should
have been a special session
to deal with this case.

5/10/15
J.P. for [unclear]
of Mr. Riley's
J.P. this

J.P.
6/2/15
the [unclear]
minutes & [unclear]
Mr. Riley
at [unclear]
St. [unclear]
7/5/15

No. 89.

February 3rd, 1915.

Sir,

*File
17492*

With reference to my telegram No. 177 of May 21st 1914 I have the honour to inform you that the trial of Govind Wasudeo Thatte accused of the murder of Mr. J. O. Hughes, Assistant District Commissioner took place at the session of the High Court held at Nairobi on July 25th 1914 and the accused was sentenced to death.

H.C. File.

A certified copy of the High Court file is forwarded herewith.

2. The accused lodged an appeal to the Court of Appeal for Eastern Africa which was dismissed at the session of the Court on January 14th.

3. After consultation with my Executive Council I have confirmed the sentence of death which will be carried out forthwith.

I have the honour to be,

Sir,

RIGHT HONOURABLE

Your humble, obedient Servant,

LEWIS HARCOURT, P.O., M.P.

[Signature]

SECRETARY OF STATE FOR THE COLONIES,

DOWNING STREET,

GOVERNOR

WEST AFRICA PROTECTORATE.

INCLOSURE

In Despatch No. 5 of 3 of 1914

In the *High* Court
at *Sitting*

11908
REC^d
REC^d 12 MAR 15

CRIMINAL CASE No. *26* of 1914

Prosecutor

Crown

Accused

Govind Wasu Shetty

Date of Issue

Date of Hearing

Charge

Judgment.—

I Certify that this is a
true copy of the original
As above
W. H. B. G. Deputy Registrar

25th July 1914.

Accused present.

Young for Crown

Ritch for defendant.

Charge explained to accused.

Plea of accused 'Not Guilty'

Assessors - Bamanji N. Patel

M. K. Seth

Dharamchand.

I explain the charge to the assessors.

Young opens.

WILLIAM HORTON HEARD - I am M.B., B.Ch. R.U.I.

I am a private practitioner acting as
Government District Surgeon at Eldebet.

I visit Eldebet Jail.

I know accused.

I have had him under observation for 4 or
5 weeks seeing him once a week.

I was of opinion that he was of a sound mind.

I saw him first on 27th March 1914.

I have no reason to think he was ever anything
but sane.

Blood slides were taken of accused's blood.

I received the report produced (Exhibit 1).

I EXD:-

Qualified in 1893.

Practising in this country about 7 years.

I have not come across many cases of insanity
here.

I remember.

I am not a bacteriologist.

I had never seen accused before.

He was in custody at Eldebet when I visited him.

Evid. pp. 1, 2. (2)

I base my opinion on (1) I saw nothing abnormal in conduct, (2) no incoherence of speech and 3rd no confusion of thought.

Accused was suffering from chronic dyspepsia.

Bodily derangements may affect the mind.

Headache may accompany dyspepsia.

Restlessness, loss of appetite, lowness of spirits, flushed face rapid pulse and temperature may accompany dyspepsia.

The liver is implicated in it.

In the ordinary attack of dyspepsia I would not expect to find severe mental symptoms.

A transitory effect on the brain might take place but I would expect it pass off with the attack of dyspepsia.

The mind is usually regarded by the medical faculty as a function of the brain.

The mind has 3 functions will thought emotion.

If brain affected one or more of these functions may be affected.

Severe uric acid trouble is a predisposing cause to brain trouble.

Prolongation of trouble would accentuate affect on brain.

Hereditary might assist other predisposing causes.

Lunacy is not inherited but fibril weakness in the brain may be hereditary which renders the sufferer more susceptible.

Insanity in a family would weigh in the

In Hereditary mania - there are some

let it begin with an alteration in the character of the man leading to a degree of excitability which would culminate in the act.

In case of an outburst of homicidal mania I should not be surprised to find the patient calm, express no regret nor remorse nor fear. He might confess the deed.

