

IN THE SUBORDINATE COURT OF THE FIRST
CLASS FOR THE LUSAKA DISTRICT
HOLDEN AT LUSAKA

SSPB/115/2016

(Criminal Jurisdiction)

THE PEOPLE

V.

ALICK PHIRI

JUDGMENT

The Juvenile offender stands charged with one count of assault occasioning actual bodily harm contrary to section 248 of the Penal Code Chapter 87 of the Laws of Zambia. Particulars of offence allege that on 2nd August, 2016, the juvenile at Lusaka in the Lusaka District did assault one Given Siwalozi thereby occasioning him actual bodily harm.

The juvenile pleaded not guilty.

I warn myself at the outset that the onus is upon the prosecution to prove its case beyond all reasonable doubt and there is no onus on the juvenile offender to prove his innocence. If the standard of proof is not met and doubt is created in my mind, then I am duty bound to

resolve that doubt in favour of the offender and thereby enter a finding of not guilty.

To succeed on this charge, the prosecution must prove beyond reasonable doubt the following elements of the offence:

1. That the aggrieved party, Given Siwalози, was assaulted by the juvenile offender
2. That he, as a consequence thereof, suffered actual bodily harm

In support of its case, the prosecution called three witnesses.

PW1 was the aggrieved party, 22 year-old Given Siwalози whose evidence was that on 31st July, 2016 at around 19h00, he was by a roadside shop near his home in Ng'ombe compound buying airtime when he was accosted by a group of about 5 to 6 people. The said group started beating him and he was able to recognise the now juvenile offender amongst the members of the group. He said the shop is well lit and so he was able to clearly see the juvenile whom he knows very well. They play football together. According to PW1, the juvenile offender punched him on his left cheek and then went on to trip him and he fell to the ground. He stood up but was tripped for the second time and he broke one tooth. In addition, he sustained a cut on the inner lower lip. PW1 said he went to Ng'ombe clinic the following day after reporting the matter to the police. He was however referred to Chipata Clinic as Ng'ombe does not have a dental clinic. He identified the medical report issued him and it was marked ID1. In Conclusion, PW1 said it was not only the juvenile offender that beat him but the other members of the group as well.

When cross examined, PW1 stated that the juvenile offender beat him first. He said he reported the juvenile to the police because it is him

that he recognised. He denied the assertion that he was beaten because he insulted the juvenile's friends. He also denied having been drunk. He further denied the assertion that his tooth was broken long before the encounter.

PW2 was 21-year-old Lucky Chimanga also of Ng'ombe compound who told court that PW1 is his nephew. He testified that on 31st July, 2016, around 19h00, he was by the roadside chatting with his friends when he saw PW1 walking with a phone in his hand. On his right was a group of people and amongst them was the now juvenile offender. According to PW2, after PW1 bypassed the group, he heard murmurs from the group that "he was the one". To his surprise, the group descended upon PW1. It was PW2's testimony that the juvenile punched PW1 on the cheek and PW1 fell on a rock. The juvenile's friends then started stomping on him and according to PW2 he could not rescue PW1 as the assailants were many. He instead ran home to alert the elders but by the time he returned to the scene with them, the juvenile and his friends had left. PW2 said he observed on PW1 a cut on the lower lip and a broken tooth. When asked if he had recognised any of the group members, PW2 said he only recognised the juvenile offender who punched PW1.

When cross examined, PW2 said the juvenile was in group of about 8 and not 3. He also stated that he was able to identify the juvenile because they play soccer together. He denied the assertion that the PW1 has always had a broken tooth.

PW3 was Dt. Constable Lewis Malamba of Lesoleil Police Post whose evidence basically was that upon receipt of the docket containing the allegation of assault that occurred on 31st July, 2016, he interviewed the complainant as well as the juvenile offender. The juvenile denied

having committed the offence. Not satisfied with response, he made up his mind to charge and arrest him for the subject offence. As custodian of the medical report, ID1, PW3 tendered it in evidence and it was admitted marked P1.

When cross examined, PW3 stated that he was not aware that PW1's elder brother had given a statement that PW1's tooth was already broken and it was only the gums that were shaking.

When cross examined by the juvenile's guardian, PW3 stated that he did receive the report that the juvenile offender did not act alone but he did not manage to locate the other assailants as the juvenile failed or neglected to lead him to his colleagues. Further, the witnesses' statements were that the juvenile started the fracas.

In his defence, the juvenile offender (aged 18) elected to give evidence on oath and called no other witnesses.

