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Saak No. \_\_\_\_\_  
Case No. \_\_\_\_\_

IN DIE HOOGGEREGSHOF VAN SUID-AFRIKA  
IN THE SUPREME COURT OF SOUTH AFRICA

( Appel ) Afdeling)  
Division)

AANSOEK/ILLIKWIEDE-SAAK/PROVISIONELE-SAAK  
APPLICATION/ILLIQUID CASE/PROVISIONAL CASE

Charles Henry Chavac

Applikant/Eiser  
Applicant/Plaintiff

teen/versus

Die Staat

Respondent/Verweerder  
Respondent/Defendant

Prokureurs/Attorneys

Applikant/Eiser  
Applicant/Plaintiff Prodeo

Respondent/Verweerder  
Respondent/Defendant P.G. Kaapstad

Advokaat/Advocate

Applikant/Eiser  
Applicant/Plaintiff P Gamble

Respondent/Verweerder  
Respondent/Defendant \_\_\_\_\_

Aard van Aansoek/Geding  
Nature of Application/Claim Vrees tot appel teen skuldigevinding en vonnis

Ter Rolle Geplaas vir Verhoor op  
Set Down for Hearing on Voorgesê op 25.12.82 -- Van Helden A.R.

K.P.A.

Abdullah

Enkele punt in verband met die uitreiking van die  
deurlopie 1/2/83.

REGISTRAR, HOOGGEREGSHOF  
VAN SUID-AFRIKA  
15-03-82  
REGISTRAR, SUPREME COURT  
OF SOUTH AFRICA

510/82

In reply please quote  
By beantwoording haal aan

SS 278/82

No. ....

Telegraphic address } "Supreme"  
Telegramadres }

Telephone No. ....  
Telefoon No. .... 22-1112

Postal Code .....  
Poskode ..... 8000



DEPARTMENT OF JUSTICE · DEPARTEMENT VAN JUSTISIE  
REPUBLIC OF SOUTH AFRICA · REPUBLIEK VAN SUID-AFRIKA

Office of the Registrar of the Supreme  
Court of South Africa

Kantoor van die Griffier van die  
Hooggeregshof van Suid-Afrika

Navrae: Mnr Muller  
Desember 21, 1982

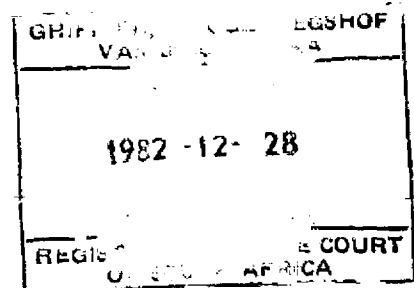
Privaatsak X9020  
Kaapstad

Die Griffier  
Appèlafdeling  
Posbus 258  
BLOEMFONTEIN  
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VERLOF TOT APPÈL: CHARLES HENRY CHAVE

Ingesluit vind asseblief die stukke soos  
versoek in paragrawe a en b van u brief  
510/82 van 10 Desember 1982.

*Wan*  
GRIFFIER  
JCH MULLER/bm



IN THE SUPREME COURT OF SOUTH AFRICA  
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE N° . KS.278/82 ..... 2nd November 1982

T H E   S T A T E

versus

CHARLES   HENRY   CHAVE

*M.R. de K.*  
*26.XI.1982.*

DE KOCK, J:    The accused is charged with the murder of his wife. ISABELLA MARIA CHAVE, who died on Friday, 15th January 1982, as a result of a bullet wound through the chest, damaging both lungs and the heart.

In his explanation of plea in terms of Section 115 of the Criminal Procedure Act the accused admits that he shot the deceased in the chest with a 7,65 pistol and that she died as a result thereof. He denies, however, that he intended to kill the deceased and avers that he acted in self-defence against an unlawful attack upon him by the deceased. (10)

The shooting took place in the accused's flat at Arundel Court, Rosebank, at approximately 8-p.m. It is clear from the evidence before the Court that when the accused fired the shot he was standing at point 'B' on the plan EXHIBIT 'C'. The deceased was then at point 'A' on the plan, a distance of 2,4 metres or, roughly, 8 feet away from the accused. The bullet entered her left breast and she died instantaneously, or within a matter of minutes.

