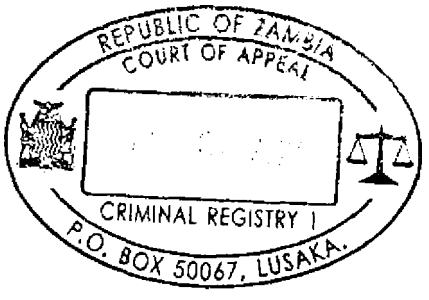
IN THE COURT OF APPEAL OF ZAMBIA **Appeal No 117/2020**
HOLDEN AT LUSAKA AND NDOLA
(Criminal Jurisdiction)

BETWEEN:



PATRICK SAKALA **APPELLANT**

AND

THE PEOPLE **RESPONDENT**

CORAM: Mchenga DJP, Chishimba and Sichinga JJA

On 24th March 2021 and 18th November 2021

For the Appellant: M. Makinka, Senior Legal Aid Counsel, Legal Aid Board

For the Respondent: M. Chipanta-Mwansa, Deputy Chief State Advocate, National Prosecution Authority

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JUDGMENT

Mchenga DJP, delivered the judgment of the court.

CASES REFERRED TO:

1. Kelvin Kabwe v The People SCZ Appeal 123 of 2017
2. Francis Kamfwa v The People SCZ Appeal 125 of 2017
3. Stephen Mwaba v The People SCZ Appeal 184 of 2020
4. Alubisho v The People [1976] Z.R. 11
5. Regina v Evans [1958] R&N 432.
6. Jutronich, Schutte and Lukin v The People [1965] Z.R.9

LEGISLATION REFERRED TO:

1. The Penal Code, Chapter 87 of the Laws of Zambia

1. INTRODUCTION

1.1. The appellant, initially appeared before the High Court (Chitabo, J.), on the information containing a charge of Murder contrary to **section 200 of The Penal Code.**

1.2. He denied the charge.

1.3. The charge was then substituted with the lesser offence of Manslaughter contrary to **section 199 of The Penal Code.** The allegation was that between 29th and 31st of March 2019, at Chipata, he unlawfully caused the death of Yvonne Mwanza.

1.4. He admitted the charge, and following his conviction, was sentenced to 65 years imprisonment with hard labour.

1.5. The appellant has appealed against the sentence only.

2. CASE BEFORE THE TRIAL COURT

2.1. The evidence, as was set out in the admitted facts, was that the appellant and his wife, Yvonne Mwanza, went on separation following matrimonial problems.

2.2. On the 27th of March 2019, in the morning, the appellant met his wife, who had just bought chickens for resale at Magazine Market in Chipata. He followed her to the market, where he assaulted her.

2.3. The appellant's wife reported the incident to the police and was issued with a medical report.

2.4. Later that day, the appellant persuaded and lured his wife, to meet him, after indicating that it was his intention that they resolve their differences amicably.

2.5. She went to meet him, and he strangled her.

2.6. He left her body inside the Alfa and Omega Church. It was discovered on 31st March 2019.

2.7. Next to the body, the police found the torn medical report that they had issued to the appellant's wife following her assault.

2.8. They also found a small plastic container with an insecticide.

2.9. A post-mortem examination, on the 3rd April 2019, by Dr. John Phiri, of Chipata Central Hospital, confirmed that the appellant's wife died from strangulation.

2.10. The appellant was apprehended trying to flee Chipata.

2.11. In mitigation, the appellant told the trial judge that he was a first offender and that they had a one year old child. He also said he was 25 years old at the time the case was being heard.

2.12. The trial judge took the view that the appellant's age was not mitigatory, neither was the fact that they had a one-year old child.

2.13. He found that the brutal way the appellant murdered his wife, and the dumping of her body in a church, where aggravating factors.

2.14. The trial judge also pointed out that in order to deter others, he was going to impose a harsh sentence.

3. GROUND OF APPEAL AND ARGUMENTS IN SUPPORT

3.1. The sole ground of appeal is that the sentence imposed on the appellant was harsh.

3.2. Mr. Makinka referred to the cases **Kelvin Kabwe v The People**[1], **Francis Kamfwa v The People**[2], **Stephen Mwaba v The People**[3] and pointed out that in those cases, sentences of between 5 to 6 years, were imposed on persons who were convicted of the offence of manslaughter.

3.3. He also argued, that in the case of **Stephen Mwaba v The People**[3], the Supreme Court guided that sentences of above 20 years, in homicides, should be reserved for murder cases where there are extenuating circumstances. This being the case, he submitted that the sentence of 65 years was manifestly excessive.

