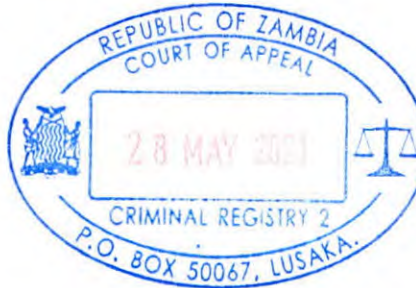


IN THE COURT OF APPEAL OF ZAMBIA
HOLDEN AT KABWE
(Criminal Jurisdiction)

APPEAL 172/2020

BETWEEN:

HILDAH ZULU
AND
THE PEOPLE



APPELLANT

RESPONDENT

CORAM: Mchenga DJP, Majula and Muzenga JJA

On 19th May 2021 and 28th May 2021

For the Appellants: E. Sichone, Legal Officer National Legal Aid
Clinic For Women

For the Respondent: S. Muwamba, Acting Chief State Advocate,
National Prosecutions Authority

J U D G M E N T

Mchenga, DJP, delivered the judgment of the court.

Cases referred to;

1. The People v Njovu [1968] Z.R. 132
2. James Kape v The People [1977] Z.R. 19
3. Sondo v The People [1981] Z.R. 302
4. Yotamu Hamenda v The People [1977] Z.R. 184
5. Charles Lukolongo And Others v The People [1986]
Z.R. 115

6. Joseph Mutaba Tobo v The People [1990-1992] Z.R. 140
7. Director of Public Prosecutions v Risbey [1977] Z.R. 28
8. David Zulu v The People [1977] Z.R. 151
9. Keith Akekelwa Mukata v The People CAZ Appeal No. 10 of 2018

Legislation referred to:

1. The Penal Code, Chapter 87 of the Laws of Zambia

1. INTRODUCTION

- 1.1. This appeal arises from the judgment of the High Court (Chembe, J.), delivered in Ndola, on 2nd March 2020.
- 1.2. The appellant, appeared before that court, on an information containing one count of the offence of murder contrary to **section 200 of the Penal Code**. The allegation against her, being that on 26th November 2018, at Ndola, she murdered Racheal Kapambwe.
- 1.3. She denied the charge and was tried. At the end of the trial, she was found guilty and convicted of the said offence. She was also condemned to suffer capital punishment.

1.4. She has appealed against both the conviction, and the sentence.

2. EVIDENCE BEFORE THE TRIAL COURT

2.1. On 26th November 2018, Rita Bwanga, who was a maid at Rachel Kapambwe's house, on Petauke Crescent, Kanshenshi, Ndola, reported for work around 07:00 hours. She found her employer who was at home with her two grandchildren, who were toddlers.

2.2. As she was sweeping the leaving room, her employer joined her. She complained about how uncontrollable the appellant, who was her daughter, was. She also told her that the appellant left home to buy diapers the previous day and had not returned.

2.3. Thereafter, her employer left, saying she had gone to take a bath

2.4. After sometime, Rita Bwanga sent one of the grandchildren to collect washing powder from her employer. The child came back with none and said she was bathing. She later sent the child again,

the child still came back with no washing powder, but this time, the child said she was sleeping.

2.5. At that point, Rita Bwanga went to knock on her door, but there was no response.

2.6. A short moment later, the appellant arrived home. She did not have the fare to pay for the taxi that brought her home. She went straight to her mother's bedroom, alone.

2.7. Rita Bwanga did not hear any conversation or argument between the two, while the appellant was in the bedroom. After between 5 to 10 minutes, the appellant emerged from the bedroom and said her mother had died.

2.8. The appellant then went to inform the neighbours.

2.9. She came back with Leah Zimba and Emma Banda. The duo went into the bedroom and after seeing Rachael Kapambwe, who was unconscious, proposed that she be taken to the hospital as they believed she was still alive.

2.10. There was no visible injury on the body. All that was observed is that she had vomited on herself.

- 2.11. The appellant, who looked drunk, rejected the proposal that her mother be taken to the hospital. She said her mother would not be taken out of the bedroom, until her father arrived home.
- 2.12. Rita Bwanga tried to call the appellant's father, but the appellant grabbed the phone and removed the sim card.
- 2.13. Eventually, Rachael Kapambwe was taken to the hospital where she was declared dead on arrival. According to Emma Banda, the doctor who received them, pronounced her dead. The doctor who saw her said she had died from high blood pressure. She was then placed in the mortuary.
- 2.14. Two days later, Lilian Musonda, Rachael Kapambwe's elder sister, went to collect her body from the mortuary, in preparation for burial. She observed that she had marks around her neck and vomit.
- 2.15. After discussing with other family members, they agreed that a postmortem be conducted, but her late sister's husband (the appellant's father) refused

to have the examination carried out. They did not give up.

