IN THE SUPERIOR COURT OF JUDICATURE
IN THE SUPREME COURT
ACCRA

CORAM: WOOD C.J, (PRESIDING)
BROBBEY, JSC
ANSAH, JSC
ANIN YEBOAH, JSC
BAFFOE-BONNIE, JSC

CRIMINAL APPEAL
NO. J3/2/2007
4th February 2009

GABRIEL KWAO BOSO - APPELLANT

VRS

THE REPUBLIC - RESPONDENT

J U D G M E N T

WOOD, (MRS) CJ:-

Brief Facts

On the 21st of January, 2009, we affirmed the decision of the Court of Appeal which substituted the appellant's murder conviction for manslaughter. Furthermore, we enhanced the sentence of 15 years imposed on him to 21 years with hard labour and reserved our reasons. We now assign our reasons for those decisions that we took.

The appellant appeared at the jury trial in the High Court Tamale, as the 1st Accused, was convicted with one other person for the murder of one Debora Biggor and sentenced to death, for conspiracy to murder and murder. On appeal, the Court of Appeal substituted his conviction of murder with manslaughter and imposed a sentence of 15 years with hard labour. It is from this decision of the Court of Appeal that the Appellant, has appealed to this

court against both conviction and sentence on the following original and additional grounds, four in all.

GROUNDS OF APPEAL

The Court of Appeal erred by convicting the Appellant for manslaughter when there is no evidence that he was responsible for the death of Debora Bigoor.

The Court of Appeal erred by not acquitting and discharging the Accused person (appellant herein) when the evidence on record is that he mutilated the corpse of Debora Bigoor which act cannot constitute manslaughter.

Sentence is excessive in view of the offence

The sentence did not take effect from the date of offence.

The deceased, who the appellant alleges was pregnant, visited the appellant, a Principal Medical Assistant in his bungalow at the Nakpanduri Health Centre on the 22nd of December 2000 complaining of abdominal bleeding. According to him, in order to stop the bleeding, he injected her with ergometrin and oxytocin and asked that she rest in his room until she felt better to go home.

The evidence however also reveals that the other person with whom the accused was charged with the two offences, and who was alleged to have invited the deceased out on that fateful night, which allegation he vehemently denied, rather found the Debora's corpse on the bed of the 1st accused covered with a blanket. Alarmed at this discovery, and as a result of the close relationship between the two of them, he hired a motor bike and chased the appellant to Gambaga whereupon on being informed of his discovery, the Appellant promised to take care of the mess. The Appellant however did not report the case to the Police as promised, which compelled the 2nd accused to report to the chief's palace leading to his arrest by the police.

The incontrovertible facts reveal further that, the appellant who administered dangerous drugs to Debora Bigoor, who was later discovered dead, undertook the grisly task of dismembering the dead body into pieces, crushing the skull and disposing of all these parts, together with the internal organs, namely the liver, heart, spleen, lungs, uterus, intestines and the brain in such a manner that those vital internal organs could not be retrieved to aid pathological tests in determining the exact cause of death.

Also undisputed is the fact that it was the Appellant who led the police to retrieve the dissected flesh from his manhole into which he had dumped those body parts, one hundred and fifty pieces in all, and the bones also from another pit he led them to.

On a critical examination of the record, we find that the appellate court dealt fairly with the appellant by examining the evidence with the greatest care and detail, the trial judge's summing up and the verdict which was returned, namely the verdict of murder. Their Lordship's returned a verdict of manslaughter in substitution, concluding that Debora's death was not intentionally caused. The learned justices rightly in our view identified the pivotal issue in this case. Their Lordships reasoned that:

"On (sic) thorny issue in this case undoubtedly relates to the cause of death. Certainly the medical report is not helpful because while the prosecution contended that the cause of death was the skinning and crashing of the deceased's skull, the accused persons contended by their statements to the police and their testimonies in court that death had already taken place at the time when A1 carried out his brutal exercise of crushing the body. What then caused the death? The only evidence available came from the 1st Accused who stated that he injected the deceased with some Class A drugs which belongs to the category of dangerous drugs in the medical classification of drugs. If the story of the accused persons is anything to go by one would say

that the cause of death has not been found by the medical officer who conducted the autopsy. The result was that the jury was left with the duty of inferring the cause of death from their perception and evaluation of the totality of the evidence."

