SCZ Appeal No. 44/2013

IN THE SUPREME COURT OF ZAMBIA

HOLDEN AT LUSAKA

(Criminal Jurisdiction)

BETWEEN:

NGENDA MUNALULA **APPELLANT**

AND

THE PEOPLE

RESPONDENT

Coram: Phiri, Hamaundu and Kaoma, JJJS
On the 3rd of December, 2013 and 9th December, 2016

For the Appellants: **Mr. C. Magubbwi, of Messrs Magubbwi & Associates**

Mr. L. Mwenya of Messrs Lukona Chambers

For the Respondent: **Mrs. M. M. Bah-Matandala**
Acting Senior State Advocate, NPA

JUDGMENT

Phiri, JS, delivered the Judgment of the Court

Cases referred to:

1. **Edward Sinyama vs. The People (1993-1994) Z.R. 16**
2. **Mwewa Murono vs. The People (2004) Z.R. 207**
3. **Imusho vs. The People (1972) Z.R. 107 (Reprint)**
4. **Abraham Mwanza and 2 Others vs. The People (1977) Z.R. 221.**
5. **Yoan Manongo vs. The People (1981) Z.R. 152**
6. **Fawaz and Chelelwa vs. The People (1995-1997) Z.R. 3**

7. **John Nyambe Lubinda vs. The People (1988-1989) Z.R. 110**
8. **Mushanga vs. The People SCZ Judgment No. 18 of 1983**
9. **Patson Simbaiula vs. The People (1990/92) Z.R. 136**
10. **The People vs. Nkata (1972) Z.R. 382**
11. **Lubendae vs. The People (1983) Z.R. 54**

This is an appeal against both conviction and sentence. The appellant, a Police Officer, was tried and convicted of the charge of ***Murder contrary to Section 200, Chapter 87 of the Laws of Zambia.*** The particulars of the offence were that on the 17th of March, 2011, at Mufulira, the appellant did murder Mubarak Zulu. He was given the extreme mandatory sentence of death.

The prosecution's case was anchored on the evidence of eight witnesses. Their collective evidence was that on the date of the offence, the deceased was at PW1's shop when a quarrel erupted between him and PW1's wife who was in the shop. At the time of the quarrel, PW1 was outside the shop. PW1 was alerted to the noise inside the shop and when he entered, he apprehended the deceased with the help of his neighbour, PW2. They both conveyed him to Mufulira Central Police Station where PW1 reported the assault of his wife. According to PW2, the deceased was in good

health and did not appear drunk. He was fully dressed in clean clothes.

At the Police Station, they found three Police Officers on duty, including the appellant. The Police detained the deceased and directed PW1 to bring his wife to the Police Station; which he did. At the Police Station, PW1's wife showed the Police Officers a swollen finger which she allegedly sustained at the hands of the deceased. The Police issued her with a medical report form and directed her to get back to the Station soon after receiving medical treatment. However, PW1 and his wife proceeded back to their shop and did not go back to the Police Station. According to PW2, he earlier witnessed the exchange of words between the deceased and PW1's wife. All the events at the shop and at the Police Station occurred between 18.00 hours and 18.30 hours.

PW3 (Lexina Zulu) was the deceased's aunt. During the evening of the fateful day, she was informed by PW4 that the deceased had been hospitalized. She rushed to the hospital and found the deceased admitted to a ward. The deceased was vomiting a green substance. PW3 stayed at the deceased's bed side for three

days until the deceased died. During that time, she observed that the deceased had been beaten on both sides of his chest and ribs which had black marks. PW3 talked to the deceased during his hospitalization and learnt that he was severely beaten at the Police Station. The beatings were directed to his head, on his groin, as well as on his private parts. The deceased showed PW3 his private parts and PW3 noticed the injuries he sustained.

PW4 (Mc Neil Mulenga) was the deceased's brother-in-law. His evidence before the trial Court was that on the 17th March, 2011, he invited the deceased to his home in Mufulira when prospects of a job arose. On the fateful day he received a phone call from PW1 who advised him to proceed to Mufulira Central Police Station to attend to a dispute between PW1's wife and the deceased. He proceeded as advised and met PW1, his wife and the appellant, who was the arresting officer. The appellant denied him access to the deceased, but allowed him to bring some food and an apple drink.

