

DISTRIBUTABLE (27)  
Judgment No SC 33/05  
Crim. Appeal No 273/02

**WISDOM GOCHERA v THE STATE**

SUPREME COURT OF ZIMBABWE  
CHIDYAUSIKU CJ, MALABA JA & GWAUNZA JA  
HARARE JUNE 27 & SEPTEMBER 6, 2005

*A. Nyikadzino*, for the appellant

*R.K. Tokwe*, for the respondent

CHIDYAUSIKU CJ: The appellant in this case was charged with murder. He pleaded not guilty but was found guilty of murder with actual intent. He was found guilty of murdering Karen Da Nobrega Guilherme, a co-worker.

It is common cause in this case that the deceased died as a result of the assault upon her by the appellant. What was at issue in the court *a quo* were the precise circumstances of the killing of the deceased. The appellant admitted assaulting the deceased at the back of her head with a dust bin and that she died as a result of this assault. He raised two defences to the charge of murder, namely, self-defence and provocation. The court *a quo* rejected both defences. The court concluded that the appellant had deliberately killed the deceased in order to steal the money that the deceased was counting.

The trial court found the following facts as proved.

The appellant and the deceased were both employed by Spoornet International Railways, the former as a messenger and the latter as executive

secretary to the business manager. Spoornet International Railways is situated on the 9<sup>th</sup> Floor, Century Towers, Samora Machel Avenue in Harare and that is where both the deceased and the appellant worked.

On 18 September 2001 the deceased reported for work at about 6.30 hours. She went into her office and commenced her duties. The appellant followed her to her office a couple of minutes later. When the appellant got into the deceased's office she was counting some money. The appellant took a wooden dust bin and struck the deceased upon the head causing a fracture to the skull. The deceased died almost instantly.

As the deceased lay dead the appellant stole from her US\$4 325, Z\$525, a cell phone and a blank cheque. Part of the property was recovered at the instance of the appellant upon his arrest.

The deceased was the first person to report for duty at around about 6.30 hours in the morning. The appellant was the second person to report for duty after the deceased. He proceeded to the 9<sup>th</sup> Floor and after spending a few minutes there, he came down and enquired from the security guard to the building, if he had seen the deceased.

The body of the deceased was discovered by her immediate boss, Mr Matthew Senga, after he entered into her office some time around about 8.10 hours. It was observed that the company's petty cash box and a cheque book were on the floor beside the chair on which the deceased was seated. The deceased's co-workers, including the appellant, gathered around the deceased's office. The appellant never volunteered any information concerning what had transpired

between him and the deceased. He, in fact, pretended to be taken aback by the discovery of the deceased. The appellant's co-workers detected nothing amiss about the appellant's demeanour until he was approached by the police officer, Tawanda Munongi, who then noticed that the appellant was nervous and shivering.

The appellant was taken by the police for questioning since he had been the next person to enter the office after the deceased. He was searched and found in possession of US\$4 325 which was hidden in his underwear. The money was stolen from the deceased. Following this discovery and upon being questioned to account for his movements on that morning the appellant confessed that he had fatally assaulted the deceased. He subsequently elected to make indications which resulted in items originating from the deceased's office being recovered from the appellant's person and different places where he had dropped them soon after committing the offence.

The post mortem report indicates that the deceased died as a result of a fractured skull and haemorrhage caused by a blunt instrument and that the deceased's death was a direct result of the severe attack perpetrated on her by the appellant.

The appellant, as I have said, did not deny causing the death of the deceased. He raised two defences to the charge of murder, namely, self defence and provocation. The record reveals that the appellant gave, on several occasions, conflicting versions of how and why he assaulted the deceased. This led the court *a quo* to reject the appellant's evidence and both defences raised. Indeed the court *a quo* concluded that the appellant was a liar who could not be believed. The learned

trial judge, after a very careful analysis of the appellant's evidence, made the following assessment of the appellant as a witness and the defences he raised: -

"... the picture painted here undoubtedly leads us to conclude that accused lied in his evidence. What emerges from all this, is clear that accused killed the deceased so that he could have the money he found her counting on top of her desk. He wanted to rob her of this money by use of force. Having done that, accused tried to cover up for his crime. He tried to make it appear that there had been no scuffle whatsoever. He locked all doors and closed all the blinds. He wanted things to appear as if all was well when Babra Mukoko arrived. He sat by the reception reading the paper as if nothing had happened.

The closing of the blinds was obviously meant to conceal what was inside. He decided to take the bunch of keys Karen used and throw it down the air pipe, so that no suspicion would fall upon him as the person who had locked up all those doors. He stole Karen's cell phone and took it away and up to to-day that cell phone has not been found. Instead, in an effort to cover up for that cell phone, he took the cell phone pouch and threw it into a dust bin which was what the police recovered to make it appear as if the cell phone was also thrown into that dust bin. He attempted to hide the money which he had stolen from Karen. If the police had not searched him, that money would not be here to-day.

Accused demonstrated a clear intention to kill somebody in cold blood. He struck Karen when she was not suspecting anything the back. The post mortem report and the evidence of the doctor cannot be faulted ...

The accused deliberately and intentionally struck Karen on the part of the head which he knew was very delicate."

The learned judge's approach and analysis of the evidence cannot be faulted.

Indeed Mr *Nyikadzino*, who appeared for the appellant, conceded that he was unable to make any meaningful submissions in respect of conviction. He abandoned his written heads of argument. The concession was properly made, in my view, having regard to the overwhelming evidence against the appellant. His poor showing as a witness led to the collapse of the two defences he sought to raise.

There is no possible basis for interfering with the verdict in this case and, accordingly, the appeal against conviction fails.

The trial court found that there were no extenuating circumstances and sentenced the appellant to death. In his ruling on extenuation the learned judge had this to say: -

“There is no element of extenuation whatsoever in this matter and under those circumstances we can proceed to mitigation.”

The trial court, having found that the appellant killed the deceased with actual intent in order to steal the money she was counting, it is difficult to see how it could have found extenuating circumstances. There is nothing really that can be said for the appellant. He killed the deceased in order to effect the theft. I agree with the learned trial judge that there are no extenuating circumstances in this case.

In the result the appeal against both conviction and sentence is dismissed.

MALABA JA: I agree.

GWAUNZA JA: I agree.

*Pro Deo*