KASHENDA NJUNGA, FRANCIS KANDONGA KANGEYA, GEORGE MUSENGA CHIKATU, CHIMUNGA KANGOL SHAMUZALA AND OSCAR MASEKE MAKUWA v THE PEOPLE
(1988 - 1989) Z.R. 1 (S.C.)

SUPREME COURT
GARDNER, J.S., BWEUPE AND CHAILA, AG. JJ.S.
23RD FEBRUARY, 1988
(S.C.Z. JUDGMENT NO. 20 OF 1988)

Flynote

Criminal law and procedure - Manslaughter - Cause of death - Deceased assaulted with sticks - Medical evidence cause of death unknown - Right of court to find death due to assault.
Evidence - Cause of death - Assault - Lay evidence - Inference to be drawn.

Headnote

The accused were charged with manslaughter. At their trial the evidence was that the accused were investigating an allegation of witchcraft against the deceased and others. There was evidence that the deceased and the others were taken into the bush and beaten by the accused. There was also evidence that the deceased led the appellants to a village and on her return was being carried and when placed on the ground she was unable to sit upright. Further evidence was adduced that one of the appellants assualted the deceased on her chest. The doctor who carried out the post-mortem examination gave evidence that there were blisters on several parts of the body and a small wound on the left eye and that the injuries could not have caused the death; and the blisters could be caused by fire or a blunt instrument. The doctor said the cause of death was stated as being probably shock. The accused were convicted and appealed.

On appeal, the appellants argued that there was insufficient evidence to show that the appellants caused the death; that if shock was the cause of death such evidence should have been given by the doctor in court and not only in the report. There was no evidence that the death was caused by assault with sticks as found by the judge.

Held:
It is not necessary in all cases for medical evidence to be called to support a conviction for causing death. Except in borderline cases, laymen are quite capable of giving evidence that a person has died. Where there is evidence of assualt followed by a death without the opportunity for a *novus actus interveniens*, a court is entitled to accept such evidence as an indication that the assault caused the death.

For the appellants: B. Ngenda, Messrs Ngenda and Company.
For the respondent: F. Mwiinga, Director of Public Prosecutions.

Judgment

GARDNER, J.S.:

The appellants were convicted of manslaughter; the particulars of the charge being that they on 10

April 1984 at Lyebela village in the Kalabo district, jointly and whilst acting together, unlawfully caused the death of

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Bukolo Nyafulai. They were each sentenced to ten year's imprisonment with hard labour.

The prosecution evidence was to the effect that three women at Lyebela village were suspected of being witches. In particular they were suspected of having charms and human flesh. The appellants, who were special constables, were called in to investigate the allegations against the women. There was evidence that on 9 April 1984 the women were taken into the bush and there they were beaten with sticks by the five appellants. There was evidence that the following day the deceased woman said that she could lead the appellants to another village where they could find another witch. On their return in the afternoon, it was seen that the deceased woman was being carried, and when she was put on the ground she was unable to sit up so that she lay on her side. The same witness said he saw the first appellant assaulting the deceased on her chest saying that she was cheating. The medical evidence produced by the prosecution was that of Dr Anne Jonkman, a government medical officer, who said that she examined the body of the deceased two or three days after her death and found blisters on the right breast, on the right leg, one big blister on the back and a small wound on the left eye. This witness in her evidence said that in her opinion the cause of death was unknown, that the injuries could not have caused the death and that the blisters could have been caused by fire or a blunt instrument. The witness completed her evidence by repeating that she could not say what caused the death and putting in evidence her post-mortem report.

The post-mortem report contained a record of injuries previously described by the witness and contained the statement that the cause of death was probably shock. There was evidence from the police officer who attended the post-mortem examination that he had been told at first by the doctor that she thought the cause of death was shock and that the witness had reminded the doctor to make a note of this finding in the post-mortem report.

