

IN THE SUPREME COURT OF ZAMBIA

APPEAL NO. 112 OF 1993

HOLDEN AT NDOLA

(Criminal Jurisdiction)

B E T W E E N:

TIMOTHY MWILA

Appellant

v

THE PEOPLE

Respondent

Coram: Sakala, Chaïla and Chirwa JJJ.S.

at Ndola on 7th September, 1993

For the Appellant : In Person

For the Respondent: Mr. R.O. Okafor, Asst. Principal State Advocate

J U D G M E N T

Chirwa, J.S. delivered the judgment of the court.

The appellant was convicted on one count of murder contrary to Section 200 of the Penal Code Cap. 146. The particulars of the offence were that, he, on 11th September, 1989 murdered one Veronica Mutale. Upon his conviction he was sentenced to the mandatory sentence of death.

The prosecution evidence is mainly from the eye witness who was PW3, Christine Mutale, who testified that she was the elder sister of the deceased and that the appellant was married to the deceased. She further told the court below that sometime in September, 1989 her deceased sister came to their home and the following day the appellant followed the deceased. On being asked what he wanted, the appellant is said to have said that he wanted to pick up a small pot but this was not given to him. As the deceased and PW3 were about to leave the house it is said that the appellant shot the deceased with a gun which he had brought and in the process of shooting the deceased the child that was being carried by the deceased belonging to PW3 was also injured.

2...The matter was

The matter was reported to the Police and the appellant was arrested and charged with the offence. The postmortem examination revealed that the deceased died of internal injuries caused by gunshots.

The appellant's defence was that the deceased left her home carrying with her some property including the gun and that when he came to collect her he went into the house of his parents-in-laws collected the gun and as he was going away, having earlier on exchanged a few words with his deceased wife a struggle ensued and in the process of this struggle the gun went off and he left the scene, only to be told the following day that his wife had died.

We have considered his written grounds of appeal and also the argument of the learned Principal State Advocate and the evidence on record. We are satisfied that the learned trial Judge had carefully considered the evidence of PW3 and that of the appellant and his conclusions cannot be faulted. The defence of accidental firing cannot be supported by the medical evidence as the medical evidence shows that the injuries were received from the back and these injuries at the back are also confirmed by PW2. It is not possible that one can struggle with someone from the back so as to injure the person from the back and it is also clear that if the injured child was carried by the deceased, it is not possible that she could have engaged herself in a struggle with the appellant.

On the evidence on record we see no merit in the appeal against conviction and it is therefore accordingly dismissed and there is no appeal against the mandatory sentence.

E.L. Sakaia.....
SUPREME COURT JUDGE

.....
M.S. Chaila
SUPREME COURT JUDGE

.....
D.K. Chirwa
SUPREME COURT JUDGE