2.16. Twenty days later, on the 15th of December 2018, her body was exhumed and the post mortem examination was carried out by Dr. Tadjimurar Musakanovu, a forensic pathologist.

2.17. Dr. Musakanov's findings were that the cause of death was asphyxia due to fatal pressure of the neck by ligature strangulation. He produced his report in court.

2.18. During his testimony, the doctor admitted that he had signed the report on that very day that he testified. He also admitted that it had a number of typographical errors, but maintained that the cause of death was asphyxia.

2.19. Further, the investigations officer confirmed, during his testimony, that he did not try to find or interview the doctor, who opined that the appellant's mother died from high blood pressure.

2.20. In her defence, the appellant denied strangling her mother. She said when she arrived home, her 4

years old daughter, informed her that her mother was not waking up. Rita Bwanga, also told her that she had been trying to wake up, but she did not respond.

2.21. She rushed into her mother's bedroom, together with her two children. The maid followed, right behind her. She called out to her, but there was no response. She noted that her mother was sitting upright, facing upwards and that she had vomited on herself.

2.22. Rita Bwanga passed out while they were in the bedroom and the appellant went to call the neighbours for help.

2.23. Emma Banda gave her mother first aid and said that she was probably unconscious. She stopped Leya Zimba from pouring cold water on her mother because her blood pressure was high. She said she did not refuse to take her mother to the hospital but wanted her father, who was working in Kitwe, to be informed. She then asked them to wait in the

passage and shut the door to her mother's bedroom, so that she could make a phone call.

2.24. She subsequently agreed to take her to the hospital.

2.25. Her father, Fanwell Zulu, also gave evidence in her support. He said on 26th November 2018, around 01:00, he received a call from his wife. She complained that the appellant had left home and had taken the money he had left for provisions at home.

2.26. later that morning, he received a phone call from Leahimba, who informed him that his wife was unwell and the appellant was stopping them from taking her to the hospital, until he arrived home.

2.27. As he made his way home, he was informed that his wife had died and so he proceeded to the hospital.

2.28. He saw her body at the mortuary. He noticed that she had vomit on her mouth. He denied claims that there were marks on her neck. He also said the appellant and her mother, had a cordial relationship.

2.29. The appellant's brother, George Zulu, also testified. Similarly, he said he did not see any marks or stab wounds, on his mother's neck. He produced into court, photographs of his mother that were taken at the mortuary. He also said he only saw vomit.

2.30. In addition, he said his mother and the appellant had a good relationship.

3. TRIAL COURT'S FINDINGS OF FACT

3.1. The trial judge noted that the case against the appellant was anchored on circumstantial evidence.

3.2. She accepted Rita Bwanga's account of what happened and rejected the appellant's narration of how things unfolded on that fateful morning.

3.3. She accepted Rita Bwanga's evidence that when the appellant came home, she went straight into the mother's bedroom. She went into the bedroom alone.

3.4. She found that the appellant spent about 10 minutes in her mother's room. She then came out crying and saying her mother had died. She noted that the

appellant failed to give an account of what transpired during those 10 minutes that she was in the bedroom.

- 3.5. The trial judge found that the appellant had an ample opportunity to strangle her mother.
- 3.6. The trial judge also took into account of the fact that the appellant left home the previous evening and did not return. When she returned, she did not have the money to pay for the taxi and expected to collect the money from home. She opined that this created a perfect situation for a confrontation between the two.
- 3.7. Further, the trial judge considered the appellant's conduct during the incident. She noted that she went to seek help from the neighbours but refused to allow them help or take her mother to the hospital.
- 3.8. She found that her conduct was not that of an innocent person. She took the view that the appellant wanted to ensure that her mother was not given an opportunity to be revived.

3.9. She was also of the view that the appellant's decision not to accompany the mother to the hospital evidenced that she cared very little about her. It also pointed at the poor relationship they had.

3.10. Having looked at the photographs of Rachael Kapambwe, taken in the mortuary, she took the view that they supported the pathologist's findings. The skin around the lower part of her neck, appeared to have been tampered with. In her view, her observation was consistent with strangulation.