In his judgment the learned trial judge recited the evidence that the deceased had been assaulted all over her body with sticks. He also recited the doctor's opinion that the blisters could have been caused by fire or a blunt instrument. After these recitals, the learned trial judge said that he was therefore satisfied that the blisters found on the deceased's body were consistent with being assaulted with sticks, and that, despite the inability of the doctor to establish the cause of death, he was satisfied that the deceased died as a result of being assaulted with sticks by the appellants.

Mr Ngenda on behalf of the appellants has argued that there was insufficient evidence to show that anything done by the appellants had caused the death of the deceased. He argued that the finding by the learned trial judge that the cause of death was as a result of assault with sticks could not be supported by the evidence of the medical witness who said that the injuries could not have caused the death. As to the mention of probable shock in the written post-mortem report, *Mr Ngenda* argued that this evidence should have been contained in the verbal evidence of the witness and that at least questions should have been asked by the prosecution counsel to establish that shock was the cause of death if that were to be used to support the conviction. *Mr Ngenda* further argued that

there was insufficient evidence as to the age of the deceased and as to the journey made on the day of her death, which would have enabled the court to ascertain what was the possible cause of death. He further maintained that there was no evidence as to how long after the deceased's return from taking the appellants to another village she died. It was argued that without this evidence the trial court could not come to any conclusion as to the cause of death.

The learned Director of Public Prosecutions in reply argued that there had been no misdirection on the part of the learned trial judge and there was sufficient evidence for the learned trial judge to arrive at the conclusion to which he did, and to support the conviction.

We have considered the arguments put forward by both the learned counsel and we agree with *Mr Ngenda* that it was for the prosecution to prove the case against the appellants beyond all reasonable doubt. For this reason the onus was on the prosecution to prove that the actions of the appellants caused the death of the deceased. We share *Mr Ngenda's* dissatisfaction with the evidence of the doctor and agree that it would have been better had the doctor referred to probable shock as the cause of death when giving her evidence in court. However, the written post-mortem report, having been tendered in evidence by the doctor, was as much part of the evidence as her verbal evidence. We understand the effect of this witness's evidence to be that the blisters found on the body of the deceased could not in themselves have caused the death of the deceased; but that does not mean that they could have caused shock. We take judicial notice that shock can be a cause of death, and that persons who are beaten, as was the deceased, can suffer from shock. We do not accept that there could be any suggestion that the doctor was prompted by the police officer who attended the post-mortem examination to diagnose the cause of death as probable shock. The witness did no more than remind the doctor to insert in the post-mortem report an opinion which she had already expressed to him.

This court has on a number of occasions indicated that it is not necessary in all cases for medical evidence to be called to support a conviction for causing death. Except in borderline cases, laymen are quite capable of giving evidence that a person has died. Where there is evidence of assault followed by a death without the opportunity for a *novus actus interveniens*, a court is entitled to accept such evidence as an indication that the assault caused the death.

We do not consider that the general evidence was insufficient as to the deceased's age or that the possibility that a long journey, or indeed any other cause, might have contributed to her death. There was ample evidence before the learned trial judge to justify his finding that the deceased met her death as a result of being beaten by the five appellants.

There is no other reason why we should interfere with the learned trial judge's finding and the appeals against conviction cannot succeed. The appeals against conviction are dismissed.

As to sentence, *Mr Ngenda* has argued that the investigation of cases of witchcraft in the area concerned in this case was a serious matter and that the appellants, having been called in by the headman of the village, were doing their duty by interrogating the deceased and others. He argued that

they should not be unduly punished for their excessive zeal. In imposing the sentence, the learned trial judge took into account these matters and he also took into account the necessity for old persons to be protected from the type of interrogations carried out by the appellants which led to death. We agree with the opinion of the learned trial judge. We cannot say that the sentence comes to us with a sense of shock nor was it wrong in principle. The appeals against sentence are dismissed.

Appeal dismissed.