He saw the deceased the next day and the deceased looked very unwell. The deceased failed to walk and could not sit on the floor of the Police Station. He was lying down and had not eaten

the food he took to him. PW4 met the Criminal Investigations Officer (CIO) who uttered threatening statements to the deceased. The deceased was, however, released on Police Bond and taken to the Clinic where he was instantly referred to Ronald Ross Hospital due to his serious condition. The deceased was admitted to the hospital and PW4 was later joined by PW3. They made attempts to get a medical report form from the CIO, who, instead of giving them the form, became verbally abusive. Two days later, PW4 learnt that the deceased had died. He was called to the hospital where he identified the deceased's body to the doctor who conducted the postmortem examination.

PW4 observed that there was blood oozing from the deceased's nostrils and there were black marks on the left side of his ribs and on the stomach. When the doctor opened the body, PW4 noticed that there was accumulation of blood inside the body cavity and the deceased's intestines were perforated. However, when Dr. Luboya who conducted the postmortem examination issued his report, PW4 was surprised that the doctor attributed the deceased's death to an infection called "salmonella". He and the rest of the family disputed

the doctor's findings and demanded that a second postmortem examination be conducted. This was done by the Lusaka Police Forensic team headed by Dr. Musakhanov, the State Forensic Pathologist. PW4 identified the deceased's body to the State Forensic medical doctor at Chibolya cemetery in Mufulira. Both PW3 and PW4 identified the appellant as the officer who arrested the deceased and kept him in Police custody.

PW5 was Harriet Mutale, the deceased's elder sister. Her evidence on record is that she visited the deceased at the hospital on the 20th of March, 2011. She found her mother, PW3, on the bedside while the deceased lay on the floor; tossing and turning from side to side. The deceased asked to be assisted to pass some urine. In the process, PW5 undressed him but found that all his private parts had shrunk. PW5 got more scared and then the deceased said this to her: **"This is what I wanted you to see; the Police have killed me".** PW5 also observed marks of injuries on the deceased's hands, legs, and ribs; and also observed that the deceased's stomach was swollen. PW5 unsuccessfully attempted to obtain a medical report form from the Police Station; but the Police

officers declined because a more senior officer instructed them not to issue any medical report form concerning the deceased. She later lodged a complaint against the appellant and other officers at Ndola Police Division Headquarters.

PW6 was Detective Sergeant Phineas Hamuvumbe whose testimony in the Court below was that he received a report of assault from a group of five men who brought the deceased to the police station. The report was to the effect that the deceased assaulted PW1's wife while she was selling in her shop. According to PW6, the deceased was asked to remove his shoes and belt so that he is detained, but he refused to obey. Instead, the deceased charged at the appellant and held his collar. The appellant then slapped the deceased and later managed to put him down. The appellant fell to the floor together with the deceased; but managed to put the deceased in handcuffs and to remove his shoes. PW6 gave dramatic details of how all this happened. He narrated that the deceased held one of the appellant's legs in order to prevent him from using his handcuffs. This made the appellant to lose balance, and in the process of releasing his leg from the deceased, the

appellant stepped on the deceased's groin before he was finally handcuffed and detained in the Police cells. At that point, their shift came to an end at midnight. Both he and the appellant left the station at 01.00 hours and retired to their quarters.

PW7 was Detective/Inspector John Katungu who witnessed the postmortem examination conducted on the deceased's body by Dr. Luboya after the body was identified by PW4. He also attended the second postmortem examination conducted on the same body by Dr. Musakhanov, the Pathologist from the University Teaching Hospital, after the body had been exhumed at Chibolya Cemetery

The arresting officer was Assistant Commissioner Mulala Sikota (PW8) whose evidence on record is that he received a complaint from PW5 to the effect that the deceased was assaulted by a police officer from Mufulira police station and that the police officers had refused to issue him a medical report form. PW8 then directed the District Criminal Investigations Officer (CIO) to issue the medical report form, but soon after, he learnt that the deceased had died. PW8 then directed that the three officers who were on duty with the deceased should be arrested. He was later surprised

to observe that the first postmortem report on the deceased's body showed findings which were inconsistent with the alleged assault; which suggested that the deceased died from an infection.

After consultations with the Director of Criminal Investigations at Zambia Police Headquarters and the office of the Director of Public Prosecutions, a second postmortem examination was conducted by the State Forensic Pathologist. Thereafter, he arrested the appellant and charged him with the offence of murder.