3.11. The trial judge also considered the effect of the failure by the arresting officer to interview the doctor who attended to Rachael Kapambwe when she was taken to the hospital. She concluded that it amounted to a dereliction of duty, but the appellant suffered no prejudice because a postmortem was subsequently conducted.

3.12. Having reviewed all the evidence, she was satisfied that the appellant caused the death of her mother with *malice aforethought* and convicted her.

4. GROUNDS OF APPEAL

4.1. Six grounds have been advanced in support of this appeal. They are as follows:

- (1) The court below erred in law and fact when it found that the prosecution proved its case beyond reasonable doubt and convicted the appellant to the mandatory death sentence when there was no evidence to warrant a conviction.
- (2) The court below misdirected itself when it found that the appellant with malice aforethought caused the death of her mother, when in fact there was no evidence pointing to that fact.
- (3) The court below misdirected itself when it came to its conclusion that, the circumstantial evidence drew the case out of the realm of conjecture so that it attains the degree of cogency which permitted only an inference of guilt.
- (4) The court below misdirected itself when it ignored and failed to consider the evidence for the defence and only relied on the prosecution evidence.
- (5) The court below misdirected itself when it concluded that the appellant had a sour relationship with the mother without evidence from the prosecution or defence pointing to that fact.
- (6) The court below misdirected itself when it concluded that the dereliction of duty on the part of the arresting officer never prejudiced the appellant to warrant an acquittal.

5. ARGUMENTS IN SUPPORT OF THE APPEAL

5.1. The 1st, 2nd and 3rd grounds were argued together.

Mr. Sichone submitted that the case against the appellant, was not proved beyond all reasonable doubt. He contended that evidence incriminating her, did not establish *malice aforethought* nor lead to an inference that she was guilty.

5.2. He also argued that the trial judge erred when she accepted Rita Bwanga's evidence that the appellant went into her mother's bedroom alone, as there was had no reason for her to be alarmed and follow her.

5.3. He pointed out that in the face of evidence that Rita Bwanga had sent the appellant's daughter, twice, to her grandmother's bedroom, and she came back saying that her grandmother was not responding, there was a basis for her being worried and following.

5.4. Mr. Sichone also argued that there was no evidence to support the trial judge's finding that when the appellant returned home with a 'pay forward' taxi, it created a confrontational situation with her

mother. He pointed out that there was no evidence that the two were heard quarrelling.

5.5. He referred to the case of **The People v Njovu**¹ and submitted that the prosecution failed to prove that the appellant had *malice aforethought* and caused the death of her mother, because they did not lead any evidence proving that she intended to kill her mother.

5.6. In relation to how the trial judge should have dealt with the appellant's evidence that she was sober at the material time, Mr. Sichone referred this court to the cases of **James Kape v The People**² and **Sondo v The People**³ and submitted the trial judge should have still have found that she was drunk, after taking judicial notice that she had been drinking the whole night.

5.7. Finally, he referred to the case of **David Zulu v The People**⁴ and submitted that had the trial judge taken in to consideration the fact that the appellant was drunk, she would not have come to

the conclusion that the appellant's conduct raised an inference of guilt.

5.8. In support of the 4th and 5th grounds of appeal, which he argued together, Mr. Sichone submitted the trial judges's finding that the appellant and her mother, had a sour relationship, was not supported by any evidence.

5.9. He pointed out that the fact that her mother complained about the appellant on 26th November 2018, did not imply that the two had a strained relationship which motivated her to kill her mother. The trial judge would not have come to that conclusion had she not disregarded the evidence from the appellant's father and brother, that the two had a good relationship.

5.10. As regards to the 6th ground of appeal, Mr. Sichone argued that the failure on the part of the arresting officer to carry out thorough investigations amounted to a dereliction of duty.

5.11. He referred to the case of **Yotamu Hamenda v The People**⁵ and submitted that the arresting officer

ought to have interviewed the doctor who attended to the appellant's mother and concluded that she had died from high blood pressure. The failure to do so, prejudiced the appellant.

5.12. He also pointed out the fact that he postmortem report had many errors and was only signed by the pathologist in court. In addition, it was also signed by a doctor who did not conduct the postmortem.

