

IN THE HIGH COURT FOR ZAMBIA
HOLDEN AT LUSAKA
(Criminal Jurisdiction)

HP/147/2016

BETWEEN:

THE PEOPLE

V.

ZONDANI MTONGA

NCHIMUNYA N'GANDU



BEFORE HON. MR. JUSTICE M. CHITABO, SC

For the State: Mrs. A. K. Mwanza - Senior State Advocate

For the Accused: Mr. C Siatwinda – Senior Legal Aid Counsel

JUDGMENT

Cases referred to:

1. *Banda v the People* CAZ Judgment No. 15 of 1968
2. *David Zulu v The People* (1977) ZR 151
3. *Patrick Sakala v The People* (1980) ZR 205
4. *People V Hamanda* (1972) ZR 310
5. *Tepeb v R* (1952) AC 48

6. *The People v Inonge Anayawa Lubinda Sinjambi HT/23/2010*
7. *The People v Maketo and 7 other v the People (1979) ZR 23*
8. *R v Baldrey [1852] 2 Den Cr. 120*

Legislation Referred to:

1. *Penal Code Chapter 87 of the Laws of Zambia*

The accused persons stood charged with two counts of the offence of Murder contrary to section 200 of the Penal Code Chapter 87 of the Laws of Zambia.

Particulars of count one are that the accused persons on 17th February, 2015 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together did murder one Nodzi Sibanda (hereinafter referred to as “**1st deceased**”).

Particulars of count two are that the accused persons on 6th April, 2015 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia jointly and whilst acting together, did murder one Priscilla Felistus Mulinda (hereinafter referred to as “**2nd deceased**”).

Both accused persons pleaded not guilty to the charge. The State called eight (8) witnesses to support its case.

PW1 was **Priscilla Mapulanga** of Kanyama compound who testified that she was married to the 2nddeceased’s young brother but that the said marriage had since ended. She said she had continued being friends with the 2nddeceased and sometime in April, 2015 on a

Sunday the 2nd deceased went to Mandevu. At around 18:00hrs the witness also followed her to Mandevu. She met the 2nd deceased at Warriors Night Club where they chatted as the witness drunk beer while the 2nd deceased drunk a soft drink. She disclosed that the two were sex workers.

At around midnight the witness was drunk and she told the 2nd deceased to watch over her as she slept in the bar and told her that she had left her phone at the counter. While she was asleep, the 2nd deceased told her to hold the phones for her as she was going. The witness continued sleeping until around 04:00hrs when she started looking for the 2nd deceased. She inquired if anyone had seen her and a search around the night club found that she was not around. She narrated that the time she slept the 2nd deceased had not yet found a man and that when the 2nd deceased told her she was going she assumed she was going to the room within the club with a man. She inquired from the lady who sold the rooms but found out nothing useful. She left the club at around 05:00hrs and got on a bus from town to her residence in Mutanda Bantu. She later received a phone call from the receptionist who told her that her friend had been killed at Warriors. The lady also told her to inform the 2nd deceased's relatives.

Later when the body was picked and taken to the mortuary, the witness went to identify the body. The UTH police then told them to go to Emmasdale police where the family went while the witness

proceeded to the funeral house. She was summoned to go to Emmasdale Police and made a statement.

She explained that it was normal practice to leave phones to avoid theft and that at times they would leave chitenges or clothes for changing. She stated that the clothes that the 2nd deceased left at the reception were collected from the receptionist by the police.

When cross examined by Defence Counsel, Mr. Siatwinda she admitted that she was patronizing for prostitution. She said they had a choice of which men would go with them even though they did not know the men. She said she did not know if the 2nd deceased had gone to the rooms with a man.

In re-examination she clarified that she did not know for certain if the 2nd deceased had been booked.

PW2 was **Precious Mubinda** of Kanyama Compound who testified that she was a business lady selling clothes and shoes. She narrated that on a Monday in April, 2015 she was supposed to go and get orders but the minibus she was on had a problem. While on her way to town she received a call from her first born child who informed her that her sister, the 2nd deceased was dead. She went back home and found her daughter with two phones belonging to the 2nd deceased. She told her that PW1 was the one who brought them. The witness went to PW1's house where she confirmed the news and PW1 gave her the number of the person who told her about the

death and when the witness called she was informed that the body had been taken to the mortuary.