In his defence, the appellant acknowledged that he received the deceased at the police station as a suspect in a complaint of assault. The deceased was brought to the station by PW1 and other members of the public. When he tried to search the deceased, the deceased became violent prompting PW6 to bring handcuffs from the CID office, after which the deceased was handcuffed and searched. The appellant denied that he assaulted the deceased. He also disputed the evidence given by PW6 to the effect that he slapped the deceased and stepped on his groin. The appellant insisted that he only touched the deceased when searching him.

The appellant's only witness was Constable Stanley Shanduba (DW2) whose testimony before the trial Court was that he saw the deceased at the inquiries office when he was brought in by members of the public. He observed that his shirt was torn and he had some scratch marks on his neck. Since the deceased was being attended to by the appellant, DW2 left the inquiries office, leaving behind PW6, the appellant and the deceased. He also indicated that the deceased was not handcuffed by any police officer at the time he left the inquiries office.

The learned trial Judge assessed the evidence on record and concluded that the deceased died from injuries he sustained whilst in police custody. The learned trial Judge also concluded that when the deceased was brought into Mufulira Central Police Station he was in good health. The Court also concluded that the Police prevented PW4 from seeing the deceased whilst in police custody because they were concealing the effects of their brutal assault on the deceased. The Court also concluded that the appellant was on duty when the deceased was brought to the police station and that all the injuries the deceased suffered were sustained during his

detention under the charge of the appellant and that the appellant did not implicate any other person or officer in the assault of the deceased person. The Court found that the appellant acted unlawfully when he assaulted the deceased without any lawful justification. The Court also found that the appellant knew or ought to have known that his brutal assault would probably cause death or grievous bodily harm to the deceased, but he did not care. The trial Court therefore, concluded that the appellant acted with malice aforethought and convicted him of the murder of the deceased, without extenuating circumstances.

Mr. Magubbwi, on behalf of the appellant, filed five grounds of appeal couched in the following words:

1. **The lower court repeatedly erred in fact and law in its judgment when it made various findings of fact based upon its own speculation and assumption which findings should be set aside for being perverse and incompetent at law.**
2. **The Judge in the Court below erred in fact and law when she selected to accept the deceased's cause of death to be as stated in postmortem report exhibit 'P2' and not postmortem report exhibit 'P1' in default of expert evidence on the said two reports.**
3. **The Judge in the Court below further erred when in the absence of any evidence, relied on the biased and speculative manner of assessing and analyzing the evidence on record in concluding that:**

"The Court therefore, finds that the deceased was brutally assaulted at the police station and died as a result of the assault".

4. **The Court below erred in fact and law when it rejected the evidence of PW6 in so far as same was favourable to and exonerated the accused person by wrongfully invoking the principle of a witness with an interest to serve.**

5. **The Court below erred when against the weight of the evidence on record favourable to the accused adjudged on page J49 that the circumstantial evidence available had taken the case out of the realm of conjecture against the accused.**

Grounds 1 and 3 of the appeal are related. In support of these two grounds, Mr. Magubbwi submitted that the assault on the deceased person could not rightly be attributed to the appellant, but to the members of the public who brought him to the police station. He argued that no medical examination was conducted on the deceased in order to rule out the assault by the members of the public. According to Mr. Magubbwi, the trial Court speculated that police brutality was behind the assault. He alleged that the deceased did not mention the appellant's name during the three days he was admitted to the hospital ward. He also alleged that the statement allegedly made by the deceased to PW5 that: **"this is what I wanted you so see, the police have killed me",** was not supported in law as a 'dying declaration' whose definition and standard was set in the case of **Edward Sinyama vs. The People[1].**

The gist of Mr. Magubbwi's argument is that the deceased failed to disclose the identity of the assailant to PW3 (Lexina Zulu) who nursed him at the Hospital until his death on the third day of his admission. It was submitted that it was highly questionable that the deceased could have disclosed the identity of the assailant to PW5 on the latter's singular visit to the deceased's hospital bed on 20th March, 2011. It was contended that the deceased's statement to PW5 fell short of the requirements of a contemporaneous or spontaneous statement.