He might behave ^{like} a sane criminal but yet be insane.

It does not necessarily follow from what I saw that the accused had not suffered from an attack of homicidal mania.

Every cell in the body is in a state of activity.

I have never known dyspepsia have a disruptive effect on the brain.

Self control depends on normal will power.

RE X:-

I saw no symptom of any illness which in my opinion had deranged the accused's mind.

Read over - correct.

(Sgd.) Albert Ehrhardt

OSWIN GEORGE SMITH sworn states:-

Inspector of Police at Mombasa.

In March last I was at Sergoit, Uasin Gishu.

On March 24th last at 2.30 a.m. I received a report from the Manager of Algeo Saw Mills.

I proceeded to a spot known as Campi Baridi, midway between Algeo Mills and Marakwet.

On arrival at 9.30 p.m. there I found a camp. I entered the largest tent and saw lying on a bed the body of Mr. Hughes whom I knew personally.

He was Assistant District Commissioner of Marakwet.

The body was lying on its back left-side towards door of tent.

I examined the body.

There were two wounds on the body.

One situated below the left breast caused by a bullet which came out below the right shoulder blade at the back.

The other was a slight wound on the right breast.

In my opinion the first described wound caused the death.

I saw the accused at the camp.

He was sitting down at the camp fire.

He said good morning, sir.

Accused was tied up with rope round wrist and ankles.

I arrested accused and he was sent under escort to Eldoret.

The wound could not ^{have been} self inflicted.

I noticed no signs of a struggle.

I found the gun produced in the grass about 300 yards from the tent.

Ordinary rifle used by the akakis.

Near the entrance of tent I found one discharged cartridge.

Exhibit 3 is like the one I found.

Exhibit 4 is a sketch I made of the locality.

I noticed nothing the matter with the accused when I arrested him.

He appeared quite normal.

I had never seen him before.

Evid. pp. 3, 4. (5)

The rifle was dirty when I found it owing to its having been fired.

I say:-

I regard the gun as having been fired within a day either on 23rd or 24th.

There was a native policeman there and accused was tied up.

Accused's tent was about 20 yards from the askari's tent.

Deceased's tent was facing southerly.

From askari's tent you cannot see door of the accused's or the deceased's.

Porters' tents were about 6 or 8 yards from the askaris.

Bushes were close to the tents, pretty dense.

The trees and bushes were close to Mr. Hughes' tent.

TO THE COURT:-

Deceased was about 30 years of age.

Read over - correct.

(Sgd.) Albert Ehrhardt

JUMA BIN KARANJA affirmed -

I was boy of Mr. Hughes.

I know accused.

I remember going on safari with Mr. Hughes and accused.

We met letters on the way to the camp.

My master gave some letters to accused.

The porters then pitched the tent and my master had meal at 12 o'clock.

After lunch we had shooting at 4 o'clock and came back at

After 6 he had food.

At 7 he went to bed.

He gave me his putties and boots.

Before the putties were dried I heard the noise of a gun.

I saw askaris wandering about.

I heard a second shot and the askaris began to run away.

I said why are you running away.

I went inside my master's tent and took the lamp outside to light it.

Before I went into the tent I saw the doctor i.e. accused, running from the tent.

He had an askari gun.

I could see him plainly.

I saw a man coming from there but I was afraid.

It was dark. The man was the accused.

I found my master was dead.

I saw a mark under his left breast.

I saw accused again at 8 p.m. that same night.

He went round the tents of the porters.

We caught him and tied him till the morning.

We asked him whether he had shot my master and he said yes.

Mr. Smith came next morning.

I was drying the putties near the kitchen fire.

There were three fires, Kitchen, Porters and Askaris.

There was a fire near the deceased's tent.

It was on left of tent when you are going out of tent.

The fire was quite close to the tent.

Evid. pp. 4, 5. (6)

After 6 he had food.

At 7 he went to bed.

He gave me his putties and boots.

Before the putties were dried I heard
the noise of a gun.

I saw askaris wandering about.