The accused and the deceased were married on the 30th (20 October 1981; he for the third and she for the second time.

The/.....

The marriage was not a happy one. There were frequent quarrels between the accused and the deceased mainly about money matters and the accused's drinking habits which were not to the liking of the deceased.

The accused and the deceased were alone in the flat when the shooting took place. His evidence is, therefore, the only available testimony as to what occurred in the flat that evening. Before I deal with his version I shall give a brief resumé of the evidence adduced on behalf of the State. (10

Constable LOTZ testified that he received a telephone call at the Mowbray charge office at quarter past eight that evening. The person who spoke to him gave his name, namely, Charles Chave (the accused's name) and his address and then told the Constable that he had shot his wife. According to the Constable the person spoke calmly and slowly.

The second witness in sequence called by the State was Sgt. VAN DER RIET. He stated that he received a radio report at quarter past eight that evening and that he arrived at the accused's flat at approximately twenty-five past eight. (20 He found the door standing open and when he entered the flat he saw the deceased lying on the floor and the accused sitting in a chair. The accused told him that the person on the floor was Isabella and he said that he had just shot her. When the sergeant asked him the reason for his conduct the accused informed him that they had had an argument over money and that that had led to an assault upon him by the deceased. The accused furthermore told the Sergeant that the deceased had knocked the spectacles from his face and had poured whisky over him and that she had threatened him with a certain Mr (30

Henry/.....

Henry, who was the previous husband of the deceased and who was a witness for the State.

According to Sgt. VAN DER RIET the accused also told him that he was very much afraid of Mr Henry and that Henry had phoned him that afternoon and uttered certain threats against him to the effect that he would come and fix him. According to Sgt. VAN DER RIET the accused appeared to be calm and he showed no sign of any emotion.

Thirdly, there was the evidence of Detective-Warrant-Officer MILLER who arrived at the flat approximately 9 o'clock (10 that evening. He supports the evidence of the other policemen that there were no obvious signs of disorder in the flat, but according to Mr MILLER the accused appeared at that stage to be nervous, agitated and upset. He said that while he was there he heard the accused saying, not to any person in particular but more as if he were unburdening himself, "What more did they want from me? I have given them so much" or words to that effect.

Then there is the evidence of Mr HENRY. He admits in his evidence that he telephoned the accused on the Friday (20 afternoon and that in the course of the conversation he said to the accused he would knock his bloody head off. He explained that he had been told by his present wife of certain threats that the accused had made in regard to the children of Mr HENRY and the deceased which had annoyed him and that was the reason why he telephoned the accused and said to him what he did.

The only other part of Mr HENRY's evidence that I need refer to at this stage is that the accused telephoned him on the Monday evening after the incident on two separate occasions. (30

On the first occasion the accused said to Mr HENRY something like "What I have done to Bella (or Belle) I will do to you" And on the second occasion the accused said to him "Stick around, I am coming to get you" or words to that effect. Mrs HENRY readily conceded in cross-examination that the accused was slurring when he spoke and that he may well have been under the influence of liquor.

Pausing here, I may say that the accused in his evidence did not deny that he telephoned Mr HENRY on that Monday evening or that he said to Mr HENRY what HENRY testified in his evidence. The accused stated merely that he had no recollection of having phoned HENRY, ~~that evening~~. He admitted that he was under the influence of liquor on <sup>the</sup> ~~that~~ Monday evening and that may account for his loss of memory. (10

The State also called one of the children born of the marriage between the deceased and Mr HENRY, one AMANDA HENRY. The relevant part of her evidence is that the accused and the deceased often quarrelled, that the deceased objected to the accused's drinking and she apparently complained that he did not give her sufficient money. AMANDA also testified that the accused was jealous of her father (MR HENRY). In her testimony she mentioned that on an occasion in December 1981 she heard the accused threatening to shoot her mother (the deceased) and when she ran into the bedroom she actually saw the gun in the accused's hand, pointing at her mother. (20