5.13. He urged this court to allow the appeal and acquit the appellant.

6. RESPONDENT'S ARGUMENTS AGAINST THE APPEAL

6.1. Ms. Muwamba indicated that she supported the conviction and sentence imposed by the trial judge.

6.2. In response, to the 1st, 2nd and 3rd grounds of appeal, she pointed out that the trial judge, who had the opportunity to observe the demeanour of the witnesses, was entitled to believing Rita Bwanga. Having believed her evidence, that the appellant spent about 10 minutes in her mother's bedroom, she

was entitled to arrive at the conclusion that the appellant had an opportunity to commit the offence.

6.3. Further, she submitted that nothing unusual occurred prior to the appellant arriving home, to warrant the classification of Rita Bwanga as a suspect witness. She pointed out that the fact that the appellant's mother did not respond when Rita Bwanga knocked on her door, was nothing unusual as she could have been in deep sleep.

6.4. Ms. Muwamba also pointed at the fact that when the appellant emerged from her mother's bedroom, she exhibited strange behaviour. The appellant refused to have the mother taken to the hospital and insisted on waiting for her father who was working in Kitwe. The appellant also chased everyone from the house and prevented Rita Bwanga from informing relatives about the incident.

6.5. In addition, she pointed out that the appellant did not accompany her mother to the hospital on the pretext that she remained to take care of her children. She contended that the appellant's reason

for remaining behind defied logic, considering that she had left her children with her ill mother and spent the entire night in a club.

- 6.6. Ms. Muwamba then submitted that the trial judge was on firm ground, when she found that the evidence before her was cogent and only permitted an inference of guilt.
- 6.7. She also submitted that the trial judge was entitled to conclude that the appellant had *malice aforethought*, at the time she killed her mother.
- 6.8. As regards the 4th and 5th grounds of appeal, Ms Muwamba submitted that the trial judge, who had the opportunity to observe all the witnesses, was entitled to believe the prosecution witnesses and not the explanation given by the appellant.
- 6.9. She also pointed out that there was evidence that the appellant's mother had complained to her husband and Rita Bwanga, about how she was not pleased with the appellant. In her view, that was evidence that the appellant and her mother, did not have a good relationship.

6.10. With regard to the argument that there was a dereliction of duty when the allegation that the appellant's mother died from high blood pressure, was not investigated, she submitted that the trial judge was right when she found that the appellant suffered no prejudice. This is because evidence from the postmortem was not affected by the failure.

6.11. In concluding, she submitted that the conviction was safe and urged us to uphold it together with the sentence. She said the appeal should be dismissed because it lacked merit.

7. APPELLANT'S REPLY TO THE RESPONDENT'S ARGUMENTS

7.1. In reply, Mr. Sichone maintained that the trial judge erred when she convicted the appellant on circumstantial evidence which was not cogent.

7.2. He reiterated the fact that the trial judge failed to resolve the fact that it was only the appellant who could have killed her mother, considering the evidence that prior to her arrival, at 09:00 hours,

the deceased was not responding to Rita Bwanga and her grandchild.

7.3. He argued that there was a possibility that Rita Bwanga caused her death between 07:00 hours and 09:00 hours. He added that there was also a possibility that an intruder could have caused her death. It was his contention that in light of all these possibilities, the trial judge ought not to have convicted the appellant.

7.4. Mr. Sichone maintained that no injuries were observed on Rachael Kapambwe's body as she was being taken to the hospital. He also maintained that the dereliction of duty on the part of the arresting officer, prejudiced the appellant.

8. CONSIDERATION OF APPEAL AND DECISION OF THE COURT

8.1. Because it is logical, we will first deal with the 6th ground of appeal. Thereafter, we will deal with the 4th and 5th grounds of appeal, at the same time, as they were argued and the 1st, 2nd and 3rd grounds of appeal, in that order.

8.2. The 6th ground of appeal revolves around the argument that there was a dereliction of duty, when the police did not interview the doctor who attended to Rachael Kapambwe. That doctor, is said to have concluded that she died from high blood pressure.

8.3. The fact that there was a dereliction of duty, was raised before the trial judge. She took the view that the appellant was not prejudiced in anyway by the failure to interview that doctor because a postmortem was subsequently carried out to determine the cause of death. The trial judge opined that such interview was unlikely to have resulted in a different finding as to the cause of death.

8.4. Further, the presence of ligature marks as seen in the photographs produced by defence witnesses, gave further credence to the pathologist finding that Rachael Kapambwe was strangled.

