CAPSON NYIRENDA v THE PEOPLE (1980) Z.R. 194 (S.C.)

SUPREME COURT
GARDNER, AG.D.C.J., BRUCE-LYLE, J.S. AND MUWO AG.J.S.
8TH APRIL, 1980
S.C.Z. JUDGMENT NO. 10 OF 1980

Flynote
Criminal law and procedure - Plea - Lesser offence - Plea to lesser offence when facts disclose major offence - Impropriety of.
Sentence - Manslaughter - Mitigation - Factor of hardship

Headnote
The appellant was charged with murder but at the trial the State and the learned trial commissioner accepted a plea of guilty to manslaughter. The appellate court found that in the circumstances the State should not have reduced the charge to one of manslaughter.

Counsel for the appellant urged the court to reduce the five-year jail term imposed on the ground of hardship to the appellant.

Held:

(i) Where the facts disclose a major offence it is improper for a court to accept a plea to a lesser offence.

(ii) There was no question of there being no time for passion to cool, and it cannot be said under any circumstances that the premeditated blowing-up of a house in which people are living is reasonable retaliation for the provocation arising in this case. In the circumstances the State Advocate should not have reduced the charge to one of manslaughter in this case, and, had the learned trial commissioner been aware of the facts, it would not have been proper for him to accept a plea to such a charge.

(iii) Despite the hardship that may be caused, a severe sentence must be applied in this case in order to deter others from be having in such a manner.

For the appellant: G. T. Moruthane (Miss), Assistant Senior Legal Aid Counsel.

For the respondent: K. C. V. Kamalanathan, Senior State Advocate.

Judgment
GARDNER, AG.D.C.J.: delivered the judgment of the court.

The appellant was charged with murder, the particulars of the offence being that on the 22nd June, 1978, at Mufulira he unlawfully murdered Olipa Daka. At his trial the State and the learned trial commissioner accepted a plea of guilty to manslaughter, and the statements of facts in respect of that charge indicated that the appellant having been estranged from his wife decided to send his wife home. She did not go home and the appellant a short while after sending her away found that she was still in the vicinity where he was living, but she was living with another man. Having discovered this, the appellant, who was employed by the mines, stole explosives and detonators at different times during a period of eight days. He used these materials to place a charge against the house in which he knew that his wife and her lover were living. He then detonated the charge on the eighth day after discovering where they were living, and killed his wife in the resultant explosion. He was sentenced to five years' imprisonment with hard labour.

This court has said on occasions before that where the facts disclose major offence it is improper for a court to accept a plea to a lesser offence. In murder cases material is available in the form of preliminary inquiry records or statements of witnesses in summary committal cases to enable the trial judge to assess whether a plea to a lesser offence is acceptable. Furthermore, whoever is prosecuting for the State is in a position to know whether it is proper to accept a plea to a lesser offence. There are many cases where it would be unfair to put an accused on trial for murder where the State is prepared to accept certain arguments on behalf of the defence that it is proper to reduce the charge to one of manslaughter. This case is not one of such cases. The defence was one of provocation arising from jealousy because the appellant saw his wife, whom he had sent away, cohabiting with another man. There was no question of there being no time for passion to cool, and it cannot be said under any circumstances that the premeditated blowing-up of house in which people are living is reasonable retaliation for the provocation arising in this case. In the circumstances the State Advocate should not have reduced the charge to one of manslaughter in this case, and, had the learned trial commissioner been aware of the facts, it would not have been proper for him to accept a plea to such a charge.

However, the appellant has been convicted of manslaughter and we will deal with the question of sentence on that basis and in the light of the able argument put forward on his behalf in mitigation by Miss Moruthane. The appellant is forty-four years old and has eleven children with no one to support them. This situation occurs to many people who find themselves in court facing prison sentences. However despite the hardship that may be caused, a severe sentence must be applied in this case in order to deter others from behaving in such a manner. We have also heard that the appellant is a sick man; but it appears that while in prison he is receiving proper treatment in accordance with the medical records which have been produced to us by his counsel. There is no basis for us to reduce the sentence on the grounds of the appellant's ill health.

The sentence on an accepted plea of manslaughter does not come to us with any sense of shock, nor did the learned trial commissioner misdirect himself when he imposed such sentence.

The appeal against sentence is dismissed.
Appeal against sentence dismissed

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