**THE PEOPLE v CHISATA (1969) ZR 176 (HC)**

HIGH COURT

DOYLE CJ

30th DECEMBER 1969

**Flynote and Headnote**

[1]   **Criminal procedure - No case to answer - Discrepancies between**40 **prosecution witnesses - Effect of unreliable witnesses on testimony of reliable witnesses.**

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   Even assuming that a single prosecution witness's testimony would have put the accused to his defence, the evidence must be taken as a whole when the court considers the defence's request for a ruling of no case to answer; accordingly, when the prosecution's case includes the testimony of two unreliable witnesses in addition to the 5 (assumed to be) reliable one, the latter's evidence may be discounted and a ruling of no case to answer given.

**Zulu, Director of Public Prosecutions, for the People.**

*Shamwana and Susman Q C* , for the accused.

[[](https://jutastat.juta.co.za/nxt/print.asp?NXTScript=nxt/gateway.dll&NXTHost=jutastat.juta.co.za&d=lrza/3/1167&multi=1&pb=0&isrc=no&f=save&" \l "end_0-0-0-2789)

[*Editorial Note*] This prosecution arose out of a shooting incident on December 20, 1968, on a part of Chindende Road within the boundaries of the Mufulira West constituency. On the previous day the accused, the candidate of the United National Independence Party (UNIP), had succeeded in winning the parliamentary seat for Mutulira West; he later became Minister of State for Power, Transport and Works in the Government formed by UNIP. According to testimony at the trial, when the accused arrived at the scene of the incident in a convoy of cars, supporters of the two rival political parties, UNIP and the African National Congress, were throwing stones at each other. The other relevant facts appear in the following ruling, which was given after the prosecution had finished presenting its evidence and the defence had requested a ruling of no case to answer.

**Judgment**

**Doyle CJ:** There is no doubt that on 20th December, 1968, Frank Anselo Rex was shot and killed in broad daylight at a spot somewhere between House No. 564 and House No. 508 near the Chindende Road, 25 Mufulira.

The case for the State rests in substance on the evidence of three alleged defence witnesses. Mr Susman, of counsel for the defence, has submitted that the evidence of these witnesses is so unreliable and so full of discrepancies that it does not warrant a conviction. It does not of course 30 necessarily follow that because there are discrepancies between witnesses that these witnesses must be disbelieved. For example, it would not surprise me that a person who had been shot at and even another man shot dead by a person who came in a convoy of cars could not accurately describe the order of that convoy some nine months later. The discrepancies 35 must be of a kind and degree as to show that the witness cannot be relied upon.

The first of the three witnesses was Benson Chilekwa. His evidence was that he lived in a house in Section F Mufulira. He gave two numbers of houses he lived in. He was employed on the mine as a machine boy and his 40 mine number was 197A. He was due to go to work on 20th, but as there was some trouble he went instead to see what was happening. As he was standing near the house of Donald Bali on the north side of Chindende Road he saw a convoy of cars come along Chindende Road travelling west. The cars stopped, and accused got out of the left side with a pistol in his 45 hand. He fired a shot at the witness which missed and hit Donald Bali's house. The convoy moved on. Accused walked for a short distance and

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then fired a short at Frank Anselino Rex which hit him and knocked him down. Witness ran to Frank, saw he was wounded, and went for the police.

Benson was cross - examined at length. He described how he first saw a witness Samson Banda that day. Samson was then at his house, and 5 neither spoke to each other. Samson was some forty yards from him when the shots were fired. Donald Bati came out of his house immediately the first shot was fired, and Benson showed him where the bullet had struck. Later in cross - examination he agreed that the accused was on the other side of the vehicle. On being questioned as to his mine number he declined 10 to answer.

Samson Banda said he was present when the shots were fired. He saw the convoy arrive. Accused got out and fired two shots from the same place over the car. He described how he had met Benson earlier, and they had chatted together and walked or ran together to the scene. When the shots 15 were fired he and Benson were beside each other. Donald Bati came out of this house immediately after first shot.

The third witness Donald Bati said he was woken by the shot and the bullet which hit his house. He got up immediately and saw accused getting into a car with a pistol in his hand. He knew Benson well. Benson 20 was unemployed and lived in a kitchen, not a house.

There were many other details in the evidence which I do not specifically mention. All three witnesses knew accused well so there could be no mistake in identification.

Before I comment further on the evidence of these witnesses I must 25 deal with the police investigation of this crime. There was virtually none. The sum total of the investigation was a search at the scene for used cartridges and bullets and presumably the sorting of the evidence of the three witnesses mentioned. On that day it is apparent that the police were in possession of the evidence now put before the court. Ordinary police 30 action could have been to arrest accused and search him and his house for the alleged weapon. Ordinary police action would have been to interrogate all the persons who were in the convoy. Nothing of this was done, and the accused was only arrested nine months later. The police officer then in charge of the investigation informed the court that was because of 35 instructions received. That such instructions were given and obeyed is a disgrace to the police force and a complete denial of their function to detect crime and bring offenders to justice. It is not of course proper for the court to speculate as to what a proper investigation might have revealed or to draw conclusions adverse to the accused from this deliberate 40 police inaction. The court must deal with the case on the evidence produced.

Benson Chilekwa was a thoroughly unsatisfactory witness. He was deliberately lying about his housing and employment. He was deliberately lying about many of the circumstances which he said occurred that day. 45

Donald Bati did not impress me as a witness. He was evasive on a of number of points. In addition, if the evidence is correct that he was

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present when the second shot was fired, he must have seen and heard it. It was suggested that deafness might explain this. Whilst giving evidence no marked deafness was manifest nor was his eyesight demonstratively defective.

[1] The other eye witness Samson Banda gave evidence reasonably well. He was the only witness of the three who gave any appearance of credibility. Had his evidence stood alone it might well have had weight. The evidence must however be taken as a whole. All three witnesses are friends. One has been shown to be lying and another to be probably lying.

Taking this evidence as a whole, I do not consider that it is such as 10 can reasonably warrant a conclusion. A conviction on this evidence would be manifestly unsafe.

I therefore acquit accused and order his discharge.

*Accused acquitted .*