I heard a second shot and the Askaris
began to run away.

I said why are you running away.

I went inside my master's tent and took the
lamp outside to light it.

Before I went into the tent I saw the doctor
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He had an askari gun.

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he said yes.

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There were three fires, Kitchen, Porters and
Askaris.

There was a fire near the deceased's tent.

It was on left of tent when you are going out
of tent.

The fire was quite close to the

It was alight but not much when I saw askaris
come out of the tent.

X BED:

It was not dark when I gave Mr. Hughes his
food at 6.

Quite light.

I lit the lamp for dinner.

It was nearly getting dark.

I waited at dinner.

My master finished his meal at 6 - he started
at 5.

Mr. Hughes went to bed when it got dark.

I cleared the table and went away.

He gave me the boots before he went to bed.

I dried the putties at our fire near the
askaris tent.

I did not go to my master's tent after I got
the boots until I heard the gunshots.

I was standing there.

When the putties were nearly dry I heard the
shot.

There were the cook and the cook's boy and
some askaris there.

Cook did not come near the tent - I fetched the
food.

Hamis bin Juma is cook's name.

The kitchen boy's name is Uuyange.

There were two askaris there.

I waited for the askaris to go and see but
they didn't.

and I were going to see when I heard the
second shot.

Evid. pp. 5, 6. (8)

I saw my master holding a book.
The lamp was alight when I heard the first
shot and the second.

But when I went in the lamp had fallen and
the oil was leaking.

The cook came with me to the tent when I
heard the shot.

The cook and I did not run away.

The nakaris did.

I lit the lamp that was in my master's tent.

Somba also came to the tent.

Meesa, Somba cook and I went to the tent.

Somba told me to go with us to light the lamp.
Somba did not light the lamp.

When I said I went away I meant I went round
my tent.

I am sure I saw accused come out of the tent
but it was dark.

When I saw the accused come out of the tent
we were running towards the tent - back in front.
Somba came up and we told him. Somba was standing
at his tent he followed us.

I went into tent first.

Cook could have seen accused come out of tent.

We had no light we could not make out.

Cook could have seen the gun.

Cook was there when we caught the accused.

Accused said in effect he had killed my master.

I was suspected of stealing my master's money
after his death.

The cook stole it.

RE XID:

I suspected the cook of the theft.

I was not suspected myself.

Read over - correct.

(Sgd.) Albert Ehrhardt

Adjourned till July 27th.

(Sgd.) Albert Ehrhardt

Resumed - July 27th 1914.

HAMIS BIN JUMA, Swahili, Mahomedan sworn states:-

I was cook for Mr. Hughes.

I remember going on safari with him from
Karakwet.

Accused was there.

We left Karakwet with the doctor.

We camped at Campi Baridi.

We met the first post there.

I saw deceased give doctor some letters.

At 3 o'clock deceased went shooting.

At 5 p.m. he returned.

He wanted food.

When he had finished soup a porter said
something.

Deceased fired three shots and missed.

He came back to take his food.

After his food he had some letters.

6.30 deceased was shot by the doctor.

He was lying in the tent. The doctor
the gazette.

He was in pyjamas.

At 7 when I was working porridge for next

morning I heard the sound of a shot.

I heard deceased say "Oh".

He was lying in the tent. The doctor
tent.

When we were near we heard a second shot in the tent and ran away.

I did not run far but stood and saw a man coming from the tent and told the askaris.

On our way to deceased's tent I went to the doctor's and called him but he was not there.

Somba told the boy to light the lamp.

The boy lit the lamp.

Somba came out of the tent.

We looked for the doctor and found his cap in the askaris' tent.

I saw a man come out but could not say who it was because it was too dark.

He came out about 3 minutes after the second shot.

I did not go into the tent that night.

I saw Mr. Hughes after the shots next morning. He was shot in the ribs.

One askari went to Marakwet one to Sergoit and one to Mr. Smith.

I was staying with the porters and heard some one call 'Somba' from the bushes.

