

Judgment No. S.C.82/2001
Crim. Appeal No. 206/2001

ROBERT TIMOTHY TEN TEN v THE STATE

SUPREME COURT OF ZIMBABWE
CHIDYAUSIKU CJ, EBRAHIM JA & MALABA JA
HARARE, OCTOBER 1 & NOVEMBER 22, 2001

H Simpson, for the appellant

R K Tokwe, for the respondent

EBRAHIM JA: The appellant was charged with murder and was convicted of murder with an actual intent to kill. The facts were that on 3 August 1997 the appellant wrongfully and with intent to kill murdered Taurai Andeseni by striking her with an axe on the head, at Muchemwe Village, Chief Negomo Communal Lands in Mazowe.

The events leading to the death of the deceased followed a domestic dispute between her and her customary law husband, the appellant. The dispute occurred during the month of June 1997, after the appellant had taken in another woman as his second wife. This resulted in the deceased leaving the matrimonial home to go and stay with her brother.

On 3 August 1997, in the early hours of the morning, the appellant armed himself with an axe and proceeded to where his wife was residing. On arrival the appellant entered the kitchen hut where the deceased and her relatives were

sleeping. The appellant then struck the deceased once on the head with the axe before he left the scene. He was arrested on the same day in the afternoon by members of the Criminal Investigation Department.

The post-mortem report indicated that the twenty-seven year old deceased sustained the following injuries:

“A 16 cm deep incision through the scalp and bone and *diva mater* plus 4 x 4 incision into the parietal lobe of the left cerebral hemisphere, made by a sharp instrument, travelling from the front to the back.”

The cause of death was found to be cerebral damage.

The appellant was convicted of murder with actual intent and sentenced to death.

The appellant does not pursue his appeal against conviction, but has submitted that the trial court should have found extenuating circumstances.

It is apparent from the evidence that prior to the appellant killing his wife he had imbibed a considerable amount of alcohol, so much so that he had to be assisted to get home. Clearly the fact that his wife had left him also played a part in upsetting his emotional equilibrium. His drinking at the very least appears to have affected his inhibitions, that is, by lessening his inhibitions. His irrational conduct towards the deceased can only be attributed to his level of intoxication.

It seems to me that this is a borderline case and it is my view that extenuating circumstances should have been found and we so find (compare *S v Tshuma* 1991 (1) ZLR 166 (SC)), particularly when regard is had to the level of the appellant's intoxication and the fact that he was clearly emotionally disturbed by his wife having left him.

This remains a very serious case. The aggravating features are that this was a brutal killing in which a lethal weapon was used to inflict a very severe injury on a vulnerable part of the deceased's body, the deceased's skull sustained a 16 cm deep incision; the appellant had armed himself and walked several kilometres before perpetrating this dastardly deed; and he inflicted the lasting and permanent harm on the defenceless and unsuspecting victim, having had time to reflect on his actions despite his state of intoxication.

This is therefore an extremely serious case which calls for the imposition of a severe sentence and I consider that life imprisonment would meet the justice of the case.

Accordingly the sentence of death is set aside and in its place is substituted a sentence of life imprisonment.

CHIDYAUSIKU CJ: I agree.

MALABA JA: I agree.

Pro deo