

**IN THE SUPREME COURT OF ZAMBIA SCZ APPEAL No.38 OF 2000
HOLDEN AT LUSAKA AND KABWE
(CRIMINAL JURISDICTION)**

B E T W E E N:

MISHECK KAMWENGO

APPELLANT

AND

THE PEOPLE

RESPONDENT

Coram: Chirwa, Muzyamba and Chibesakunda, JJS

3RD October and 7th November 2000

For the Appellant: In person

For the Respondent: F.L. Shawa Siyunyi, State Advocate

J U D G M E N T

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

The appellant was convicted of murder contrary to Section 200 of the Penal Code, Cap 87 of the laws of Zambia and due to extenuating circumstances he was sentenced to 15 years imprisonment with hard labour. He originally appealed against both conviction and sentence but at the hearing of the appeal he abandoned his appeal against conviction.

The particulars of the offence were that on 12th November 1995 at Livingstone in the Livingstone District of the Southern Province of the Republic of Zambia, the appellant did murder LILLIAN SIAMPAKANI.

The prosecution case was that on the fateful night at about 21 hours the appellant came home in a taxi. He had been drinking beer. He had no money on him to pay the taxi driver. He asked his wife, the deceased to pay but she had no money. The appellant then asked for a brief case to be brought

to him from the house. This was done and he got money from the brief case and paid the taxi driver. When he got into the house he had an unprovoked fight with the deceased which ended in her death. In his defence on oath the appellant said that in the struggle that ensued between him and the deceased they both fell to the ground and in the process the deceased got injured by the edge of the bed. The postmortem report however showed that she had multiple injuries and died of a ruptured spleen and heomatoma of the scalp and cerebral vessels.

In mitigation of sentence the appellant said he did not intend to kill his wife and regretted her death. That his mother who was looking after the children had since died and he prayed for leniency.

We have considered the plea in mitigation of sentence. The appellant is a first offender and no weapon was used. He also regrets the death of his wife. The sentence of 15 years imprisonment therefore comes to us with a sense of shock. We allow the appeal and set aside the sentence. In its place we substitute a sentence of 10 years imprisonment with hard labour with effect from 18th November 1995 the date of his arrest.

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D.K. CHIRWA

SUPREME COURT JUDGE

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W.M. MUZYAMBA

SUPREME COURT JUDGE

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L.P. CHIBESAKUNDA

SUPREME COURT JUDGE