Then I saw the doctor come from the bush.

When he came I caught him with the porters.

I tied him and I said did you kill the master and he said yes I did.

I said why did you kill him. He said I did kill him and I will not tell lies to a black man.

I had been 3 years with deceased.

I have known deceased for 7 months.

Deceased was in his tent before the shots were fired. I did not hear anything.

At Mbarakret he was well.

I remember one day doctor wanted leave. He was continually going to office for leave. Deceased said "I have sent a letter to Nairobi". One day when Mr. Hughes was shaving accused disturbed him. Mr. Hughes said what is the matter doctor said I want leave. Mr. Hughes. What is the matter. Don't you understand English go away you damn fool.

After the doctor had come back I asked him where he got the shorts and rifle and he said from the askaris.

When I asked him why he had killed Mr. Hughes, he said I will not tell you I will tell the big master.

X END:-

I was Mr. Hughes cook.

That was all I did for Mr. Hughes.

Doctor was in his tent when Mr. Hughes went shooting at 3.30.

I saw the doctor go into his tent at 1 p.m.

I saw him taking a letter to Mr. Hughes after lunch.

I saw accused at 5 p.m. near the askaris fire.

All the askaris and many porters were there. When the 1st shot was fired I was in my kitchen in the open air making porridge.

Last witness was with me during the shots.

I could see Mr. Hughes' tent from the fire.

Nobody could see whether the lamp was alight from the kitchen fire.

When the 1st shot was fired, I went with the askaris towards the tent.

Evid. No. 10. (12)

When we got near the tent we heard the second shot and ran away.

We were about 10 paces away from the tent.

Last witness was with me.

Somba was with me.

We were all running away and I stopped and looked back and saw a man come out of the tent.

When I turned round to look Juma and Somba were about 10 paces from me.

The sekaris were fastest, the porters were second, I was nearest the tent.

It was dark.

We all ran into bush.

When we tied the doctor we had a good deal of talk.

I cannot say whether the man coming from the tent carried anything in his hand. It was too dark.

I do not know where Juma was at that time.

Juma lit the lamp in the tent.

I did not go inside Mr. Hughes tent.

Somba and Juma went in. I only saw those two.

I did not tell so much in lower Court because I was not asked questions.

I saw Juma light the lamp.

I did not wait there.

I was suspected of stealing and arrested for it. Juma said about it.

I think Juma stole it.

I was charged with theft and let go.

Read over - correct

(Sgt.) Station Sergeant

SOMBA WA HAKU witnesses, notes

and a

I knew Mr. Hughes and accused.

I went on safari with them.

We left Marakwet at 7.

We got to Baridi Camp at 12.

At 2 the post came.

Mr. Hughes gave two letters to accused.

The doctor went to his tent.

At 4 Mr. Hughes went shooting.

He returned at 5.

We stayed till 6 and I inspected the askari.

The askaris had rifles + all of them.

They had 3 cartridges each.

I reported they were all there to Mr. Hughes.

I saw it was 7 p.m.

I went to askaris tent.

I took off my belt and put it with my rifle on my mattress.

I heard a gunshot from Mr. Hughes' tent.

I left the porters and ran to the askaris tent.

I looked for my gun but could not find it.

The number is 2406.

Exhibit 2 is my gun.

While I was looking for my gun I heard a second shot.

Not finding my gun I took another askari's gun and went to Mr. Hughes' tent.

I went to the tent by myself.

There was no light I called Juma.

I asked him for matches.

When he brought the matches I lit the lamp.

I lit it.

I saw Mr. Hughes dead lying on his bed.

He was wearing a shirt.

Evid. No. 10, 11. (14)

He was wounded under the left breast.

I heard Mr. Hughes cry out, when the 1st shot was
fired

I told the cook when I came out and told him to
bring the doctor

The cook told me the doctor but he was not there.

I went to the doctor's tent, he was not there.

I told the sarkis master is dead and I do not know
who killed him. One of our guns had two cartridges
missing.

When I took off my belt Mtiyu was there.

