DASHONI v THE PEOPLE (1966) ZR 58 (CA)

COURT OF APPEAL

BLAGDEN CJ, DOYLE JA, RAMSAY J

21st JUNE 1966

Flynote and Headnote

[1] Criminal procedure - Judgment - Irregularity - Failure to sign judgment - Curable.

The trial court's failure to sign the original judgment at the time he delivered it is an irregularity (Criminal Procedure Code, s.158 (1)), but it is curable pursuant to s.14 (1) of the Court of Appeal Ordinance.

Cases cited:

(1) *John v R* (1956) 23 EACA. 509.

(2) *Samwiri Senyange v R* (1953) 20 EACA. 277.

Statutes referred to:

Criminal Procedure Code (1965, Cap.7), S. 158 (1).

Court of Appeal Ordinance (Cap.12, No.52 of 1964), S.14 (1).

Jones, for the appellant

Shoniwa, State Advocate for the respondent

Judgment

By the court: In this case the appellant, Eston Dashoni, was convicted of murder by the High Court in Ndola and sentenced to death. He now appeals against that conviction. The particulars alleged against him were that on the 27th November of last year at Ndola he murdered his wife, Milika Kasempa.

The facts were that on the evening of that day the appellant, accompanied by his wife and others, visited the house of one Doubt Kasempa. Whilst he was there he criticised his wife's behaviour and said he would beat her. He then struck at her with a small table but missed her and struck instead the witness, Kasempa, who evicted him from the house.

What happened after that was related to the trial court by Kasaka Mbunda, who was the deceased's brother. He and the deceased and another witness called Frank Tito left the house to go home. They were walking along in file, when, as described by the witness Kasaka Mbunda, he heard a voice like that of his brother - in - law - that is the appellant - saying 'Milika, my shirt'. He turned round to find that the appellant was on the spot. Then he heard a sound, which he described as the sound of a stab, and saw the appellant running away. He gave chase and caught him in a ditch, but in the confusion the appellant got away again. The witness then returned to

where he had left Milika and found her still alive but bleeding freely from a wound in the neck. This account of what happened was substantially corroborated by the witness Tito. The body of Milika lay for some time where it had fallen in the road and there was

evidence that it was run over or run into by a motor car, causing further injuries to it. The evidence of Doctor Kanweka, however, who performed the post - mortem on the body and whose evidence was admitted in the form of the deposition which he made before the magistrate, made it clear that the cause of death was bleeding from the severing of the carotid artery or jugular vein in the neck.

In his defence the appellant made an unsworn statement denying that he had had anything to do with the deceased's death, and that was his attitude throughout. Mr Jones, on behalf of the appellant advanced additional grounds which were in substance a criticism of of the evidence of the witnesses Kasaka Mbunda and Frank Tito, pointing to certain discrepancies in their evidence and criticising in particular their demonstration of how the stab wound was inflicted.

He also urged that as these two witnesses had been walking in the dark for some time that did not give them any greater vision than they would have had normally and that the learned trial judge had misdirected himself in supposing that their vision was improved by that circumstance. In our view, however, the appellant here was convicted in very clear evidence and we can see no substance in these grounds of appeal.

There are two further matters to mention in this case, one of which led to our adjourning the matter for further investigation. There was some confusion in the preparation of the record as to whether the learned trial judge had dealt with the question of drunkenness in this case. That matter has now been resolved by reference to the belt recording of what was said, from which it is clear that the judge did take this matter into account.

The other matter which I would mention is that the learned trial judge evidently forgot to sign the original judgment as he should have done in accordance with s. 158 (1) of the Criminal Procedure Code at the time at which he delivered it. That is an irregularity, but it is curable In the circumstances under the provisions of the *proviso* to s. 14 (1) of the Court of Appeal Ordinance. In support of this I would cite the cases of *John v R* [1] and *Samwiri Senyange v R* [2].

Appeal dismissed