

DISTRIBUTABLE (49)

Judgment No. SC. 56/05

Crim. Appeal No. 86/05

JOB VHERA v THE STATE

SUPREME COURT OF ZIMBABWE
CHIDYAUSIKU CJ, CHEDA JA & ZIYAMBI JA
BULAWAYO, JULY 25 & OCTOBER 24, 2005

C Dube, for the appellant

Ms B Wozheli, for the respondent

CHEDA JA: At the hearing of this appeal Mr *Dube*, who appeared for the appellant *pro deo*, indicated that after perusing the record he felt he had no meaningful submissions to make against both conviction and sentence. He conceded that both the conviction of murder and the sentence of death were proper as there were no extenuating circumstances.

The above concession was proper for the following reasons –

The appellant and the deceased were known to each other. They were employed at two adjacent farms.

In October 1999 the two had a misunderstanding at a football match. The deceased assaulted the appellant. The appellant reported the assault to the police and the deceased was asked to pay a deposit fine of \$250 for the assault.

On 31 October 1999 the appellant told a witness that he wanted to shoot the deceased. The witness explained to the appellant the consequences of shooting the deceased, but the appellant insisted that he wanted to shoot the deceased.

On 10 December 1999 the deceased set off on his way to Kwekwe Police Station to pay the deposit fine. The appellant waylaid the deceased and shot him in the head with a shotgun.

It was established that the deceased had money for the deposit fine, but when he was found dead his pockets had been turned inside out. That same day the appellant bought eight litres of opaque beer. He was asked about the source of the money and he said he had been given \$300 by his employer.

The shooting incident occurred about three months after the assault on the appellant. The appellant reported the assault to the police and was aware that the deceased was fined for the assault. The evidence led from the appellant himself was to the effect that before the shooting he had met the deceased several times at the beerhall but did not make any follow-up on the assault.

The appellant told fellow workers that he was going to injure the deceased before Christmas. One witness saw the appellant crisscrossing the road several times at the place where the deceased was shot, an indication that he was waiting for the deceased.

In considering the issue of extenuating circumstances, the court *a quo* found that the murder was committed after prior planning. The court also found that the murder was not committed as a result of emotional distress, as the assault on him had taken place some three months before. I agree with these findings, as they are clearly supported by the evidence that was led.

In the circumstances, the appeal is dismissed.

CHIDYAUSIKU CJ: I agree.

ZIYAMBI JA: I agree.

Pro deo