When I went to report to my master I saw the doctor
near the sarkis tent.

I did not hear the accused quarrelling with Mr. Hughes.

Accused was the same as other days.

After the 2nd shot I saw accused again after I
returned from the Saw Mills - he was tied.

X EXC:-

I did not run away but have been sent to prison for
cowardice.

I inspected sarkis at 6 p.m.

It was not dark.

Each man had his ammunition in his pouch.

At 7 it was dark. I could not see Mr. Hughes' tent.

When I took off my belt I do not know where Hamis
was.

I saw Juma sitting near the master's fire.

The porters tents were about 20 paces away.

I could see Mr. Hughes' tent but not the door from
the porter's fire.

I did not see Hamis and Juma running to Mr. Hughes'
tent.

I went alone to the tent.

After the first shot when I went to my tent the other askaris were there looking for their rifles.

While I was doing this I heard second shot.

I snatched up first gun and went to the tent.

Every one ran by himself.

The other askaris left the tent before me while I was looking for my gun.

I ran ~~back~~ to Mr. Hughes' tent.

When I came from porters' tent I did not see Hamis or Juma.

I saw no one running to Mr. Hughes' tent.

When I heard Mr. Hughes cry out I was standing near the porters' tent.

I did not run away - I do not know whether the other askaris ran away.

The other askaris were running towards the back of Mr. Hughes' tent.

I saw them at the back of Mr. Hughes' tent.

I did not see the cook and boy.

When I got to the tent I went in.

No one was inside beside Mr. Hughes.

I do not know where cook was.

The boy came from the cook's tent when I called him.

I called him after I had entered the tent.

Juma came alone - he lit the lamp.

When the lamp was lighted I went out and called the cook.

He came from the back of his tent.

The boy (Juma) was with me outside the tent.

The lamp was on the ground.

I told cook to wake up the sister.

He went to call the doctor.

We then went away from the tent.
 I went to the doctor's tent - I was alone.
 I left the boy near the Mr. Hughes' fire.
 I told the askaris to stay at the tent.
 I saw accused next morning.

It is untrue that the cook or boy or any askari ran with me.

TO COURT at request of Ritch - After I had dismissed the askaris after inspection they went to the askaris tent.

Read over - correct.

(Sgd.) Albert Richardt

JOHN CLIFTON SHAW sworn states:-

Manager of Standard Bank and a Justice of the Peace at Eldoret.

I saw the accused.

(Ritch objects to the reception of Exhibit 6 in lower court.

1st Mr. Shaw not a magistrate

2nd From it takes - a cross-examination not a confession.

3rd A 3rd person was present

4th Certain threats were used on day previous)

Examination resumed.

Ex. 11 produced is a statement recorded by me and signed the accused.

The statement was recorded at the office of Inspector Richardson between 11 and 12.30 of March 1912.

There were 3 in the room - the accused, Provincial Commissioner Trail and myself.

There was no policeman there - there may have been on the verandah.

Accused arrived in ordinary clothing.

I was in the room with the Provincial Commissioner
Trill when the accused was brought in.

He was brought in by a native gaoler or warder.
The warder Inspector Richardson and Inspector
Smith were asked to retire.

They did so.

I then asked the accused if he wished to make a
voluntary statement, he said yes.

I took the statement down and it was signed by
accused. At the conclusion accused asked for one
addition to be made by him. He first of all described
the effects of the circumstances and then we asked him
how it had been done.

X was

When accused came in first thing was police were
asked to retire. I then asked accused if he wished to
make a statement.

The accused made no other statement than that
contained. The procedure followed was arranged before-
hand because I was told by Inspector Richardson and
Provincial Commissioner Trill that the accused wanted
to make a statement. There was no prior arrangement as
to questions and answers. It was decided to proceed
by way of question and answer in accused's question.

Adjourned for lunch.

Resumed 2 p.m.

JONES CLIFTON BRAW TO COURT - I did nothing more than ask
the accused whether it was a voluntary statement in
order to assure myself that it was voluntary. Accused
made no allegations against the police.

