

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT NDOLA

SCZ Appeal No.22/07

B E T W E E N:

AARON CHITALU

APPELLANT

AND

THE PEOPLE

RESPONENT

CORAM : Chirwa, Chibesakunda and Mushabati JJS

On 6th March, 2007

For the Appellant: Mr. E.M. Sikazwe, Acting Director of Legal Aid

For the Respondent: Miss J.C. Kaumba, Deputy Chief State Advocate

J U D G M E N T

Chirwa, JS delivered the Judgment of the Court.

The appellant was convicted on his own plea of manslaughter contrary to Section 199 of the Penal Code Cap 87.

The particulars alleged that the appellant on 31st day of May, 2003 at Kawambwa in Kawambwa District of the Luapula Province of the Republic of Zambia, unlawfully caused the death of one Gladys Kaunda. Upon his entering the plea of guilty to this charge the appellant was sentenced to 20 years imprisonment with hard labour with effect from 13th December 2004.

He has now appealed against the sentence of 20 years imprisonment with hard labour.

In arguing this appeal against sentence, the learned Acting Director of Legal Aid submits that there are strong mitigating factors, exhibited by the appellant immediately after the incident which showed great remorse on the part of the appellant. It has been submitted that immediately after the incident; the appellant applied first aid to the deceased and thereafter took her to Mushota Rural Health Center for further treatment. It was unfortunate that the deceased died.

We have looked at the facts as accepted by the appellant in the Court below and also the mitigation offered both in Court below and before us. We note from the facts that no weapon was used in inflicting the injuries, and from the postmortem report it appears the cause of death was due to anaemia due to hemoperitoneum with cerebral anoxia due to twist of neck. We also note from the postmortem report that the deceased sustained a ruptured spleen and dislocation of cervical vertebrae number three and four.

We are particularly moved by the conduct of the appellant immediately after the incident in that in his realization of his conduct, he tried to apply first aid. We also take note of the result of postmortem examination and take notice that we have had many cases of ruptured spleens and generally doctors agreed that in areas where malaria is very prone, spleens are usually enlarged and easy to rupture. There does not seem to have been much violence in this case. The sentence of 20 years imprisonment with hard labour under the circumstances, comes to us with a little bit of sense of shock and we agree it is on the severe side. We,

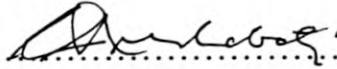
therefore allow this appeal against sentence. We quash the sentence of 20 years and in its place we impose the sentence of 10 years imprisonment with hard labour with effect from 13th September 2004.



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D.K. Chirwa
SUPREME COURT JUDGE



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L.P. Chibesakunda
SUPREME COURT JUDGE



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C.S. Mushabati
SUPREME COURT JUDGE