The Court of Appeal also relied on the English case of **The Queen v Sharmpal Singh (1962) AC 188 PC** to assist in resolving the issue of the cause of death. The Court thought that there were some similarities between the two cases and relying on the holding substituted the verdict of manslaughter with murder. This is what the court said:

> "In our effort to find solution (sic) to the issues in this case, my sister on my right brought the English case of The Queen v Sharmpal Singh (1962) AC 188 PC. In that case the accused a Kenyan was accused of murdering his wife. The medical evidence indicated that sexual intercourse had taken place just before death which was due to asphyxia caused by pressure on the chest applied simultaneously with pressure on the neck and the throat" The facts of the case were that the accused killed his wife while he was having sexual intercourse with her and there was an indicated (sic) that he used some degree of force in the process. After the death of the wife, the accused conceived a place of deception in order to make it appear that the wife had been attacked and robbed while on her way to the toilet which was outside the flat. He took the dead body out to the courtyard stabbed it in places with a knife and faked other signs of robbery. The prosecution naturally relied upon that as evidence of a crime which the prisoner was desperately anxious to conceal; the defence submitted that it was equally consistent with panic seizing the prisoner when he found his wife had died accidentally. In the instant case the 1st accused story was that because of fear that he might be lynched by the relatives of the deceased, he decided to cut and did cut the body into parts and concealed them obviously with intent to conceal the death. He also

stated that he told a lie that the body had been buried in the farm of one Azumah. This similarity in the instant case and that Queen v Singh [supra] depicts the common behaviour of human beings. The medical witnesses were unable to say how severe and prolonged such pressure would have had to have been in either place to cause death. The accused person's conviction of murder was reversed by the Court of Appeal of East Africa and insists (sic) place a conviction of manslaughter was substituted. The Crown appealed against the decision of the Court of Appeal of East Africa to the Privy Council in England which dismissed the appeal on the ground that:

Held: the inability of the medical evidence to speak with precision about the degree of force used together with other circumstances, opened up both manslaughter and accident as alternative possibilities requiring consideration and it was the duty of the trial judge to deal with such alternatives if they emerged from the evidence as fit for consideration not withstanding that they were not put forward by the defence"

After a review of this not so well known English case, the appellate court concluded as follows:

"In the instant case the 1st accused's story was that because of fear that he might be lynched by the relatives of the deceased he decided to cut the body into parts and concealed them obviously to with intent to conceal the death. He also stated that he told a lie that the body had been buried in the farm of one Azumah."

We are in complete agreement with the decision of the court. On a critical examination of the evidence of the prosecution and the defence there is no doubt that the evidence leading to the death of Debora was clearly circumstantial. Also, two possible verdicts were open to the court and the

learned justices are to be commended for examining these two alternative possibilities carefully.

From the evidence led, it is not disputed that the Appellant caused the death of the deceased.

a. The accused admits that he injected the deceased with two class "A" drugs. He also admitted that these are very potent and dangerous drugs and when given an overdose, could kill.
b. The Appellant further admits that he chopped up the body of the deceased and flushed it down a septic tank.
c. The internal organs which were essential to ascertaining the actual cause of death of the deceased could not be found and were never retrieved.

The clear legal principle established in the case of **R v. Onufrejczyk [1955] 1 Q.B. 388** is that in a trial for murder, the fact of death can be proved by circumstantial evidence provided that the jury were warned that the evidence must lead to one conclusion only, and the cause of death may be proved by such circumstances as render the commission of the crime certain and leave no degree of doubt, even though there is no body or trace of the body or any direct evidence as to the manner of death of the victim.

Clearly, the principle discernible in this case applies with equal force to charges of manslaughter. In a trial for manslaughter, the fact of death is provable by circumstantial evidence, the only caveat being that the evidence must irresistibly lead to only that one conclusion. The death may be proved by such circumstantial evidence even though there is no trace of the body or as happened in this instant case vital organs needed to help establish the specific cause of death cannot be traced. Provided the circumstantial evidence leaves no room for doubt and does safely lead to that one conclusion, a guilty

person ought not to be set free on the sole ground that the exact cause of death has not been established by medical experts.

The plain evidence that I shall recount coupled with the inconsistent account of the statements given by the accused person of what happened on the fateful day to the police, the initial lies he told as to where the deceased had been buried, justifies a return of the manslaughter verdict.

The evidence led in this case was purely circumstantial evidence which led to one reasonable conclusion only- that the deceased died at the hands of the Appellant. His whole conduct must therefore be taken into account and questions posed as to why he would dismember the body and conceal the vital parts needed to prove the exact cause of death. His whole conduct is particularly relevant in establishing the main fact in issue.