She then followed to UTH mortuary in the company of two of her friends. After identifying the body she proceeded to Emmasdale police where she reported the matter. Three months after the burial the police summoned her to Emmasdale police and while there they brought two people and she recognized one of them. She explained that she had met him before with her sister but her sister did not introduce them. On another occasion she met the same man and her sister told her that she used to go out with him but the relationship had since ended. Further, that since that time he kept warning the sister that "my sister you will see".

She identified the person she saw and recognized at the police station as A1. She recalled that at the mortuary she noticed the 2nd deceased's neck was swollen, her dress torn and a visible stab wound on the head and on the left side of the chest.

When cross examined she told the Court that she remembered giving a statement to the Police on 6th April, 2015. She stated that the statement was not read back to her but she identified her signature on the statement. She further stated that she said she did not know if the police recorded a statement when she met with A1.

PW3 was **Boniface Mulenga**, a shoe repairer of Marapodi Compound who testified that one morning in April, 2015 he woke up and heard people shouting that there was someone dead. When he

approached where the people were, he found a girl in a makeshift stall with blood on the face facing downwards. He then left and later the police came to pick up the body. Two months later, the police came to the area where he operated from. One of the men with the police was A1 and he was pointing at the stall and stated that it was him and Zachariah who killed the person who was found there. He heard A1 explain that the 2nd deceased was with a man and the intention was to capture both of them but the man ran away.

He further narrated that he heard A1 say they beat up the 2nd deceased and she said "Zondani, is this what you can do to me". A1 then stepped on her neck until she died. While explaining this he saw A1 pointing at the stall which was the witness' and he used it as a barbershop. He went on to state that the second person said he was Nchimunya, A1 and he was dissociating himself and said A1 and Zachariah killed the 2nd deceased and that he only assisted in taking her to the stall. He said this happened at around 14:00hrs in the afternoon. He identified A1 and A2 as the two who took the police to the stall.

In cross examination the witness explained that when the accused persons were brought to the area, the police were not in uniform and that he did not see any firearm with the police. He confirmed the two suspects were in handcuffs and added that the police did not say that the two were not the ones who killed the 2nd deceased.

PW4 was **Goodson Aluvela Namagonze** of Kaseba Compound in Kafue. He testified that on the morning of 6th April, 2015 he received

a phone call from his young sister PW2 who informed him that his sister, the 2nd deceased was found dead in Mandevu compound. When he followed up with Emmasdale Police he was informed that the body had been taken to the mortuary. An officer called Sikana told him that he would be required when the postmortem was to be conducted on 10th April, 2015. On that day he was present during the postmortem and was in the company of his sister PW2 and a police officer.

He said he noticed that the 2nd deceased had deep cuts on her neck and bruises and it was found the injuries sustained on the neck and head were what caused the death of the deceased. He said the deceased was in good health at the time of her death.

PW5 was **George Gwizihanda** of Northmead area in Lusaka who testified that on 17th February, 2015 he received a phone call at around 05:00 to 06:00hrs from Chitalu, the 1st deceased's friend, who told him to wake up his mother and inform her that his aunt had been attacked. When he informed his mother, his mother started off for Garden compound. They drove to Garden and were alerted by a mob of people and parked the car at a distance and rushed to the scene and when they reached they found the police taking photos.

He informed the police he was the first deceased's nephew and they asked him to identify the body which he did and he noticed a screw driver stuck in her back. He said he went to Emmasdale Police and

gave a statement. He added that the first deceased used to stay near the sewer tanks in Garden compound.

PW6 was **Mary Nyirenda** of Garden Compound who testified that she used to stay with the 1st deceased person for six years and that used to work in Kabulonga for a certain white person and used to go for work at around 05:00. On 15th February, 2015 she greeted them and retired to bed and the following morning they heard the door open and she left for work. After a little while they heard her screaming for the mother to Emmah. The witness woke up and rushed to where she was murdered. The police came later and when the body was turned she saw a screwdriver and when she saw the screw driver she fainted and did not even know when the body was taken to the mortuary.

