Judgment No. S.C. 129/83
Crim. Appeal No. 304/83

REPORTABLE
(58)

LUKAS ANDRES LAMPRECHT v THE STATE

SUPREME COURT OF ZIMBABWE,
GEORGES, CJ, BECK, JA & GUBBAY, JA,
HARARE, NOVEMBER 14, 1983.

A.N.B. Maeterson, for the appellant
M. Werrett, for the respondent

GEORGES CJ: The appellant was charged with malicious injury to property in that on 8 June 1983 at Wallasey Farm, Featherstone, he wrongfully and unlawfully with a wrecht clamp trapped and killed an Angus bull, the property of Nicholas Breakspear (the complainant) with intent to injure the complainant in his property. In the alternative he was charged with a contravention of s 3(1)(a) of the Prevention of Cruelty to Animals Act in wrongfully, unlawfully and cruelly killing an Angus bull by placing it in a wrecht clamp and beating it about the body.

The appellant was acquitted on the main charge, the magistrate holding correctly that from the facts proved the appellant had no intention to injure the complainant in his property. He was, however, convicted on the alternative charge and ordered to pay a fine of $75 or in default undergo 15 days' imprisonment with labour.

The appellant appealed. The State, in its heads of argument, conceded that the magistrate had misdirected himself and did not support the conviction. Since this concession appeared to be sound the appeal was allowed at the hearing and the conviction and sentence were quashed Reasons now follow.

The facts are not seriously in dispute.
The appellant testified that it was a common occurrence for the complainant's bull to

stray onto his farm and interfere with his heifers. On 7 June 1983 he saw the bull among the heifers and sent a note by an employee to the complainant asking him to try to keep the animal away and he drove the bull back,

The next day, the 8th, he saw the bull again serving one of his heifers. He took the bull to the dip kraal and closed the gate. As he was leaving he saw the bull breaking out. He put the bull in a crash pen, caught him in a neck clamp and placed three poles behind him. The appellant left for another section, passed the spot on his return about 5 pm and saw the bull standing clamped as it had been left. He then called at the complainant's house and told him that the bull had been placed in the clamp. The complainant clearly did not treat the situation as one needing urgent attention.
He said he would send someone to move it in the morning.
The men had a drink.

The next day at about 7 am the appellant passed the spot where the bull had been clamped and found it dead, lying on its stomach, legs apart and with a little blood appearing to come from its nose. He drove at once to the complainant's house to inform him,

Fanuel Urayayi, who was given the head of the beast and skinned it, noted a fracture of the right jaw which appeared fresh. Anderson Wallace who pulled the bull out saw no injuries but after skinning noticed some marks on the back which might have been caused by someone poking it with a stick. Isaac Urayayi, who led the party sent to move the carcass, saw on the back what appeared to have been clots indicating that the bull had been beaten. The complainant's evidence was that when he saw the carcass it appeared that the bull had been badly beaten on its back.

While the cause of death was not scientifically established the general view was that somehow the bull had been strangled in the clamp.

Quite properly the magistrate held that the evidence did not establish that the appellant had beaten the bull or had been responsible for the breaking of its jaw. He then held that by clamping the bull and by placing three poles at its back the appellant had cruelly ill-treated the animal for the hour before he informed the complainant.

The State did not allege that merely placing the bull in the clamp was cruelty. What was alleged as cruelty was placing the animal in a clamp and beating it about the body. Indeed the appellant's evidence which was not controverted was that the animal was standing when he passed it at 5 pm. It is significance that the complainant did not seem perturbed when told that the bull had been placed in a clamp.
He was prepared to wait until the following day to deal with the matter. This attitude is explicable only on the basis that he did not think that the animal was suffering or likely to be injured.

The word “cruelly” in s 3(1)(a) of the prevention of Cruelty to Animals Act clearly imports the element of mens rea into the offence. In R v Sibeko 1951 (2) SA 41 (EDLD) REYNOLDS J stated at 43:-

> "When, however, a person without any compulsion thereto, of his own free will elects to do something, which he knows must in the ordinary way produce pain and he does that act not accidentally or under circumstances negativing intention to perform that act, then he does that act intentionally and wilfully."

In that case the defendant had ridden a horse for forty miles. When the saddle was removed there were two large open raw sores beneath. An inflamed growth about the thickness of a pencil was sticking out of the sore on the center of the spine. Both sores were inflamed and suppurating, indicating that they had not been recent.
On those facts it was held that mens rea had been established.

No such necessary inference can be drawn In this case since, as I have indicated, the complainant himself seemed unperturbed at the report that the

bull had been placed in a clamp. There was no realisation that the act would, in the ordinary way, produce pain. Had there been evidence that the appellant had beaten the animal while it was clamped the situation would have been otherwise.

The magistrate did not direct himself properly on the issue of mens rea.

Accordingly the appeal was allowed.

BECK JA: i agree.

GUBBAY JA: I agree.

Coghlan, Welsh & Guest, appellant's legal representatives.