In support of the latter argument, Mr. Magubbwi also referred us to the case of ***Mwewa Murono vs. The People***[2], in particular to a passage on page 214 where we said that:

> **"This evidence indicates that quite a considerable time passed between the assault and the making of the statement. We agree with the learned Chief State Advocate that the statements made by the deceased were not contemporaneous or spontaneous with the event. The possibility of concoction or distortion was very high in the circumstances of this case".**

In support of ground 2, Mr. Magubbwi submitted that it was a misdirection by the lower Court to make a finding that the cause of the deceased's death was as indicated in exhibit **'P2'** and not exhibit **'P1'** in the absence of oral evidence adduced by the medical

experts who prepared the medical reports. In support of this ground we were referred to the cases of ***Imusho vs. The People***[3] ***and Abraham Mwanza and 2 Others vs. The People***[4]. The latter case dealt with the absence of medical evidence, either verbally or by way of a written medical report. The ***Imusho case***[3] dealt with the principle of none interference with findings of fact and the principle of fair conduct.

In support of ground 4, Mr. Magubbwi attacked the manner and style which the learned trial Judge adopted in the application of the principle of a witness with an interest to serve, which, according to Mr. Magubbwi was applied wrongly. He argued that the evidence given by PW6 showed that the appellant accidentally stepped on the groin of the deceased; and that this was a possible cause of his death. He stated that the evidence of PW6 introduced a lesser charge of manslaughter as it revealed no intention on the part of the appellant to cause the deceased's death. In this regard, we were referred to our decisions in the cases of ***Yoan Manongo vs. The People***[5] ***and Fawaz and Chelelwa vs. The People***[6].

In support of ground 5, Mr. Magubbwi argued that the circumstances of this case did not take it out of the realm of conjecture on the ground that there was more than one inference which could be drawn based on the two postmortem reports produced. It was also argued that the police witnesses, who testified against the appellant, in particular the CIO (PW8), should not have been used to implicate the appellant. Mr. Magubbwi further stated that when the appellant did not issue a medical report form to the deceased's relatives and did not allow them to visit the deceased, he was merely obeying superior orders. On the basis of these arguments, we were urged to quash the conviction and acquit the appellant.

On behalf of the people, Mrs. Bah-Matandala supported both the conviction and sentence; and argued that the judgment addressed all the elements required to prove the charge of murder against the appellant. Mrs. Bah-Matandala analysed the judgment of the lower Court and urged us to uphold the conviction and dismiss the appeal.

We have very carefully considered the judgment of the lower Court and the record of appeal. We have also meticulously examined the evidence on record as well as the grounds of appeal and the arguments presented before us. We will consider grounds one and three together as they are related.

Grounds 1 and 3 attacked the findings of fact made by the lower Court and labelled them as speculations and assumptions. Mr. Magubbwi alleged that the many findings of facts contained in the judgment were perverse and incompetent at law. In so arguing, Mr. Magubbwi, in the main, alleged that there was no medical examination done or performed on the deceased between the time he was at the shop and when he was conveyed to the police station; and that the Court erroneously found that if the people at the shop had assaulted the deceased, the assault was not serious as to cause his death.

There is evidence on the record to categorically establish that the deceased was fit and in good health, sober and well dressed when he visited PW1's shop. He had come to Mufulira from his village barely three days before the fateful day. There is also

evidence that the deceased was unknown to PW1 and PW2 who took him to the police station after a minor altercation; and yet their evidence is that he was apparently in good health and did not spot any evidence of injury caused by assault. Thus, the evidence of PW1 and PW2 establishes, conclusively, that the deceased was fit and healthy when he was placed under the charge of the appellant at Mufulira Police Station.

In the meanwhile (PW4) was prevented from visiting him at the police station. He was also prevented from giving him food. The Police also rejected PW4 and PW5's request for a medical report form; and yet, the appellant released the deceased from police custody into the custody of PW4 on an apparent Police Bond with a warning that he should be returned to the police station for the Court process. By the time of this callous release from Police custody, the deceased had suffered very serious injuries; such that he could neither sit nor stand, or walk. He was unable to move his bowels or urinate. The appellant still refused to issue a medical report form, and he did not take the deceased to the nearest clinic or hospital.

There is unanimous evidence confirming that from the time the deceased was taken to Mufulira Police Station to the time he became an invalid with multiple fatal injuries, the deceased was under the care and charge of the appellant.

In his defence the appellant did not extricate himself from handling the deceased at the Police Station until he handed him over to PW4 as a gravely injured suspect purportedly on a police bond. He placed himself at the scene of the offence with the deceased. The critical conclusions drawn by the learned trial Judge were that:

1. The deceased did not have any injuries when he was taken into Police custody and he was in good health
2. The deceased died from injuries he sustained whilst in Police custody overnight.
3. The Police prevented PW4 from seeing the deceased whilst he was in Police custody.
4. The Police refused to issue a Police medical report form.
5. The deceased was under the care and charge of the appellant who did not implicate any other person involved in assaulting the deceased.