PW7 was **Patricia Sibanda** who testified that on 17th February, 2015 at around 06:00hrs she received a call from her aunt Belezya Sibanda and informed her that her aunt Nosizwe Sibanda had been murdered in Garden Compound. She said she was driving from Mumbwa at the time and drove straight to UTH where she found the body lying in the canter with a screw driver embedded in her back. The body was taken to the Mortuary and on 19th February, 2015 she said she went to identify the body in the presence of two police officers from Emmasdale Police and a Doctor. She explained that she had last seen the 1st deceased two weeks before her death.

PW8 was **Detective Sergeant Sikana** a police officer at Chilanga Police Post. He testified that he was previously stationed at Emmasdale Police before he was transferred to Chilanga Police.

He narrated that between the years 2013 and 2015 the station had recorded a number of murders and he was assigned to investigate the murders of Nozi Sibanda, the 1st deceased and Felistus, the 2nd deceased. The 1st deceased's body was recovered on 17th February, 2015 while 2nd deceased's body was recovered on 5th April, 2015 in Mandevu compound. He explained that the Postmortem of Nozi was conducted on 19th February, 2015 while Felistus' postmortem was conducted on 10th April, 2015.

He said they had some information that there was a suspected group who named themselves 'Boko Haram' and in July, 2015 there were some suspects who were apprehended for burglaries. While the suspects were in custody, there was some information that surfaced that the same suspects were part of the Boko Haram group. Amongst the said suspects were A1 and A2 together with Fred Malambo and Masauso Daka.

He testified that based on the information they received they questioned the suspects and A1 led them to the home of Zacharia Mwamba in Kaunda Square but did not find him at his residence. The other suspects were convicted in other burglary cases. He said that after conducting investigations he recorded a warn and caution statement from A1 and A2 and according to him the two accused persons gave free and voluntary statements admitting to the offence,

which statements were read back to them and signed by both A1 and A2.

Defence Counsel strongly objected to the production of the confession evidence stating that his instructions were that the same was not freely and voluntarily given. The Court conducted a trial within a trial to establish the voluntariness of the alleged confession statements. At the close of the trial within a trial the Court ruled that the confession evidence given by both A1 and A2 with respect to both deceased persons were freely and voluntarily given.

When the witness was called back to the stand he continued to testify that upon considering the postmortem reports and the statements he made up his mind to charge A1, A2, A3 and A4 for the offences of murder of the two deceased persons. A1 and A2 confessed while A3 and A4 denied the charges.

He explained that he visited the crime scenes and he identified the screw driver that was found embedded in the second deceased person's body and the same was admitted into evidence and marked exhibit P1. He also identified the Postmortem Report for Nozi Sibanda and that of Felistus Pricilla Mulinda and the same were admitted into evidence and marked exhibits P2 and P3 respectively. A1's statement with respect to Felistus Mulinda was admitted into evidence and marked as P4 while his statement with respect to Nozi Sibanda was marked as exhibit P5. A2's confession statement with respect to Felistus Mulinda was admitted into evidence and marked exhibit P6 while the statement with respect to Nozi Sibanda was

admitted into evidence and marked exhibit P7. The witness read the said statements which detailed how the two deceased person were individually murdered and with respect to Nozi Sibanda, it detailed how the parties involved shared the K2,500 that was found with Nozi Sibanda.

When cross examined by Mr. Siatwinda the witness told the Court that it was not possible to uplift fingerprints from the screwdriver while it was embedded in the body because the handle for the screwdriver was in the soil. He stated that at the time he visited the crime scene A1 and A2 were with him and that they were led to the scenes by the two accused persons.

At the close of the prosecutions' case I found A1 and A2 with a case to answer and having found no prima facie case established against A3 and A4, I found them with no case to answer and accordingly acquitted them. Both A1 and A2 elected to give evidence on oath and called no witnesses.

