

The 'Metamorphosis' and a twist to Licit Justice: Revisiting the bewildering verdict of the Oscar Pistorius Trial



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1. From 'Human' to 'Gunman': Revisiting Franz Kafka's 'METAMORPHOSIS'

Oscar Leonard Carl Pistorius, the South African Olympic and Paralympic athlete who beat the odds to motivate millions worldwide, was shown in the cover page of the [TIME](#) magazine of March 11, 2013 as an entity who gradually transformed into a 'Gunman' through 'Superman' from a 'Man'. These days the people even know that the romance of celebrity paralympian Oscar Pistorius and South African model and law graduate Reeva Rebecca Steenkamp did not result in an Oscar-winning comedy rather it turned into an incredible tragedy which nobody would spectate even in the nightmare. Unfortunately the tragedy was masterminded by Oscar himself in the night of Valentines' Day who for some complicated state of his psyche transformed into a 'Blade Gunner' from the 'Blade Runner' by that time. Nothing like Franz Kafka's absurdist fiction, the Metamorphosis(1915) the adverse transformation of Pistorius can be surrealistically viewed as a 'mysterious metamorphosis' as well.

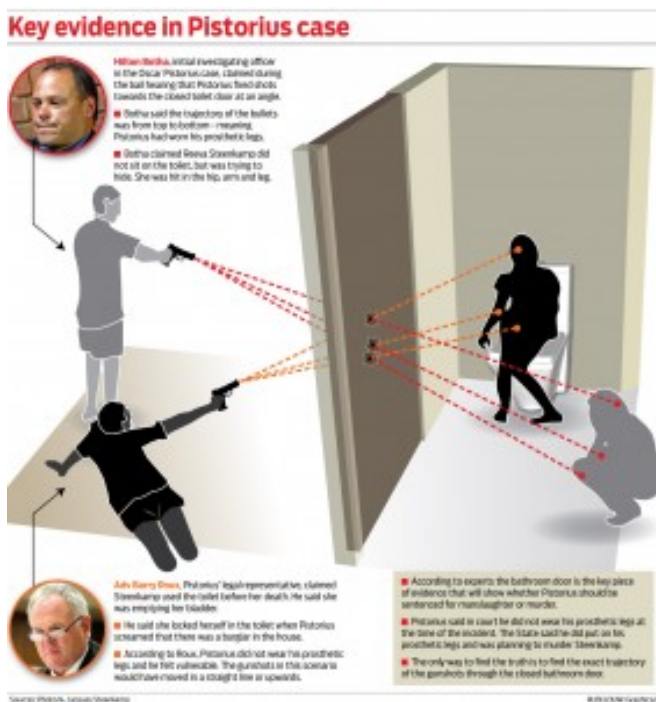
Many of us functioning in the realm of law are still skeptical as to whether justice was served to Reeva Steenkamp in the celebrated trial of Oscar Pistorius. Till today much criticism is resonating around the globe inclosing the bewildering judgment of that trial. The world is currently criticizing the judgment as an instance of 'misjudged' case based on the judge's preference on Oscar's exceptional self-exculpatory defense version (i.e. putative private defense) of that heart-rending occurrence.



y to visualise the alleged homicidal incidence.

2. The overwhelming 'televised' Trial

Being overwhelmed by camera crews, photographers and reporters from all over the world the open trial took place at the Gauteng Division of High Court of South Africa in Pretoria. Pistorius was charged along with other offences involving reckless and unauthorized use of firearms with a gravest offence of premeditated-murder for his valentine's alleged murder committed by him on 14 February 2013 in his Pretoria townhouse. Oscar was placed on trial in March 2014 and in early part of the September 2014 he was found not guilty of murder by the said division of the High Court of South Africa. In the said trial the judge Thokozile Masipa found him guilty of 'culpable homicide' (the South African Penal Law version of Common Law manslaughter) for killing his girlfriend, Reeva Steenkamp by mistake. Steenkamp, who was a 29-year-old model and law graduate, died in a small toilet cubicle when Pistorius shot her four times through the locked door just after 3 am on Valentine's Day of 2013. The defence lawyer said there are ["two Oscars"](#) - a world-class athlete and a highly vulnerable individual with a serious disability who acted out of fear, not anger, when he fired the fatal shots. On the contrary, the prosecutors described him as an egotistical liar obsessed with guns, fast cars and beautiful women, who was not prepared to take responsibility for his actions. The Court heard how [Oscar's hollow tipped bullets](#) opened and mushroomed on impact, tearing through Reeva's flesh and killing her almost instantly but the judge accepted Oscar's claim that he had mistaken Reeva for an intruder. Undeniably, it's quite tough for us to reconcile the letter of the law with the unusual way the verdict in Oscar Pistorius trial is pronounced. It seems harder not because of the less quantum of sentence inflicted upon the convicted rather the blatant 'judicial idiosyncrasy' which the ultimate decision manifested made the reconciliation tough. Because to many of us, it is always tough to understand how could an impartial judgment become so reluctant to reflect the rational version of an occurrence in its operative portion even if the improbable defense version may be taken as an issue to discuss for coming into a just decision? Nevertheless, as I am invested with the judicial function in a part of the globe, I reckon that to some extent, I too have few relevant arguments to share in the context of the present trend of critiquing the leaning judgment proclaimed in [The State v. Oscar Pistorius](#).



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dence adduced.

The conviction of culpable homicide, in South African jurisdiction, can bring a maximum imprisonment of 15 years, although legal experts pointed to five years as a guideline because unlike murder, the judge may use her discretion and suspend the sentence or only impose a fine. In the same verdict, he was also found guilty on a charge of negligently handling a firearm that went off in a restaurant. Many legal actors believe the athlete is getting off lightly, possibly because of his fame while some argue that the judge has merely followed the law and the evidence available before her. The onus was on the state to prove its case beyond reasonable doubt, which the judge, in lines 10-11 of the page no.3340 of [the judgment](#), held the State had failed to establish.