There is the evidence of Detective-Warrant-Officer ELLIS who arrived at the flat at 9,30 that evening at a stage when the accused was no longer there. Mr ELLIS testified that on the day after the incident - it may have been a day later (30

the accused told him that HENRY had threatened him on the Friday in question and that he (the accused) was very much afraid of Mr HENRY. Mr ELLIS said in his evidence that the accused did not mention a gang or tell him that HENRY had spoken of a gang in connection with the alleged threat by HENRY.

The last witness called by the State, whose evidence is relevant to some extent, is SEAN BREACH, AMANDA's boyfriend. He testified that he was present in the deceased's house in December, that he heard the quarrel between the deceased and the accused in the bedroom and that he heard the accused say to the deceased "I will shoot you, you bitch". He says that he actually saw the gun in the accused's hand and that it was pointing at the deceased. (10

That is a brief summary of the evidence adduced on behalf of the State.

The accused gave evidence in his own defence and he also called his attorney, Mr SNITCHER, and one CHRIS LE ROUX as witnesses.

Mr SNITCHER testified that the accused's sister phoned him at approximately 8,30 on the night of the incident and that he then telephoned the accused. His impression was that the accused was disturbed and upset and his voice was shaking. (20

Mr LE ROUX is a fellow-salesman at Harmony Furnishers where the accused was employed, also as a salesman. He testified as to certain incidents between the accused and the deceased before their marriage and also apparently while they were married. He referred to an occasion when the deceased had thrown whisky in the face of the accused; to an occasion when she apparently came into the room with a knife and said (30

to/....

to the accused "I will kill you". He also saw on an occasion how the deceased pushed the accused on to a bed and he testified that the accused often said to him that he was scared of his wife, the deceased.

I shall deal now with the evidence of the accused. He states that the deceased was always complaining that she had no money and that he did not give her enough money; that he never took her out and that she objected to his taking even one drink. He said that he liked his Scotch and that he used to drink two, three or four glasses of whisky in the (10 evenings after he had returned from his work.

He denies the gun-pointing incident in December in the deceased's house and testified that he would never use a word like "bitch" with regard to a lady like his wife. He explained that what really happened on that occasion is that she gave him a push which resulted in his knocking his head against part of the furniture and that thereafter she would not let him leave the house. He denies that he had a firearm in his possession when this incident took place. He admits however that the deceased asked AMANDA to call the police, but (20 he suggests that she did so because she had taken fright as a result of his dazed condition after he had been knocked against the furniture. According to the accused, he simply sat there and waited for the police to arrive; he was too terrified to move.

He testified about another occasion when he and his wife and SEAN were supposed to go to the Kentucky Fried Chicken shop. He became very suspicious of the presence of SEAN in the motorcar and therefore drove straight to the police station and complained about his wife in the car. The police (30



would not interfere because they said it was a domestic matter.

Coming to the relevant months, the accused stated that by December 1981 the relationship between him and the deceased had become very strained. The deceased had threatened him that HENRY and his gang would fix him and he took these threats seriously. On the 15th January 1982 the deceased came to the shop where he was employed, Harmony Furnishers, at approximately 3 o'clock in the afternoon. She had phoned him before the time to tell him that she was coming to make trouble. (10 When she was in the shop she asked for money to buy food for her children and he gave her R50. She was not satisfied with that and threw the money on the desk. She created a scene which embarrassed him and eventually she left the shop. Thereafter Mr HENRY phoned him and said that he was trying to make trouble for his daughters and he (HENRY) was going to fix him up.