DW1 was **Zondani Mtonga**, A1, who testified that on 2nd February, 2015 he was asleep at home in Garden Compound and was awoken by the police who came to his house. When they entered the house he inquired why they were there and they told him to just follow them. He was taken to Muzaleka Police Post and when he reached there he was put in police custody. He was later taken to the CID where they questioned him about a TV and he told them that he did not know the issue of the TV. He said the officers then started beating him and when they persisted in beating him under his feet

he told them that the TV was hidden in a bush in Foxdale area and that they could go and get it. He led them to where the TV was hidden and when it was retrieved they went back to the police station. He explained that he worked at the house next to the house where he stole the TV from.

When they went back to the police he was charged for the offence of burglary and theft of the same TV and he was put in police custody. He narrated that he was in police custody for two months when he was taken back to Mr. Ndeleki's office. There he found Mr. Mbola who directed that he should not be released and Mr. Mbola brought a list and said that A1 should be put on a swing. He alleged that they started beating him and said that he was the one who murdered the person at Warriors Night Club.

He however denied murdering the person and they continued beating him and he was later taken back into police custody. Whilst in custody three officers from Emmasdale Police took him in a Police Vehicle and they told him that he should tell them exactly what he had told them where there were going. When the beatings persisted he told them that he would tell them what he would see there. He told them that he did not know anything. He was handcuffed and put behind the van and was taken to Warriors Night Club. When they got there, the officers disembarked and went to where that person died while he remained in the van

According to him, while there they found four people. One of them was a shoe repair man, PW3, who was taken to where he was in the

van. They told PW3 that A1 was the one who murdered that person. They asked him to tell PW3 what he knew and because he was scared of the beatings he told PW3 that it was them who killed the deceased. They apprehended PW3 and they all went to Emmasdale police and A1 returned to police custody while PW3 went upstairs.

He said when he was taken to Court he thought he was going for burglary and theft but they also added the offence of murder. He denied both charges and from there he was taken to remand prison. He said he did not raise the issue of the beatings because they waited until he healed.

With regard to the second count he narrated that while in police custody, the police continued beating him so he admitted to everything. He said they got him from police custody and took him to 'Garden Ze Bank Bar'. The police officers told him to tell the people they would find what he had said. At that bar they found a man washing and the police disembarked from the van and they got the man who was washing at his house and they asked him to tell the man what he told them

He then said sorry he was the one who killed the 2nd deceased. They took him back to the police station where a docket for murder was opened. He said the police were the ones who took him to the alleged crime scene. He said he apologized to onlookers for killing the deceased person at Warriors Night Club because he was beaten.

He further testified that he knew A2's mother and not A2. He said when they beat him they asked him to show them his other friends and he took them to A2's mother's house and A2's mother took them to where A2 was staying and they found him asleep. He explained that the police slapped him and he just went and pointed at A2 because the beatings were too much. He said he just pointed at an innocent person so that he could be relieved from the beatings.

When cross examined the witness denied being referred to as Boko Haram. He admitted to stealing the TV but that he did not know PW3 and was just shown to him by the police. He said PW3 lied against him and he denied lying about the beatings despite not reporting them to the magistrate.

He said everything in the warn and caution statement with regard to the murder of the 2nd deceased was just made up due to the beatings he suffered despite the graphic details. The accused person admitted that what was contained in his statement is consistent with the postmortem report P3 particularly how she was stabbed on the left side of the body.

He further admitted that the postmortem report P2 tied in the cause of death as exactly what the accused narrated in his testimony with respect to the 1st deceased. He admitted that it was difficult to believe that his warn and caution statement was made up considering the graphic details it contained.

The witness denied knowing the 2nd deceased. He admitted that when Precious went to the police and saw him she started crying and the accused apologized.

In re-examination the witness said when the statement was being made he was on the floor in handcuffs and he did not know what the police were writing on the table since he was sitting on the floor. He said that the police said that he recorded a statement.