YOUNG - investigation may be investigation by police

Act 80 of Evidence Act.

Section 3 of III/1910.

Evid. pp. 14, 15. (18)

I exclude the confession on the ground that it was made after the police investigation was concluded and that there is no evidence of the circumstances under which it was made from which I can satisfy myself that it was voluntary.

Young tenders Mr. Shaw to give evidence of what accused said.

The confession having been excluded - I reject the evidence.

THOMPSON JAMES HUTCHISON sworn states:-

Medical Officer at the gaol Nairöbi.

I have had eight years experience of lunatic asylums

I know the accused.

I have had him under observation since June 3rd.

I have formed the opinion that accused is sane.

On June 3rd the condition of his mind was clear.

On June 19th his mind was clear.

He talked to me - slightly deaf.

For a week at a time he would not speak at all.

I think because he did not want to.

I formed no opinion as to his mind before June 3rd.

From accused's knowledge of medicine, I think he was malingering.

X END:-

I have never discussed his medical knowledge.

I inferred he was malingering from the symptoms I saw. With silence you expect other symptoms in an insane person.

I could not say that the accused had not had an attack of mania some time or at

incipient insanity or the commencement of insanity.

It may show itself in innocent forms.

An outbreak might follow a strain or headache,
Want of interest might be a symptom.

One of my first questions has there been insanity
in the family.

Accused is suffering from dyspepsia which always
accompanies insanity.

After a deed of violence a lunatic may return to
a state of calmness under certain circumstances.

I do not think in case of an impulsive act patient
would be calm and express neither regret remorse nor fear.

Read over - correct.

(Sgd.) Albert Ehrhardt

Case for the Crown.

Examination of the accused put in.

Ritch - submits - no case.

asks for an adjournment.

Young opposes.

Adjourned till 26th July 1914.

July 28th 1914.

Hearing resumed.

Application for adjournment refused.

ACCUSED asked whether he has anything to say.

ANSWER - No.

(Sgd.) Albert Ehrhardt

RITCH - Calls no evidence.

Young sums up.

Ritch for defendant.

I charge the assassin and leave questions -

Did the accused shoot at and kill Mr. Hughes?

If so was he insane at the time in the sense

Evid. pp. 16, 18. (20)

that he did not know that what he did was wrong.

MR. BAMANJI N. PATEL - A murder has been committed.
From the evidence it is not clear that accused
committed it.

MR. H. K. SETH - I find it not proved that
accused committed the murder in this case
because no one has seen it.

MR. DHUMICHAND - Evidence is contradictory
but confession in the lower Court keeps my
mind in doubt.

POINTS IN MY SUMMING UP TO ASSESSORS.

1. Mr. Hughes killed by a shot from a gun after dinner while he was reading on bed.
2. Who fired shot.
3. Man seen running from the tent.
4. Who was the man.

1. Evidence of Juma
2. Search made for accused.
3. Returned after an hour.
4. His own answer to questions.
5. Plea to magistrate when he was charged.

If satisfied deed was committed.

Was he sane at the time he did -

Insanity - owing to the diseased state of his mind he did not know that he was doing what was wrong.

Self control reduced by dyspepsia or malaria not enough

The medical evidence negatives general insanity.

Was it due to a sudden insane impulse of a homicidal nature.

Motive - absence of motive not proved.

Statement of accused to magistrate suggests a grievance.

Strange in case of a sudden insane attack

- that he should choose his victim
- that he should go deliberately and get a gun from some distance.

Did the accused shoot at and kill Mr. Hughes?

Was he insane in the sense that he did not know that what he did was wrong?

(Judgment)

Bacteriological Laboratory

Nairobi

April 2nd 1914.

Dr. Heard,

Eldoret.

Dear Sir,

The blood slides sent me yesterday from a prisoner shew no malaria nor does the blood even shew any of the subsidiary signs which would suggest that he has had malaria. I searched through the slides carefully but could find no malarial parasites.

