

JUNE SHAWA AND GODFREY CHIKANGE ZULU v THE PEOPLE (1981) Z.R.
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SUPREME COURT
GARDNER, AG.D.C.J., CULLINAN, J.S., AND MUWO, AG.J.S.
28TH JULY, 1981
(S.C.Z. JUDGMENT NO. 13 OF 1981)

Flynote

Criminal law anal procedure - Offence - Lesser offence charged whilst evidence available warranted more serious offence.

Headnote

The appellants were convicted on their own plea of guilty of man manslaughter. The facts alleged by the prosecution were that the deceased person was alleged to be a wizard, and two appellants took part in the hanging of the deceased man. In their grounds of appeal, the appellants say that they were not allowed to challenge these facts. It was clear from the record that they agreed that the facts were correct.

Held:

- (i) Where the evidence warrants a charge, of a more serious offence, that offence is the one for which the accused person must be tried.
- (ii) In this particular case, it is clear that the appellants should have been charged with the offence of murder.

For the appellants: In person.
For the respondent: F.V. Bruce - Lyle, State Advocate.

Judgment

GARDNER, AG. D.C.J.: delivered the judgment of the court.

The appellants were convicted on their own plea of guilty of manslaughter. The facts alleged by the prosecution were that the deceased

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person, Phiri, was alleged to be a wizard, and the two appellants took part in the hanging of the deceased man.

In their grounds of appeal the appellants say that they were not allowed to challenge these facts. In fact it is quite clear from the record that they agreed that the facts were correct.

This court has made it clear in the past, and we would like to make it clear again, that where the evidence warrants a charge of a more serious offence, that offence is the one for which the accused

person must be tried. In this particular case it is quite clear that the appellants should have been charged with the offence of murder.

They appeal against sentences of fifteen years imprisonment with hard labour for their actions. This court is quite unable to say that the sentence imposed was excessive neither was it wrong in principle. The appeals are dismissed.

Appeals dismissed