DW2 was **Nchimunya Ngandu**, A2 herein, of Garden Compound, Lusaka. He testified that on 4th July, 2015 he was asleep at his house at around 03:00hrs. His elder brother opened the door and police officers in combat uniform and others armed entered the house. They asked for A2 and he was apprehended and they started searching the house. He inquired from them what he had done but they told him to go and hear the details at the police and as they were going towards the vehicle they were beating him. They took him to Muzaleka police and they found other officers there who asked what offence he had committed and Mr. Ndeleki said it was for burglary and theft. Despite inquiring of where he stole, he was thrown in police custody.

He was in police custody until around 21:00hrs when he was taken to Mr. Ndeleki's office. There, he was asked where the TVs they stole were and he denied being a thief. Mr. Ndeleki then started beating him using a hose pipe which had an iron bar inside. He was taken back into custody and after 28 days they came back and asked them

to tell the police how many people they had murdered. He denied killing anyone and said he only works on his own.

He narrated that days later they took him to Emmasdale police. He said he was not beaten but the following day they took him out and interviewed him again and they beat him up and put him back into custody and he stayed 4 days without food. On the 5th day they got him and took him to Garden near Cockpit Bar and they called PW3 and they told him that he was one of the people who murdered the second deceased. The police and PW3 exchanged numbers and they took A2 back to the car. They started moving and they came to stop at another place where the police disembarked and the police told an elderly man that A2 was the one who murdered the deceased. He denied this and the police officers slapped him and they took the old man with them. He claimed the police told the old man to look carefully at A2 so that he should not forget.

They went back to Emmasdale police where A2 was taken to custody while PW3 was taken up stairs. Two weeks later his relative came but they were turned away. He said he later found three officers in the office and they started writing. He did not know what they were writing. They asked him which village he came from so that they knew where they could find him in the event that he went away. They then gave him to sign the document and he thumb printed the document. He said they did not read the document to him. He was later taken to the Subordinate Court but that did not inform the Court about the beatings. A2 alleged that he was injured.

He denied admitting to committing the offence at any point. He said it was not him who made the statement, he was just told to admit. He said he can't read and had no knowledge of the contents.

When cross examined A2 evaded responding to questions. He maintained that the statement was made up. He said the statement was fabricated by the police. He said it was not odd that the statement was consistent with the postmortem findings. It was his allegation that the police used the postmortem report to record the statement. He denied any knowledge of the murders. He stated that it was odd that there was mention of a stolen handbag.

In reexamination he said the accused person's statements were similar because the two were together when their statements were being taken.

At the close of the defence's case the prosecution filed in written submissions which I have considered.

In her submissions, the Learned Senior State Advocate Mrs. Mwanza outlined that the prosecution needed to prove the following elements of the offence of murder:

1. That the deceased died
2. That the accused caused the death of the deceased by an unlawful act
3. That he/she did so with malice aforethought; and
4. That in killing the deceased, the accused had no legal justification to do so.

It was submitted that the deaths of the deceased's persons were proven by the evidence of PW6 and the postmortem report, P2 with respect to the 1st deceased's murder and the evidence of PW2 and the postmortem report, P4 with respect to the 2nd deceased.

With regard to who committed the murder counsel submitted that while there was no direct evidence connecting both accused persons with the offence, the circumstantial evidence adequately connected them. She argued that it was an inescapable finding that the accused persons were at the scenes of the crimes at the time of the incidences as is stated in the warn and caution statements P4-P7. She stated that the statements showed an intricate step by step account that happened the day the deceased persons were murdered, it was her contention that it was inconceivable that the accused persons would give such a detailed account of events if they were not present and did not take part in the commission of the murders.

She submitted that the postmortem reports with respect to both deceased persons corroborated the testimonies of the accused persons contained in their warn and caution statements. She further submitted that the accused persons' defences that they were forced into making the confession statements were afterthoughts and a deliberate attempt to mislead the Court. She asserted that their testimonies were laden with inconsistencies and full of implausible explanations.

With regard to malice aforethought, Counsel submitted that the evidence on record shows that the deceased persons were stabbed with either a knife or screwdriver during the attacks. She asserted that the accused persons knew or ought to have known that stabbing a person with a knife or screwdriver would result in death or cause grievous injury. She contended that the intention to cause a natural or probable consequence of their acts was therefore present.