The most logical assessment and analysis of all the evidence given by the prosecution witnesses, the appellant and his witness

(DW2), shows proof that the trial Court's conclusions were based on findings of fact which this Court cannot interfere with because they are evidence based, and factual. The evidence shows that this is a typical case of brazen Police brutality committed by an uncontrollable police officer on a person suspected of a very minor infraction; namely, a verbal altercation with a shopkeeper over the price of a beer. It is a typical case of a healthy man being walked into a Police Station in broad daylight and ending up on the floor behind the enquiries desk the next morning, as an invalid.

These facts present very strong and compelling circumstantial evidence against the appellant, who was in charge of the deceased person at Mufulira Police Station from the time he was taken into Police custody from PW1 and PW2, to the time the appellant released him on police bond to PW4. In addition, the learned trial Judge duly considered and assessed the statement attributed to the deceased by PW3 and PW5, his sister, at the time the deceased requested her to help undress him so that he shows her the injuries on his private parts. The learned trial Judge began her assessment

of the deceased's statement with a quotation of a passage from **'Phipson on Evidence'** where the learned authors state that:

> **"In trials of murder or manslaughter, oral or written declarations of the deceased person are admissible to prove the circumstances of the offence provided (1) the declaration was made under a "settled hopeless expectation" of death, (2) the declarant would have been a competent witness. The grounds of admission are (1) death; (2)necessity, for the victim being generally the only eyewitness to such crimes, the exclusion of his statement would tend to defeat the ends of justice; and (3) the sense of impending death, which creates a sanction equal to the obligations of an oath".**

The learned trial Judge was alive to the settled principle of law that a Judge has no discretion to admit hearsay evidence even though it might appear to be the best evidence adduced. She then proceeded to examine all the evidence and the facts of this case, before reasoning that the statement that **"this is what I wanted you to see; the Police have killed me",** was made in extremity; that the deceased was at the point of death and that every hope of this world was gone; that the fact that he did not even care if his own sister saw his private parts is further indication that he had lost every hope of this world and knew that he was not going to meet his sister again to bear the shame of her having seen his private parts; that, therefore, every motive for falsehood was silenced and the deceased's mind was induced by the most powerful

consideration to speak the truth. With this reasoning, the learned trial Judge proceeded to admit the deceased's statement as a dying declaration, which was an exception to the rule against the admission of hearsay evidence.

We have considered the authority cited by the learned trial Judge as well as her reasoning flowing from there. We have also considered Mr. Magubbwi's arguments and we are satisfied that the learned trial Judge was on firm ground when she admitted the deceased's statement into evidence as it met all the requirements and standards of a dying declaration as set in the case of **Edward Sinyama vs. The People**[1]. We find no merit in grounds one and three of the appeal.

The second ground of the appeal assailed the learned trial Judge's decision to accept the deceased's cause of death to be; 1) severe head injuries and fracture of the cervical spine, 2) Hypodermic shock due to external bleeding, as stated in the second postmortem examination report compiled by Dr. Musakhanov exhibited as **'P2'** instead of the first postmortem examination report

compiled by Dr. Luboya and exhibited as **'P1'** in which a salmonella infection was indicated.

We do take note in this case that two postmortem examinations were conducted on the body of the deceased by two different doctors. The first in time was conducted by Dr. Luboya at Ronald Ross General Hospital in Mufulira where the deceased was admitted for treatment, but later died. The second postmortem examination was conducted by Dr. Musakhanov after the deceased's body was exhumed at the cemetery for that purpose. The explanation given by the Police through PW8 was that the Police and family members were dissatisfied with the report by Dr. Luboya which indicated the cause of death as "intestinal perforation due to an infectious process to be determined by the laboratory findings". This dissatisfaction ignited a request for exhumation and a further postmortem examination by the State Forensic Pathologist.

Dr. Luboya's observations were:

"Obvious signs of injuries were found (bruises and lung hematoma) but they are not likely to cause death".

Dr. Musakhanov's observations were:

> **Acute generalized peritonitis, b) Hemorrhagic necrosis of small intestine with perforation, c) blunt force abnomino-pelvic injury, and d) Head injury".**

Mr. Magubbwi's argument was that the learned trial Judge should not have accepted the postmortem examination report compiled by Dr. Musakhanov without further oral evidence from the doctors.