8.5. In the case of **Charles Lukolongo and Others v The People**⁶, the Supreme Court had the following to say, on the approach, where there is a finding that there was a dereliction of duty:

'Where evidence available only to the police is not placed before the court, the court must presume that, had the evidence been produced, it would have been favourable to the accused. This presumption can only be displaced lay strong evidence.'

- 8.6. Though the evidence is not clear, it is apparent that the doctor who concluded that Rachael Kapambwe died from high blood pressure, did not carry out any intrusive test. It appears that he arrived at that decision after ocular observation and talking to the people who took her to the hospital.
- 8.7. Had he carried out any intrusive procedure to arrive at his decision, marks would have been seen on the body. We do not see how interviewing that doctor would have led to the discovery of any evidence favourable the appellant, presumably that her mother died from high blood pressure.
- 8.8. It is our view, that the presumption that she would have died from high blood pressure or any other causes, is displaced by the strong evidence of cause of death obtained during the postmortem.

8.9. This being the case, we agree with the trial judge's conclusion, that interviewing that doctor, was not going to change anything. Consequently, we also agree with her view, that the appellant suffered no prejudice when the police did not interview that doctor.

8.10. We find no merit in the 6th ground of appeal and we dismiss it. However, before we leave the issue, we will comment on two issues that Mr. Sichone raised in reply to the respondent's submissions, on the medical evidence.

8.11. He pointed out that the pathologist only signed the report on the day he presented it in court; that it had a number of errors; and that it was actually signed by another doctor, soon after it was prepared.

8.12. In the case of **Joseph Mutaba Tobo v The People**⁷, the Supreme Court, held as follows:

'While the real value of the evidence of a medical expert consists of logical inferences which he draws from what he himself observes, it can also be accepted that when doctors examine a patient in the

course of their duties they make notes and any doctor would be able to make an opinion based on those notes. There is nothing wrong or unacceptable about a doctor taking into account what a patient has told him or other doctors have recorded about a patient in coming to his opinion.'

8.13. From this decision, it is clear that there is nothing wrong with one doctor signing off a postmortem report, after taking into account the observations made by the doctor who carried out the examination. Even if that is the case, the doctor who carried out the postmortem in this case, actually came to court and gave oral evidence.

8.14. He admitted that there were errors in the report and gave reasons for it being the case. In any case, it is our view is that errors did not affect the finding that Rachael Kapambwe died of asphyxia after being strangled.

8.15. Coming the 4th and 5th grounds of appeal, which are concerned with the trial judge's finding that the appellant and her mother, had a sour relationship. In the case of **Director of Public Prosecutions v Risbey**⁸, it was held as follows:

'where the issue is one of credibility and inevitably reduces itself to a decision as to which of two conflicting stories the trial court accepts, an appellate court cannot substitute its own findings in this regard for those of the trial court.'

8.16. In this case, there was evidence from the appellant, her father and brother, that the appellant and her mother were in good books. On the other hand, there was evidence from the maid that the appellant's mother complained about her daughter's conduct; she told her that she was problematic.

8.17. She even called her husband, after midnight, to report her absconding from home with money he had left for provisions for the house.

8.18. It cannot, in the circumstances, be said there was no evidence of a 'bad' relationship between the two, whatsoever. The trial judge who heard both parties, cannot, in our view, be faulted for coming to that conclusion.

8.19. We are satisfied that having in mind that the appellant's father confirmed having received a call complaining on her conduct after midnight, she was

entitled to come to that conclusion. We find no basis for setting aside that finding. The 4th and 5th grounds of appeal fail.

8.20. We will now deal with the 1st, 2nd and 3rd grounds of appeal. These grounds of appeal are concerned with findings of fact not supported by evidence; the failure to prove *malice aforethought* and the inference that the appellant was guilty, not being the only inference that could have been drawn on the evidence that was before the trial judge.

8.21. Starting with findings of fact not supported by evidence, Mr. Sichone pointed at two findings. One was that the trial judge's belief that Rita Bwanga did not follow the appellant into the bedroom because at that point there was nothing to worry about. He argued that there was everything to worry about because the appellant's daughter had reported that she had not woken-up.

8.22. Earlier on, we did refer to the **Director of Public Prosecutions v Risbey**⁸, and pointed out that where two conflicting stories have been resolved on

credibility, an appellate court cannot come up with its own finding.