According to the accused he left the shop at approximately 5,30 that afternoon and went back to his flat. He took the pistol which is before the Court - EXHIBIT 1 - from (20 under the seat of his car where he always kept it and put it in his trouser belt. Once inside the flat, he bolted and locked the door. The evidence is that there were four locks on that door, which is the only means of access to the accused's flat. He said he did so because he was afraid of Mr HENRY and his gang. He had a few drinks and then spoke to his sister Doris on the telephone at approximately 7,30 p.m. They had a long conversation and while he was still talking to Doris there was a loud banging on the door like somebody trying to break the door down. When he looked out of the (30

window he saw that it was the deceased who was standing outside the front door. He opened the door, she pushed it open so violently that he was knocked backwards and when she was inside the room she pushed him and he fell back into the chair where he had been sitting. The reason why he opened the door is because he thought that perhaps she had come to make up and they could be friends again. He then told Doris that he would call her back and the next thing that happened was that the deceased picked up the whisky bottle and poured some of <sup>the contents</sup> ~~it~~ over him. She then snatched his glasses from his face and he said that his sight without the glasses was very poor. Thereafter she started pulling boxes off the racks from the room-divider which is shown on the plan; she went through his briefcase and she scratched through the boxes, all the time mumbling to herself. He said that she was in an aggressive mood and it appeared to him that she wanted to make trouble. The accused's testimony in Court was that the deceased must have been looking for money or for his will. This is of course to some extent inconsistent with the version he gave the police shortly after the incident when he said she kept on saying "Where is the money? Where is the money?" She also hit him a blow on the chest and he says that there was a bruise mark which he showed to W/O ELLIS on the Sunday. He was sitting in the chair all the time, too afraid to stand up. While she was still going through his briefcase and the other boxes, he asked her whether he could go to the lavatory and she raised no objection. He said he wanted to get away from her and he also wanted to relieve himself. The gun at that stage was still in his belt. It was loaded and cocked and not on safety. He stated in his evidence that at that stage he

(10

(20

(30

was/.....

was afraid of his wife and he was also afraid that Mr HENRY and his gang would be calling that evening. He emerged from the lavatory and as he took the turn back towards the sittingroom it seemed to him as if the deceased had a black object in her hands which he thought might have been the radio or his briefcase. She was at that stage standing next to the bed, between letter 'D' and the bed on the plan, and she seemed to come forward towards him in a lunging movement. He later said in his evidence that she actually moved forward a step in his direction, but later on again said he could not (10 say whether she definitely moved towards him but that she gave him that impression. He got scared, drew his gun and fired the shot. He explained that he drew the gun because he was scared of his wife and because he did not like physical violence. He said that he had nowhere to run; he thought of trying to get away, possibly through the front door but he could not. He said his intention when he drew the gun was to frighten the deceased, to make her leave him alone. He testified at first that he pulled the trigger but afterwards explained that he could not remember pulling the trigger. (20 He testified at first that he pointed the gun, as he thought, over her shoulder. He later stated in his evidence that he pointed the gun at her. After the shot she fell to the ground. He thought that she may be shamming, but nonetheless without making certain he telephoned the police and his sister and informed them that he had shot his wife. Thereafter he touched the calf of her leg and realised that she was no longer alive.

When he was asked why, if his intention was merely to frighten her, he actually pulled the trigger and fired the (30

shot/....

shot instead of simply pointing the gun at her and warning her not to approach him, the accused explained that everything happened so quickly that he was unable to account for his actions. He did not know why he did not fire a warning shot into the air or the floor.

It appears from the evidence of the accused that he was a member of the Royal Air Force during the war and that he had experience of guns during that time. He spent six years in the R.A.F. He was aware that this particular gun had a very sensitive trigger. He admitted that he was a good shot during the war years. (10

Under cross-examination the accused stated for the first time that the deceased hit him once or twice with her hand or fists on the head or neck while he was sitting in the chair.

Referring to the bruise on his chest, he stated that he could not remember being hit on the chest by the deceased. It was only when he took a shower on the Sunday, I think, that he noticed this blue mark on his chest and showed it to W/O ELLIS. He could also not say whether the blows to his face or neck were painful or not. (20

That, in brief, summarises the evidence given by the accused.