Before we proceed any further, we wish to reiterate that there was nothing peculiar or inappropriate on the part of the prosecution to produce before the trial Court evidence of two postmortem examination reports with different conclusions as to the cause of death. If the prosecution had withheld any of the two postmortem reports, that would have been peculiar and inappropriate, and to the advantage of the appellant because it is a settled principle of evidence that failure to produce evidence only available to the Police, raises a presumption that the evidence is favourable to the appellant. In the case of **John Nyambe Lubinda vs. The People**[7], this Court held that:

"Where evidence available only to the Police is not placed before the Court it must be assumed that had it been produced it would have been favourable to the accused".

It is also pertinent to observe that medical evidence as to the cause of death is not always conclusive. In the case of **Mushanga vs. The People**[8] this Court pronounced that:

"Medical evidence presented to the trial Court may or may not be conclusive. However, the Court is bound to consider the medical evidence together with all other relevant evidence. Its quality and weight will be assessed in light of all other facts and circumstances of the case".

In the present case, there was conclusive proof that the deceased was assaulted. He suffered injuries from the assault and died three days later without the opportunity of a *novus actus interviens*. The learned trial Judge was entitled to accept the postmortem report issued by Dr. Musakhanov as an indication that the assault caused the death. In any event, the report by Dr. Luboya indicated that he equally observed "obvious signs of injuries", although he did not attribute those injuries to the cause of his death. The observations by Dr. Luboya also equally satisfy the requirement of causation of death. In saying so, we repeat what we stated in the case of **Patson Simbaiula vs. The People**[9], that:

"Where a person inflicts an injury and the injured person later dies of a cause not directly created by the original injury, but caused by it, the requirement of causation is satisfied, where the of death can be traced back in a clear chain to the actions of the person causing the injury, it is not always necessary for direct evidence to be led that the injured person received proper medical treatment".

The submission that the postmortem examination report issued by Dr. Musakhanov should be overlooked holds no attraction for us. We find no merit in ground 2 of the appeal.

Ground 4 of the appeal criticised the learned trial Judge for discounting the evidence of PW6 as a witness with an interest to serve. According to Mr. Magubbwi, the evidence given by PW6 showed that the appellant accidentally stepped on the groin of the deceased; and that this was a possible cause of death which introduced a lesser charge of manslaughter as it revealed no intention on the part of the appellant to cause the deceased's death.

It is common cause that PW6 was on Police duties in the company of the appellant when the deceased was walked into the Police Station. It is apparent from the judgment of the lower Court that the Court did observe and explore the inconsistency in the evidence of PW6 and elected, for good reason, not to place any weight on it because PW6 was found to be deliberately protective of

the appellant. This assessment was within the power of the learned trial Judge to make, for good reasons. Firstly, the appellant in his defence rejected the evidence given by PW6 that he slapped the deceased and stepped on his groin. Secondly, the appellant did not advance the defence of accidental homicide. He categorically denied assaulting the deceased and stepping on his groin. His explanation was that he only touched him when he searched him. The essentials of the defence of accident were explained in the case of **The People vs. Nkata**[10] that:

> **"Where a man doing a lawful act, and without any intention of hurt, accidentally kills another, it is homicide by misadventure".**

None of the essentials of the defence of accident were present in this case (see also the *ratio decidendi* in the case of **Lubendae vs. The People**[11]). Thirdly, PW6 was one of the three Police Officers who were detained by PW8 as suspects in connection with the deceased's death. PW6 was certainly in the category of suspect witnesses, and was duly treated as such by the learned trial Judge. We find no merit in ground 4 of the appeal.

Ground 5 of the appeal suggested that the circumstantial evidence in this case did not take the case out of the realm of

conjecture on ground that there was more than one inference that could be drawn from the facts, based on the postmortem examination reports. The suggested inferences are that the deceased could have been assaulted by members of the public, or that he could have died from an infectious disease. We have already effectively dealt with the veracity of the findings of fact and the conclusions made by the learned trial Judge. We stated that the conclusions were supported by strong and compelling circumstantial evidence based on findings of fact which we cannot interfere with. We find no merit in ground 5 of the appeal. The net result is that this appeal fails on all grounds and we dismiss it.

G. S. Phiri
SUPREME COURT JUDGE

E. M. Hamaundu
SUPREME COURT JUDGE

R. M. C. Kaoma
SUPREME COURT JUDGE