

R. v. MUNUNGA AND OTHERS.

CRIMINAL REVIEW CASES NOS. 220-225 OF 1941.

Rogue and vagabond—section 158 (4) of the Penal Code.

The object of this section is to deal with suspicious characters acting in a suspicious manner and the facts of the case must show that both these elements are present otherwise a conviction should not be recorded.

Robinson, A.C.J.: In these six cases the facts are all the same. On the night of 3rd/4th August the six women charged were found in bed with male hospital patients in the venereal disease section of the Mongu Native Hospital. They were none of them registered patients and they had no right to be in the hospital precincts at the time.

They were charged *contra* section 158 (4) Penal Code with being rogues and vagabonds in that they were found upon premises, to wit, the Native Hospital, in circumstances as to lead to the conclusion that they were there for a disorderly purpose. Unfortunately the rest of the subsection does not at all fit the facts of the case. It says "every person found wandering in or upon or near any premises or in any road or highway, etc., at such time and under such circumstances as to lead to the conclusion that such person is there for an illegal or disorderly purpose". The whole essence of the section is to deal with suspicious characters acting in a suspicious manner. A charge under that section does not cover the facts in the cases and it is with regret that I quash the convictions and order the fines to be refunded.

Speaking generally I appreciate the Magistrate's desire that sentences of imprisonment should be served in order to see if any of the women had been infected by venereal disease. If that was so, there was no necessity at all to give the option of a fine.