It was her further submission that the accused persons had no legal justification for the killing of the two deceased persons. She stated that from the evidence on record the only inference reasonably possible that could be drawn from the facts was that the accused persons who confessed to having attacked the deceased persons caused their deaths. She therefore submitted that the prosecution had proved the case against the accused persons beyond all reasonable doubt and prayed that they are convicted accordingly.

I have considered the evidence on record and the submissions from the State. Based on the evidence before me I make the followings findings of fact:

1. The first deceased person, Nzodi Sibanda was stabbed with a screw driver and was found dead near Cockpit bar in Garden Compound.
2. That the second deceased person, Felistus Priscilla Mulinda was stabbed with a knife and found dead near Warriors Night Club in Mandevu township

3. That A1 was in police custody for burglary and theft.
4. That he was later jointly charged for the murder of the deceased persons with A2.

The questions left for this Court to establish based, on the evidence on record, are the following:

1. Did a person die?
2. Of malice aforethought at the hands of the accused persons?
3. Was the act of the accused persons unlawful?

The postmortem reports with respect to both deceased persons produced herein attest to their deaths. The cause of death of the 1st deceased according to exhibit P2 was haemorrhagic shock due to stab wounds of chest. Exhibit P3 showed the cause of death of the 2nd deceased person was subarachnoid haemorrhage due to head and neck injury. The postmortem report is evidence of the deceased's death and therefore the first element stands proved.

With regard to the malice aforethought, I agree with the prosecution's submissions that the nature of the injuries that lead to the death of the deceased persons is clear that the only probable outcome would be the death or the causing of grievous harm on the deceased. I have no doubt that there was intention to cause the murder of the deceased persons. The question that begs to be resolved now is who then killed the deceased persons?

The prosecution has rightly conceded that there is no direct evidence linking the accused persons to the deaths of the deceased person as

the evidence is largely circumstantial. The Supreme Court in the case of **David Zulu v The People (1977) ZR 151** had this to say about circumstantial evidence:

“ there is one weakness peculiar to circumstantial evidence; that weakness is that by its very nature circumstantial evidence is not direct proof of a matter at issue but rather is proof of facts not in issue but relevant to the fact in issue and from which an inference of the fact in issue may be drawn.”

The Supreme Court gave further guidance on the approach to be taken when dealing with circumstantial evidence in the case of **Patrick Sakala v The People (1980) ZR 205** where it was held inter alia that:

“The circumstantial evidence must be so cogent and compelling that no rational hypothesis other than murder could on the facts of this case be accounted for”

Further, in the case of **Tepeb v R (1952) AC 48**, it was held to the effect that it was necessary before drawing the inference of the accused's guilt from circumstantial evidence to be sure that there were no other co-existing circumstances which would weaken or destroy the inference.

Having said this, it must be noted that while the evidence may be circumstantial, I have also drawn my mind to the confession evidence which was admitted before this Court.

I have carefully analysed the confession of A1 pertaining to the death of the 1st deceased. He made the following statement according to exhibit P5:

“On the 16th of February, 2015 around 20:00hrs, I met with my friends Zacharia of Kaunda Square Lusaka, Masauso Daka of Garden Compound Lusaka and Nchimunya Ngandu of Garden Compound Lusaka. After meeting at Shi Kaoma Bar within Garden Compound, we planned to go for a breaking mission in meanwood area. From meanwood area we proceeded to Kabulonga area. We could not find any house or shop to break. Then we passed into through Arcades and came down into Garden compound.

We used the main road passing through Garden Market. When we reached the junction with the road that passes through Cockpit Bar and Garden Site IV, we saw a woman from a distance. We stopped and decided to lay an ambush for her, this was between 04:00 and 05:00hrs. My friends Zacharia and Nchimunya went to lay an ambush in some flowers on the left of the road while I remained with Masauso Daka and we took cover in some nearby flowers next to the taxi rank at Garden Market. The woman approached until the two of us stopped her while Masauso Daka and Zacharia followed her behind. We greeted her and Masauso

demanded for a K5.00 from her. She said she had no money. I charged on her and grabbed a handbag she was carrying which was blue in colour. The three of us got hold of her as she struggled with us to rescue herself. She was very strong to be challenged.