A differential count of the leucocytes gave the following results:-

Polymorpha	72
Large mononuclears	7.5
Lymphocytes	14
Transitionals	0
Eosinophiles	0.5

per cent.

There is no marked increase in the percentage of large mononuclears; there was no pigment in any of them; and there was no polychromasia of the red cells, some or all of which subsidiary signs one expects to find in the blood of persons who have had malaria even although no actual parasites may be found.

Although it is impossible to prove an absolute negative, in my opinion it is extremely improbable that this individual has had malaria, and more particularly malaria of such severity as to cause delirium.

I have etc.,

(Sgd.) E. H. Harvey Pirie

Ag. Bacteriologist

EAST AFRICA  PROTECTORATE 410

In the TOWN MAGISTRATE'S Court

at ELDORET

THE CROWN THROUGH POLICE

Prosecutor

versus

GOBIND WASUDEO THATTE

Accused

Edmund Renalds Mac Mullen, Town Magistrate, Eldoret

I, do hereby charge you Gobind Wasudeo Thatte

that you on or about the 22nd March 1914 at Campi Baridi did kill and murder one J. O. Hughes by firing two shots out of a rifle at him.

and thereby committed the offence of Murder

The Indian Penal Code

punishable under Section 302 of Ordinance No. 1 of 1861

and within my cognizance and I hereby direct that you be tried on the said charge.

Dated 1st April 1914

(Sgd.) E. R. Mac Mullen
Town Magistrate

High Court Sittings, Nassau

Criminal Case 26/14

Crown vs G. W. Shuttle. 411

JUDGMENT:-

I cannot, I regret, conform to the opinions of the assessors. I have no doubt at all that the accused committed the crime he is accused of. I have given full consideration to the points as to the evidence so skilfully put by the counsel for the accused. But I cannot say that they have raised any doubt in my mind as to the credibility of the witnesses for the prosecution on the vital facts involved in this case and I am of course fortified in my opinion by the practical confession of the accused in the lower Court.

I find the accused guilty and sentence him to death.

(Sgd.) Albert Ehrhardt

28th July 1914.

Accused informed that he has 30 days within which to appeal.

(Sgd.) Albert Ehrhardt

28. 7. 14.

Gov. 11908/1915 EAP

82

12 March 1915

DRAFT

EAP

No. 190

Jr. Sir H. C. Belfield

MINUTE

Mr. H. J. ... 18/3/15

~~Mr. ...~~

Mr. R. ... 18/3/15

Mr. Read 18/3/15

Sir G. ... 22/3/15

Sir H. Just.

Sir J. Anderson

Lord ...

Mr. Harcourt

for ...

Miss ...

to accept the

receipt of your ...

to ...

... relating to the

trial of ...

Wanda ...

... of the

murder of ...

... and ...

2. I observe that
a period of ~~one~~ ^{five}
months elapsed between
the ~~trial and sentence~~ ^{of the High Court}
and the hearing of the
appeal, and I am of
opinion that the
hearing of an appeal in
a capital case should
not be delayed for a long
time.

3. In this country it is
provided that in the case of
a conviction involving sentence
of death or corporal punishment
the appeal must be heard and
determined with as much expedition
as practicable, and this principle

should also
observed in the ~~case~~

4. Under section 60 of
the ~~Act~~ ^{would in 1910} Public ~~Act~~ ^{Act}
the Court of Appeal holds
two ordinary sessions in
each year, beginning as
soon after the 1st of March
as the 1st of Nov. is practicable
so shall the first
commence. If criminal
appeals in capital cases
are taken first (as
should be done) ~~they should~~
not have been made more
than 3 months ~~before~~
the case of under
reference, but even this

would in my opinion
be excessive, and unless
it was impossible to
assemble a quorum
of 3 judges I am
of opinion that the
case should have been
dealt with at a special
session, and section
40(2) of the Rules of
Court which provides that
special sessions may be
held at any time when it
may be considered desirable
by the senior member of the
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