The impression the witnesses made upon the Court may be of some importance and I shall, therefore, briefly deal with that.

As far as the State witnesses were concerned, they all appeared to be truthful and to give honest evidence. The police officers clearly were reliable and honest witnesses. As far as Mr HENRY is concerned, he certainly did not create (30

the impression that he was a gangster or a member of a gang.

He was fair and <sup>impartial</sup> ~~imparting~~ in his evidence and he readily admitted that he had threatened the accused on the Friday afternoon after he had been informed by his wife of what the accused had allegedly said. We accept his evidence as the truth as far as the salient aspects thereof are concerned.

AMANDA is obviously biased, but basically we think she is a truthful witness. One must approach her evidence with care but insofar as she testified about the incident when the accused threatened her mother with a gun and pointed the (10 gun at her, we accept that evidence, corroborated as it is by SEAN BREACH who, although he is a friend of AMANDA, impressed us as being a reliable and truthful witness.

The accused, on the other hand, was a poor witness. He appeared to be evasive, smooth and slippery. His inability to explain important features of his evidence is a matter for comment. He is extremely vague about whether the deceased had, in fact, started moving towards him when he pulled the gun and fired a shot at her. He at first testified that he held the pistol in a slightly upward position, pointing it (20 over the shoulder of the deceased, but later in his evidence he said he pointed the pistol at her. In this regard he contradicted himself and it is on a vital issue. He was unable to explain why, if in fact he pointed the pistol held in an upward position, the track of the wound would have passed downwards in the body of the deceased. He was obviously not truthful in his testimony when he said that he could not remember pulling the trigger. He is clearly less than candid when he says that he thought at first when she fell to the ground that the deceased was shamming. He would <sup>not</sup> ~~never~~ have (30

telephoned/...

telephoned his sister and the police and told them that he shot his wife if he had been under the impression that he had not hit her and that she was merely putting up a show.

His evidence that he was terrified of his wife and the possible arrival of Mr HENRY and his gang is either untruthful or at least highly exaggerated. The fact of the matter is that he was inside a locked room and there was no means of access into that room; he had a telephone at hand and the police were available. If he had been scared out of his wits, as he pretended to be in giving evidence, he would certainly not, in our view, have unlocked the door after he had killed his wife and left it half open when he, on his own version, firmly believed that Mr HENRY and his gang might be lurking in the immediate vicinity and were coming to attack him that evening. (10

His evidence is improbable and unreliable in many respects. His denial that he would use the word "bitch" does not ring true. His denial that he pointed the pistol at his wife in her house in December is untruthful. We accept in (20 that regard the evidence of AMANDA and SEAN.

He was unable to explain why, when he was prepared to go to the police on the occasion of the Kentucky Fried Chicken incident, he did not get in touch with the police on the Friday in question when he was in mortal fear of his life, expecting an attack by a gang upon him. He could not give a satisfactory explanation why in the first place he opened the door to his wife. The marriage by that stage was completely on the rocks and his assertion that he was hoping that they could become reconciled is clearly not worthy of (30  
serious/...

serious consideration. He and his wife had had an argument that afternoon; she had misbehaved, in his view; she had threatened him and she even told him that her ex-husband and his gang would come and fix him that evening. Yet, despite all this, when she bangs on the door as if to break it down he meekly opens the door. In this regard also his evidence is improbable and certainly does not ring true.

His testimony that his intention was merely to frighten the deceased is contradicted by the fact that he admitted afterwards that he was pointing the gun at her and by his (10 plea that he fired the shot in self-defence.