3. Premeditated Murder or not at all?

Following an extensive trial, the presiding Judge of the Gauteng Division of the High Court of South Africa gave a detailed account before announcing her verdict. She held the athlete acted "[negligently](#)" when he fired shots through a toilet door, but in the "belief that there was an intruder". It was said by the Court that the state had failed to prove that Pistorius intended to kill Reeva Steenkamp. The athlete, who became emotional after being described as an "evasive witness", seemed to have been expecting this verdict.

South Africa's prosecuting administration was "[disappointed](#)" as they were not successful in securing a conviction on the original charge of 'premeditated murder', 'negligent discharge of firearm' and 'possession of ammunition' against Pistorius. It was mentioned right after the verdict pronounced that they would wait until after sentencing to decide whether to appeal against the incumbent verdict. The bewildered and aggrieved world have questioned the presiding judge's decision to acquit him of murder and argue that the prosecution has logical grounds to appeal against that leaning judgment. The double amputee athlete had denied murdering Steenkamp after having a row with her on Valentine's Day last year, and admitted that he shot her by mistake. With this the judge agreed, saying "it cannot be said that the accused did not entertain a [genuine belief](#) that there was an intruder in the toilet who posed a threat to him." In course of the same trial he was acquitted of another charge of firing a gun in public, through the sunroof of a car, and of a charge of illegal possession of ammunition in the home where he killed Steenkamp.

4. Was Justice served?

Can we appreciate the verdict despite being an 'unusual judicial pronouncement' based on some unfounded juridical findings? Whether or not one think Oscar Pistorius got off lightly depends largely on where we stood on the case in the first place. But the verdict is certainly rumored controversial not only in South African legal spheres but also throughout other major legal systems. The parents of deceased victim Reeva Steenkamp, amidst growing discontent throughout South Africa, expressed resentment and distrust later on after Oscar Pistorius was formally acquitted of their daughter's murder, contending: "[Justice was not served](#)". Jacqui Mofokeng, a spokeswoman for the African National Congress Women's League, who supported the Steenkamps' side in trial Court, said: "They are [saddened](#) by the verdict. It's like they're mourning Reeva again. Emotions were high. Some of the families were crying when the verdict was given." There are many questions echoing about whether the judge applied the law appropriately.



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sonable doubt' issues and Oscar's plea paradox.

The South African legal system allows for various kinds of murder convictions, and the one that's important here is what is known as common-law murder with indirect intentions - or "dolus eventualis". According to the criminal law, someone is guilty of murder if s/he knows that her/his action could lead to the killing of a person and reconcile her/him to that fact, and act anyway. But the judge seems to have cleared Oscar Pistorius of this charge because she felt that, to be guilty of common-law murder, Pistorius needed to have foreseen that his actions would kill a specific person (read Reeva Steenkamp for this [case](#)). In articulating her ruling, judge Thokozile Masipa said that "a reasonable person would have foreseen if he fired shots at the door, the person inside the toilet might be struck and might die as a result", which suggests a classic case of dolus eventualis viz. the common-law murder. The state tried to prove that Pistorius was aware that it was Steenkamp behind the toilet door but the judge accepted the defence's claims that he thought it was an intruder. She put a lot of weight on the genuine remorse he showed after the fact, saying there's no way he could have faked that. But what's perhaps more interesting is the question of whether, even if he did think it was an intruder, he should be guilty of common-law murder in these circumstances - and many people believe he should. We would say that the criminal law is clear in this context- it doesn't have to be a specific person whose death can be foreseen, it can be anyone. This may be debatable; and many people have suggested that if Pistorius had killed Reeva in a fit of temper he would still be remorseful afterwards.

5. Did the Global Legal Arena perceive a 'Judicial Idiosyncrasy'?

Since there appears to be nothing to save us from the inevitable conclusion that Judge Masipa made [errors of law and errors of logic](#) we are eyeing frontward for the just decision in an appeal against both the verdict and sentence by the state after the formal delivery of sentencing mainly on the grounds that the law was misconstrued by the trial Court. We suppose there are good prospects for the state to appeal on a point of law. There's every possibility that the superior Court(Supreme Court of Appeal of South Africa) after hearing and appreciating the same evidence may come to an altered conclusion followed by imposing a stricter sentence or may reassess the verdict of culpable homicide and convict him of murder for ends of justice.

Knowing and observing Oscar Pistorius to be sentenced to 5 years imprisonment merely, it is perceived by the world of law that the justice which was served to Reeva Steenkamp and her family cannot in any way set an example for such a heinous crime. Was it something better than so-called 'judicial idiosyncrasy'?

[N.B. This is a reviewed and substantially modified version of the article titled 'A twist to licit justice:

Revisiting the bewildering verdict of the Oscar Pistorius Trial' published in the Daily Dhaka Tribune's 'JURIS' Law page . The author wants to take the privilege of offering compliments to Reajul Hasan Shohag, Advocate of the Supreme Court of Bangladesh, the Editor-in-Chief for the Volume 1 of Bangladesh Law Review and Abdullah-Al-Arif, the Senior Editor of Bangladesh Law Review and the Editor of the book 'JURIS' for priceless editing of this piece arduously. The author has also genuine feelings of gratitude to offer to Khaled Saifullah, the erstwhile Editor-in-Chief at Dhaka Law Review(a Post-Grad student at the University of Oxford currently) for intuitive comments and recommendations on the earlier version of this article. Liability for errors and statements is of the author alone.]