4. STATE'S RESPONSE

4.1. Mrs. Chipanta-Mwansa indicated that although there were aggravating factors in this case, in that this was a case of spousal abuse and the appellant was the aggressor, having pleaded guilty to the charge of manslaughter, the appellant should have received a more favourable sentence than the 65 years imprisonment, with hard labour, imposed on him.

5. CONSIDERATION OF APPEAL AND COURT'S DECISION

5.1. In the case of **Alubisho v The People**[4], the Supreme Court pointed out that with the exception of where the law imposes mandatory or minimum sentences, the trial court has a discretion on which sentence to impose. It was also pointed out that in arriving at

the appropriate sentence, the court should have regard to the particular circumstances of a case.

5.2. This position mirrors the position taken by the Federal Court of Appeal, in the case of **Regina v Evans**[5].

5.3. In that case, the court held that the general description of an offence, is not sufficient for deciding the sentence. One must look at the individual circumstances of each case and they should be predominant in determining the sentence.

5.4. In support of the proposition that the sentence in this case, must be reduced, Mr. Makinka referred to the cases of **Kelvin Kabwe v The People**[1], **Francis Kamfwa v The People**[2], **Stephen Mwaba v The People**[3].

5.5. In our assessment, the only similarity between those three cases and this case, is that the appellants all pleaded guilty to reduced charges of manslaughter.

5.6. As regards the circumstances in which the offences where committed, the deceased persons in **Kelvin Kabwe v The People**[1] and **Francis Kamfwa v The People**[2], were

the aggressors or provocateurs, and the killings took place in response to their conduct.

5.7. It was not the case in this matter. The appellant was the aggressor.

5.8. In the case of **Jutronich, Schutte and Lukin v The People**[6], the Court of Appeal, the forerunner to the current Supreme Court, set out the principles that should guide an appellate court when dealing with appeals against sentence. The guide was that the appellate court should consider three issues:

(1) Is the sentence wrong in principle;

(2) Is the sentence so manifestly excessive as to induce state of shock; and

(3) Are there exceptional circumstances which would render it an injustice if the sentence was not reduced?

5.9. The first issue we will consider is whether the sentence was wrong in principle.

5.10. In this case, the sentence was mainly informed by the trial judge's view of the brutal manner in which the appellant murdered his wife and dumped her body in a church. He found that these where aggravating factors.

5.11. He also found it necessary to deter others from killing their spouses by imposing a deterrent sentence.

5.12. It is our view that the trial judge cannot be faulted for coming to the conclusion that the 'brutal' circumstances of the killing were an aggravating circumstance.

5.13. First of all, the appellant earlier assaulted his wife for no apparent reason. When she reported him to the police, he misled her into believing that he wanted to make up with her, when it was not the case.

5.14. He lured her to a place where he strangled her. He also tore the medical report, which was evidence for the assault he had earlier inflicted on her. Finally, he placed a bottle of insecticide next to her body, most probably, to make it appear like she had committed suicide.

5.15. In the circumstances, we do not find that the sentence was wrong in principle. It is not difficult to see that the killing in this case took place in an environment in which the appellant was trying to

stop his wife from possibly having him prosecuted for the assault.

5.16. The question that remains is would it be unjust if the sentence was not reduced?

5.17. Mr. Makinka referred us to the guidance by the Supreme Court in case of **Stephen Mwaba v The People**[3], that sentences of above 20 years should be reserved for murder cases with extenuating circumstances. Our understanding of that case is that the view was expressed in relation to an 'ordinary' case of manslaughter.

5.18. We have not understood the decision of the Supreme Court in that case, to be that under no circumstances, can a sentence of over 20 years, be imposed on a person who is convicted of the offence of manslaughter.

5.19. In our view, this is not an 'ordinary' manslaughter case. The appellant displayed the most extreme level of impunity and disregard for like towards his wife. After assaulting her, he made sure that the complaint against him was not fully investigated, by taking the extreme measure of ending her life by strangulation.

5.20. In the circumstances, the sentence of 65 years, does not, come to us with a sense of shock as being excessive. If anything, it is our view that on the facts of this case, he was treated with leniency.

6. VERDICT

6.1. We find no merit in the sole ground of appeal and we dismiss it. The 65 years sentence is upheld and it shall run from the 10th of April 2019.

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C.F.R. Mchenga
DEPUTY JUDGE PRESIDENT

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F.M. Chishimba
COURT OF APPEAL JUDGE

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D.L.Y. Sichinga
COURT OF APPEAL JUDGE