We reject without hesitation the accused's evidence that the deceased was about to attack him with a heavy black object and that he was doing no more than defending himself. In the first place, no such object was found anywhere near the body of the deceased. Secondly, the accused when he spoke to the police shortly after the incident never mentioned to them that his wife was about to attack him. Nor did he make any mention to the police that he was in fact defending himself or that he was acting in self-defence. Thirdly, his (20 evidence that she was lunging towards him and had actually given a step in his direction is not borne out by his own evidence. He made a cross on the plan as to where the deceased was standing when he emerged from the lavatory. If she gave a step in his direction, as he stated in his evidence, it is inexplicable that she could have been standing at point 'A', which he himself pointed out or corroborated as being the point where she was standing when he fired the shot at her, because point 'A' is certainly not in the direction of where he was standing; if anything, it is further back in the room, (30

so that she could not have been making any move towards him or lunging in his direction as he stated in his evidence. If anything, on his own evidence, she was moving backwards at the time.

And, finally, when he fired the shot she was more than 8 feet away from him. There was certainly no justification for shooting her then at that stage and there was no immediate risk to him, even on his own evidence.

Dealing with the requirements of self-defence, it is clear, of course, that the attack must have commenced, or at least be imminent, before a person can justifiably defend himself. We have grave doubt whether in this case any attack by the deceased had commenced or appeared to be imminent. But assuming for the moment that such an attack appeared to be imminent, or that the accused believed that there was such an attack coming, it is a further requirement that the defence must be necessary to avert the attack, in other words, that the unlawful attack could not have been averted in any other way and also the law requires that the means used to avert the attack must be reasonable in the circumstances. (20

The Court finds that none of these requirements have been complied with.

It was argued on behalf of the accused that at worst for him he exceeded the reasonable bounds of self-defence and that he is therefore guilty of culpable homicide.

In our view, however, the force used in the present case was so excessive and the shooting so premature that the crime is clearly that of murder and not of culpable homicide. He knew that he was acting unlawfully, in other words, he had the mens rea in respect of the unlawfulness of his conduct. (30



It is clear that the test whether an accused acted justifiably in self-defence is an objective test. The Court must place itself in the position in which the accused found himself to be at the time. We are satisfied that a reasonable man in the circumstances of the accused would not have believed, assuming for the moment that an attack on him had commenced or was imminent, that his life was in danger or that it was seriously threatened, nor would he have believed that he was using reasonable means to avert the attack. The accused knew full well that his conduct was unlawful. (10

We are further satisfied that the accused did not genuinely believe that his life was in danger or that he was using reasonable means to avert the attack.

On all the evidence we are satisfied beyond reasonable doubt that the accused fired the shot foreseeing that it may cause the deceased's death. We are satisfied that he subjectively foresaw the possibility of death resulting from his act and that he was reckless of such result.

In these circumstances it is the unanimous finding of the Court that the accused is G U I L T Y of murder. (20

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MR GAMBLE ADDRESSES THE COURT ON EXTENUATING CIRCUMSTANCES.

MR BAKER DOES NOT WISH TO ADDRESS THE COURT.

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JUDGMENT ON EXTENUATING CIRCUMSTANCES.

DE KOCK, J: The question which the Court has to consider is whether there are extenuating circumstances. We are satisfied that there are extenuating circumstances present in this case.

The evidence reveals a picture of an unhappy marriage with a steady built-up of tension between the accused and the (30

----- deceased/...

deceased. That, obviously, played a role in this matter and to some extent reduces the moral blameworthiness of the accused's act. In addition to that, it seems that there was some provocation from the side of the deceased. She had caused trouble that afternoon in the shop and she came to the flat that evening, apparently bent on making trouble. The accused had had a few drinks and we accept that his judgment was to some extent impaired as a result thereof.

Finally, what is important in this case, is that on the finding of the Court this was not a premeditated murder; (10 the accused did not have murder in his heart when the deceased arrived at his flat, that has not been proved. The Court has found that he had dolus eventualis, in other words, he foresaw the possibility of his act causing death and he was reckless as to whether death ensued or not.

Taking those factors together, the finding of the Court is that there are extenuating circumstances present.

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THE STATE PROVES NO PREVIOUS CONVICTIONS.

MR GAMBLE APPLIES FOR AN ADJOURNMENT AND ALSO APPLIES FOR (20  
BAIL TO STAND UNTIL SUCH TIME AS THE COURT PASSES SENTENCE  
ON THE ACCUSED.