The overwhelming evidence is that the appellant mutilated the corpse and cleverly disposed of the body parts. Why did he? The appellant claims that he dismembered the corpse for fear that he would be lynched by the deceased's family. That reason does not sound plausible. But could the accused not have gone to the police station to report and ask for protection?

If he were indeed truly terrified of the deceased's family, why did he have to use that gruesomely laborious and time-consuming process to dispose of the corpse, why did he not conceal the mortal remains by simply burying it, so he could save himself from being found out and lynched as he would want us to believe? Equally importantly, if he were not responsible for the cause of death, why did he deliberately completely destroy all traces of the internal organs, vital body parts which could have aided pathological examination, the clue to uncovering the cause of death? Certainly, it could only be because the appellant, having practised as a medical assistant for over 27 years with his average medical knowledge knew that with those vital organs, the exact

cause of death could easily have been determined and therefore the took steps to obliterate all traces of his involvement in the death of the young lady. All these circumstances could lead to no other conclusion than that the accused was responsible for the death of the deceased. He injected the deceased with dangerous class "A" drugs, the body was discovered in his bed, in his room, in his house and he dismembered the body and disposed of it to avoid detection. All of this circumstantial evidence is consistent with guilt.

In **KUO-DEN ALIAS SOBTI AND OTHERS v. THE REPUBLIC [1989-90] GLR 203** Aikins JSC delivering the judgment of the Court held that

> "Failure to prove the cause of death was not necessarily fatal to conviction where, as in the instant case, there was sufficient evidence aliunde."

The court of Appeal, rightly in our view, in substituted the conviction of the lesser offence of manslaughter and we are not minded to disturb these correct findings.

APPEAL AGAINST SENTENCE

Article 14 (6) of the 1992 Constitution provides that:

"Where a person is convicted and sentenced to a term of imprisonment for an offence, any period he has spent in lawful custody in respect of that offence before the completion of his trial shall be taken into account in imposing the term of imprisonment."

These clear constitutional provisions enjoin judges, when passing sentence, to take any period spent in lawful custody before the conclusion of the trial into account. A legitimate question which might arise in any given case and which does indeed arise for consideration in this instant appeal is how do we arrive

at the conclusion that this constitutional mandate has been complied with? We believe this is discernible from the record. We would not attempt to lay down any hard and fast rules as to the form, manner or language in which the compliance should be stated, but the fact of compliance must either explicitly or implicitly be clear on the face of the record.
Admittedly, the more explicitly the court expresses the position that it has taken into account the said period, the better it is for everyone as it places the question beyond every controversy and leaves no room for doubt. Nonetheless, we think that any reference to the period spent in custody before the conclusion of the trial in manner that suggests that it weighed on the judge's mind before deciding on the sentence should be sufficient.

In this instant case, this is what the court said regarding sentence:

"Counsel for 1st accused: I plead for leniency. My lords may consider his age of 64 years. I pray that my lords be lenient and impose 5 years term.
By court: We impose a custodial sentence of fifteen years IHL from date of conviction by the trial court."

The record speaks for itself. Neither the appellant nor the court made the slightest reference whatsoever to the period the appellant had spent in custody before the trial was concluded. We also find no reference to the constitutional provision under reference or words, express or implied to the effect that it weighed on the minds of their Lordships. The only just conclusion in the circumstances of this case is that the learned justices failed to take Article 14 (6) into account before settling on the term of 15 (fifteen) years imprisonment.

The rule that appeals are by way of rehearing is not limited to substantive appeals only, but the sentences passed, provided an appeal lies therefrom. We have taken into account the period of 1 (one year) 3 (three) months (25th December 2000 – 26th March 2001) he spent in custody before conviction by

the trial court. But we have also taken into account all the circumstances surrounding this case including the appellant's own confession of the barbaric manner in which he disposed of the dead body. Certainly, he should have used the experiences he has garnered over the years as a medical attendant much more productively and certainly more profitably for the good people he was supposed to serve than in the manner that he did in respect of Debora and in the grotesque and totally uncustomary manner in which he gruesomely disposed of her corpse. We did not find any mitigating circumstances justifying a sentence lower than that which we imposed.

G.T. WOOD (MRS)
(CHIEF JUSTICE)

I agree

S. A. BROBBEY
(JUSTICE OF THE SUPREME COURT)

I agree

J. ANSAH
(JUSTICE OF THE SUPREME COURT)

I agree

ANIN YEBOAH
(JUSTICE OF THE SUPREME COURT)

I agree

P. BAFFOE-BONNIE
(JUSTICE OF THE SUPREME COURT)

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