

IN THE MALAWI SUPREME COURT OF APPEAL

AT BLANTYRE

MSCA CRIMINAL APPEAL NO. 8 OF 1995

(Being High Court Criminal Case No. 35 of 1994)

BETWEEN:

KEYAFORD MALATA.....APPELLANT

- and -

THE REPUBLIC.....RESPONDENT

BEFORE: THE HONOURABLE MR JUSTICE UNYOLO, JA

THE HONOURABLE MR JUSTICE MTEGHA, JA

THE HONOURABLE MR JUSTICE TAMBALA, JA

Accused, Not Represented

Ms Jaffu, State Advocate, for the State

Chirambo (Mrs), Official Interpreter

J U D G M E N T

Unyolo, JA

The appellant was convicted by the Court below of murder, contrary to section 209 of the Penal Code and sentenced to suffer death. He appeals to this Court against both conviction and sentence.

The case basically turned on the credibility of the witnesses.

The deceased was the appellant's mother in-law. The appellant's marriage to the deceased's daughter, PW1, was, however, on the rocks at the material time and the two were living apart.

The prosecution's case was that on the relevant day, the appellant came to his estranged wife's home and picked a quarrel with her and attacked her. A neighbour, PW4, came and remonstrated with the appellant. He left, only to come back with a slasher knife. It was the prosecution's case further that the deceased came to find out what was wrong, when the appellant struck her in the head with the knife, causing serious injury, from which she died several days later. A total of six witnesses gave evidence for the prosecution, including the appellant's wife and her two sisters, PW2 and PW3, who said that they actually were present when all this happened.

On the other hand, the appellant's case in the lower Court was that as he was walking along the road, his wife, PW1, attacked him, and that while he was engaged in a scuffle with her, PW2, PW3 and the deceased came and joined in the fracas. It was his case there, as it is in this appeal, that PW2 brought a metal rod with her, and that as she tried to hit him with it, she missed and instead hit the deceased in the head, causing her the fatal injury.

After hearing submissions by Counsel on both sides and the summing-up by the learned Judge, the Jury came up with a unanimous verdict of guilty. In other words, the Jury believed the prosecution's witnesses rather than the appellant.

The appellant attacks the conviction on the ground that the Court below failed to sufficiently direct the Jury as to the weight to be given to the evidence which was adduced by the three key prosecution witnesses, namely, the appellant's wife and her two sisters, PWs 1 to 3. The appellant described the said witnesses as "tainted witnesses". He contended that the three invented their evidence in order to cover themselves up, since it was one of their number, namely, PW2, who killed the deceased.

It is clear from the foregoing that, strictly, no new issues are raised in this appeal. As was rightly submitted by learned State Advocate, the appellant's contention on this aspect is substantially the same as was his contention in the Court below.

We have looked at the summing-up by the Court below. It is noted that the learned Judge did analyse the evidence of each witness on both sides, including that given by the appellant, fully and carefully. It is also noted that the learned Judge pointed out the

elements of the offence charged to the Jury and gave directions as to the burden and standard of proof. He also made it clear that they, the Jury, were the judges of fact and that it was entirely up to them to decide, having regard to the whole case, whose evidence they believed. As already indicated, they believed the prosecution witnesses.

Having regard to all the facts, we are unable to find any basis upon which the learned Judge's summing-up or the directions he gave to the Jury can be faulted. Indeed, it is noted that no question was put to any of the prosecution witnesses in cross-examination on the allegation that it was PW2 who struck the deceased. It is also noted that the eye witnesses, PW1 to PW3, came out firm and unscathed in their evidence, so that it is impossible to fault the finding of the Jury.

We agree with learned State Advocate in her submission that there is no merit in the appeal. We dismiss it, both as to conviction and sentence.

DELIVERED in open Court this 28th day of July 1999, at Blantyre.

Sgd

L E UNYOLO, JA

Sgd

H M MTEGHA, JA

Sgd

D G TAMBALA, JA