MR BAKER DOES NOT OBJECT TO THE APPLICATIONS.

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DE KOCK, J: The accused's bail is to stand until sentence is passed.

The Court will adjourn until 11,30 a.m.

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ON RESUMPTION: 11,40 a.m.

MR GAMBLE CALLS ARTHUR JOHANNES SCHEEPERS IN MITIGATION OF (30  
SENTENCE.

MR GAMBLE ADDRESSES THE COURT IN MITIGATION OF SENTENCE.

MR BAKER ADDRESSES THE COURT IN REGARD TO SENTENCE.

DE KOCK, J: It has been agreed that bail be extended until sentence is passed. The Court will consider the circumstances of the case and pass sentence tomorrow morning at 10 o'clock.

THE COURT ADJOURNS UNTIL TOMORROW, THE 3RD NOVEMBER 1982.

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ON THE 3rd NOVEMBER 1982 THE COURT RESUMES.

S E N T E N C E

DE KOCK, J: Charles Henry Chave, you unlawfully and intentionally caused the death of a fellow human being; that person was your wife. You killed her by shooting her in the chest with a pistol. I need not dwell on the seriousness of the crime you have committed. Nothing can be done to restore life to the deceased; no-one can give back a mother to her children. The use of firearms to commit serious offences, which appears to be on the increase, is something (10 which the Court and society cannot and will not tolerate.

I have listened to what your counsel has said in mitigation of sentence. He invited the Court to consider imposing a totally suspended sentence in this case. That is out of the question.

There are, however, several factors the Court will take into consideration in mitigation of sentence. Inter alia, you are 62 years of age; you have a clean record; you have a good work record. The crime was committed, as far as the evidence reveals, on the spur of the moment and without (20 premeditation. You acted under the stress of circumstances over which you did not have full control and after the deceased had provoked you earlier in the afternoon at your place of employment and again that evening in your flat.

In deciding what a proper sentence would be in this case I have endeavoured to have regard to all the relevant facts including your own personal circumstances, the crime you have committed, the interests of society and the objects of punishment in general.

The sentence of the Court is TEN (10) YEARS' IMPRISON-  
MENT.

THE COURT ADJOURNS.

ON RESUMPTION:

MR GAMBLE: My instructions are to bring an application for leave to appeal. I have served a notice on your Lordship's registrar. I ask leave to hand that up.

My submissions are, firstly, that there is a reasonable possibility that another Court will come to a different con- (10  
clusion on the merits and on the sentence and, secondly, that there exists a reasonable possibility of success on appeal. I have set out the grounds of appeal in the document on pages 2 to 4 and I will briefly go through them

MR GAMBLE CONTINUES TO ADDRESS THE COURT IN SUPPORT OF HIS  
APPLICATION.

MR BAKER OPPOSES THE APPLICATION ON ALL THE GROUNDS.

DE KOCK, J: Mr Gamble now applies for leave to appeal to the Appellate Division against the conviction and the sentence (20 imposed by this Court. He has handed in a written application in which the grounds are set out. I do not propose to deal with these grounds individually, I think they are covered by the judgment of the Court.

In my view there is no reasonable prospect of success on appeal. In the circumstances the application is refused.

Mr Gamble has indicated that the intention is to petition the Chief Justice for leave to appeal.

MR GAMBLE ADDRESSES THE COURT ON THE AMOUNT OF BAIL TO BE FIXED.

MR BAKER ADDRESSES COURT ON BAIL.

DE KOCK, J: Bail is then fixed in the amount of R500. It is a condition of the bail that the accused report daily to the Mowbray police station between 6- and 8-p.m.

It is a further condition that the petition to the Chief Justice be filed within the time limits fixed by the Rules of Court.

If the application for leave to appeal is refused, the accused is to report to the Mowbray police station within two days after being notified of such refusal by the Clerk of the Court, Wynberg.

(10

If leave to appeal is granted the bail will stand until the judgment of the Appellate Division has been delivered.

THE COURT ADJOURNS.