

R. v. ANDREYI CHONGO AND OTHERS.

CRIMINAL REVIEW CASE No. 142 OF 1940.

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*Corporal punishment—should only be awarded to adults in special circumstances.*

Adults should only receive corporal punishment if there are special circumstances (which should be recorded by the Magistrate) which warrant it.

As to the present power of a Court to order corporal punishment see section 27 of the Penal Code.

Law, C.J.: The Magistrate appears to have overlooked paragraph 55 of *Instructions to Magistrates* on the subject of whipping and caning.

2. All three accused are adults, aged 26, 25 and 22 respectively. No special circumstances were explained by the Magistrate to warrant the punishment of caning . . .

3. In connection with the subject of corporal punishment, the following paragraph is quoted from the Commission of Inquiry into the Administration of Justice in Kenya, Uganda and the Tanganyika Territory in Criminal Matters (May, 1933):

“ 178. We are unable to subscribe to the view that caning and flogging should be made legal as a punishment for adults, whether generally or for natives only, for any but the most serious crimes. Such a form of punishment must be damaging to self respect, particularly to those Africans who have advanced to a certain stage of civilisation, and may even tend to brutalise its victims. Any extension of the use of corporal punishment we consider a retrograde step which we must oppose.”