I stabbed her twice on the chest with a knife and Masauso Daka stabbed her on the back with a screw driver. She screamed and fell down calling for help. Then some money dropped from her bag and we picked it and ran away. I was still carrying the hand bag but without a hand string as it got cut off as we struggled to grab it from her.

After opening The bag, we found K2,500 cash money. We then proceeded to my house in Garden compound where we counted the money and then shared the four of us. K500 Zacharia and myself while Masauso got K400 and Nchimunya N'gandu got K300 and the K800 was used for beers and food. I used the money to buy some clothes and domestics for the family and rentals for the house."

Further with respect to the 2nd deceased A1in exhibit P4stated that:

"On 5th of April, 2015 I left Ngombe Compound of Lusaka around 22:30hrs after leaving one plasma T.V, one DVD and one Stereo System Radio with my friend

Fred Malambo whom I went to break one house in Meanwood area. I arrived in Garden Compound, after 23:00hrs and I proceeded to Shi Kaoma Bar within Garden Compound where I met with Masauso Daka, Zacharia and Nchimunya N'gandu.

"The two of us drunk together at Shi Kaoma Bar and later proceeded to Chola's Bar or (Club Vegas) in Madevu compound of Lusaka. It was between 23:00hrs and 01:00hrs.

"We crossed over to Warriors Bottle Store and Bar within Mandevu compound and only stayed there for a short time before it was closed. We then laid an ambush on a road opposite Warriors Bar. While there, came one man and a woman who crossed the road leading to Chipata compound and leading straight to where we ambushed the road in pair of two. I was standing with Masauso Daka and Nchimunya N'gandu stood with Zacharia. As the two approached, the man ran away after noticing our presence in the flowers. The lady followed the man and I chased after her with Masauso Daka until we caught up with her. I was armed with a knife while Masauso had a screw driver and Zacharia. The woman screamed as we dragged her down the side road with a view to rape her and search her money. She was strong though drunk. As I dragged

her she recognized me and said "Zondani Why should you do this to me"? After hearing her mention my name I produced a knife to stab her on the left side of the body. I saw Masauso Daka also produce a screw driver to stab her. Nchimunya N'gandu and Zacharia continued dragging her as she became unconscious. We together dragged her into a make shift shelter a few metres away from Warriors Bar. We never raped her or steal anything from her. After dumping her in the shelter Masauso stepped on her neck and then we all left."

In his defence A1 said he was beaten and that was why he made up everything he said. He further said he did not know A2 and merely pointed him out because he was beaten. He further emphasized in his testimony that A2 was an innocent man who he just singled out due to the beatings. I cannot accept the evidence of A1 that he was beaten and hence he gave the confession statement for the same reason that I gave in the trial within a trial when I admitted his evidence.

With respect to A2, his confession statement with respect to the 1st deceased P7 states as follows:

"On the same date, I was in company of Zondani Mtonga and Masauso Daka when we were coming from Arcades while on a breaking mission. When we reached Garden compound at Main Market Taxi rank, we saw one woman

coming on a side road between Garden Site 4 and Cock Pit Bar. The four of us stopped. Then we decided to lay an ambush for her. I went into hiding with Zacharia in some flowers while Zondani Mtonga and Masauso Daka remained behind but in hiding. The woman passed where we ambushed with Zacharia. We came out of hiding to follow her behind. As she approached where Zondani and Masauso were, they stopped her as we also closed up before reaching a point where then, I saw Zondani and Masauso struggling with the woman with the woman. She screamed calling for help. I joined with Zacharia as Zondani managed to grab a handbag from her and she suddenly fell down.

I saw blood coming out of her chest as the blouse became red. I realized one of us stabbed her. We then ran away after she fell down. After a short distance, Zondani opened the handbag and found money. We proceeded to Zondani's House where the money was counted. It was K2, 500. I got K300 which I used to buy mealie meal and charcoal while I used the other money for food and beers. I stay alone in Garden. My wife ran away from me and is at the village with her parents.