It was his testimony that on the material day, he was in the company of his friends Luka and Joe on their way from the Show grounds when he met PW1. According to the juvenile offender, PW1 insulted his friends and his friends wanted to beat him but he stopped them. The juvenile said he pushed PW1 and told him to run away because he was drunk. The Juvenile offender said he thereafter proceeded home. Five days later, PW1's brother and some cadres apprehended him and beat him up. They bundled him onto a bus and threatened to kill him and dump him in Ngwerere. However, a voice of reason prevailed and he was taken to the police where he was placed in custody without an opportunity to explain. After two days, he explained to PW1's brother that he did not assault PW1 but that his friends did. The juvenile offender said he also told the police that he and PW1 used to go to the

same school and his teeth have always been like that. Subsequently, the brother told him that they would forget about the assault charges provided he returned the phone that went missing. The police, however, refused to entertain the phone issue as it was reported days later.

When cross examined, the juvenile offender denied beating the complainant. He said he was trying to stop him from fighting. He also said he could not have beaten the complainant as he knows him very well. The juvenile reiterated that the complainant's tooth broke long ago. He however admitted the fact that the gums were shaking due to the beatings.

This is the evidence on record. Having considered the evidence, I must now state my findings of fact. I find that on the material day, the Juvenile offender and PW1 had an encounter. I also find that the juvenile was in the company of others during the said encounter. It is a fact that PW1 sustained an injury to his mouth including the lower lip. The medical report P1 indicates that his lower lip was bruised and the upper incisor (tooth) was chipped. I am therefore satisfied that PW1 was assaulted on the material day.

The indictment shows 2nd August, 2016 as the date of the incident but it is clear from the evidence of all three prosecution witnesses that the incident occurred on 31st July, 2016. 2nd August is the date on which the medical report was signed.

Further, the juvenile strongly disputed causing the chipping of the tooth. He insists that PW1's tooth broke a long time ago.

As such, what I ought to determine is whether or not the tooth was broken in the fracas of 31st July and whether the injuries suffered generally were at the hands of the juvenile offender.

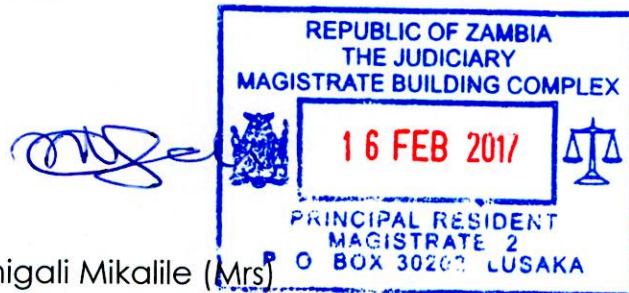
I have carefully considered the evidence in its entirety. As found, PW1 was assaulted on the evening of 31st July, 2016. The evidence clearly shows that the juvenile offender whilst acting with his friends caused injury to PW1. The evidence of PW1 which was corroborated by PW2 is that the juvenile offender actually punched him on his left cheek. I have considered the fact that PW2 is PW1's relation but I find as credible his evidence rather than the juvenile offender's evidence. The juvenile offender in one breath attempted to establish that he stopped his friends from beating up PW1 and that he merely pushed him so as to send him away. In another breath, however, the juvenile offender told court that he did not beat PW1 but that his friends are the ones who beat him. These are two conflicting statements. In the second statement, the juvenile is actually admitting the fact that PW1 was assaulted and this testimony corroborates the medical evidence showing that PW1 had injuries to his mouth.

Clearly therefore, the juvenile participated in occasioning actual bodily harm on PW1. In any event, the act of pushing, which the juvenile has admitted, is an assault in itself as it led to PW1 falling and sustaining injuries.

I have considered the juvenile's insistence that PW1's tooth broke long ago but I have dismissed it as a fabrication because it was not in any way substantiated. No other person came to court to confirm that the tooth was broken way before the incident in question. I have no doubt that the tooth was chipped when PW1 fell as a result of being pushed by the juvenile offender.

In conclusion therefore, I have no doubt in my mind that the juvenile offender, whilst acting with others unknown, assaulted the complainant, PW1, contrary to section 248 of CAP 87. As such, I enter a finding of GUILTY against the juvenile offender.

DATED THE 16th DAY OF FEBRUARY, 2016



Mwaaka Chigali Mikalile (Mrs)

PRINCIPAL RESIDENT MAGISTRATE