His statement with regard to the 2nd deceased states as follows:

“On 5th April, 2015 around 20:00hrs, I was drinking at Shi Kaoma Bar where I was joined by my friends

Zondani Mtonga, Zacharia and Masauso Daka. We left this place after 23:00hrs and proceeded to Chola's Bar where we never took any beers and went to Warriors Bar where we only drunk a few beers and it was closed. We decided to lay an ambush along a side rode road that passes through Warriors Bar going inside Mandevu Compound. I stood with Zacharia while Zondani Mtonga was standing with Masauso Daka. Our aim was to attack anyone going through that road and stealing from them. After a while we saw two people crossing the road from Chola's Bar coming into the road where we ambushed.

"I saw a man and woman. Our friends who were in front were spotted by the two and the man ran away. Then Zondani Mtonga and Masauso Daka chased after them and managed to catch the woman. We also came out of cover as they dragged her towards us. She screamed and recognized Zondani Mtonga. She said "Zondani why have you done this to me" She was beaten and stabbed by Zondani and Masauso and became unconscious. I joined Zondani with Zacharia to drag her into a make shift shelter. Masauso pressed a plank on her neck and stood on it. It was at this point that she stopped screaming and then we ran away."

A2 in his defence made an outright denial of even making a statement. He denied knowing what was being written by the police and that they only told him to sign the statement without knowing the contents.

Having carefully considered the statements I have outlined above, the graphic detail contained in these statements cannot possibly be something A1 and A2 would have just made up as a fictitious story. Further, the postmortem reports outlined the injuries sustained by deceased persons which matched exactly what was stated in A1 and A2's statements.

In exhibit P5 and P7 they both went on to describe how they split the money that was found in the 1st deceased's possession. In my view there are only two inferences that I can draw from this. The first is that A1 and A2 have an extremely active imagination that they managed to concoct such a graphic story giving details step by step of how they went on a breaking spree and attacked the deceased persons as well as how the money stolen was shared with their confederates in crime; or that these statements could only come from a people who were present at the time of the brutal attacks and actually participated in the said attacks and in the sharing of the money found with the 1st deceased person.

I find the most logical inference to be the second one considering that there is also evidence that supports these statements being the postmortem reports, exhibits P2 and P3.

I have drawn my attention to the law regarding confession evidence. In the case of ***The People v Inonge Anayawa Lubinda Sinjambi HT/23/2010*** Justice Matibini as he then was citing the case of ***R v Baldrey [1852] 2 Den Cr. 120*** held that

"I am of the opinion that where a confession is proved, it is the best evidence that can be produced."

Further, in the ***People V Hamanda (1972) ZR 310*** it was held that

Although a person can legally and properly be convicted upon his confession alone this should only be done with great caution and when there has been some pointer in the evidence tending to confirm his guilt.

Further in the case of ***The People v Maketo and 7 others v the People (1979) ZR 23*** the Supreme Court held that *a conviction can be based on a well-proved uncorroborated confession.* In the case of ***Banda v the People CAZ Judgment No. 15 of 1968*** the Supreme Court held that:

It is possible and proper in a proper case to convict on an uncorroborated confession."

In the present case the confession evidence before me is the best evidence produced by the prosecution. I am satisfied that the postmortem evidence gives adequate support to the accused person's confession evidence. Therefore, on the totality of the evidence before me and on the strength of the authorities cited above I am satisfied that the prosecution has discharged its duty

and proven its case beyond all reasonable doubt. I therefore find accused persons guilty as charged and convict them accordingly.

There are no extenuating circumstances in these horrendous dastardly and totally senseless executions of 2 Zambian women.

The law provides for extreme penalty that is death. I therefore sentence you to death and I direct that you be hanged by your necks until certified dead by a practicing medical practitioner.

May the Lord have mercy on your souls.

Delivered under my hand and seal this 26th day of April, 2018



Mwila Chitabo, SC

JUDGE