8.23. In this case, the trial judge was faced with two conflicting stories, decided to believe the evidence of Rita Bwanga. Going by her story, there was nothing to worry about. Her position was subjective, and we do not see how that can be found to be erroneous given that a child had earlier reported that she was sleeping.

8.24. The fact that child reported that she was not waking up, in the absence of any unusual observation, would not have been a basis for the maid suspecting that something terrible had happened to her.

8.25. It is our view that the trial judge cannot be faulted for coming to that conclusion and finding that the maid did not follow the appellant into the bedroom, immediately she arrived home.

8.26. The other finding of fact that is said not to be supported by evidence is the finding that the arrival of the appellant, in a taxi, she had not paid for, created a confrontational situation.

8.27. The backdrop to this finding is that appellant's mother told the maid that the appellant had left home the previous night, claiming that she had gone to buy baby diapers, but did not return. She also carried all the money her father had left home for provisions.

8.28. The trial judge, accepted this story, in preference to the appellant's claim that her mother had allowed her to go out, be it not to return late.

8.29. Having accepted what the maid said she was told by her employer, it is our view that there was evidence on which she was entitled to conclude that a confrontational situation was created. Coming back home, with an unpaid for taxi and no money, having left home with all the money her father had left the previous night, was bound to lead to a confrontation between the appellant and her mother.

8.30. As regards the argument that *malice aforethought* was not proved, the relevant provisions of **section 204 of The Penal Code**, which defines *malice aforethought*, provides as follows:

'Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:

(a) an intention to cause the death of or to do grievous harm to any person, whether such person is the person actually killed or not;

(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;

(c)

(d)'

8.31. Put simply, *malice aforethought* is the *mens rea* for the offence of murder. The *mens rea* for murder, which is, the intention to kill, is proved either by direct evidence of the intention to kill or under **sub-section (b) of section 204 of The Penal Code**, by evidence of knowledge that an act is likely to cause death or grievous harm.

8.32. In this case, the postmortem report shows that Rachael Kapambwe died as a result of being strangled. Pressure was applied to her neck

resulting in the hyoid bone being fractured and consequently, she suffocated. The presence of ligature marks is indicative that someone caused the injury.

8.33. It is our view that even if there was no direct evidence that the person who caused the injury actually intended to kill Rachael Kapambwe, that person must have intended to or cause her grievous harm. From the injury inflicted, it is clear that that there was such intention. That being the case, **sub-section (b) of section 204 of The Penal Code**, was applicable, and the trial judge cannot be faulted for coming to the conclusion that the person who inflicted the injuries, intended to cause her death.

8.34. The last issue we will deal with, is whether an inference that the appellant committed the offence, is the only inference, that could have been drawn on the evidence that was before the trial judge. Mr. Sichone submitted that there being no eye witness, anyone could have caused Rachael

Kapambwe's death, an intruder or even Rita Bwanga, could have done it.

8.35. In the celebrated case of **David Zulu v The People**⁴, it was held that:

"It is therefore incumbent on a trial Judge that he should guard against drawing wrong inferences from the circumstantial evidence at his disposal before he can feel safe to convict. The Judge in our view must, in order to feel safe to convict, be satisfied that the circumstantial evidence has taken the case out of the realm of conjecture so that it attains such a degree of cogency which can permit only an inference of guilt."

8.36. In light of the holding quoted above, we will reiterate the sentiments we made in the case of **Keith Akekelwa Mukata v The People**⁹, we said:

'It follows that when assessing whether an inference of guilty is the only one that can be drawn on the circumstantial evidence, one must look at all the pieces of evidence that prove the relevant facts. Since inferences are drawn on such proved facts.....'

8.37. In this case, the trial judge accepted the evidence that before she was found dead or dying, the appellant's mother complained about the appellant's

conduct; that she was problematic. The appellant's mother left the living room to bath, after which her grandchild reported her to have been asleep.

8.38. The appellant, who had gone away with all the money intended for home provision, the previous night, turned up that morning, on an unpaid for taxi, which created a confrontational situation. She appeared drunk. She went straight into her mother's bedroom. No conversation or argument was heard between the two when she was in the bedroom.

8.39. After between 5 to 10 minutes, she emerged from the bedroom and announced that her mother had died. She went to call for help and when the helpers came, she refused to allow them to attend to her mother. She also refused to have her mother taken to the hospital.

8.40. A postmortem that was subsequently conducted on the body found that she had been strangled.

8.41. With these facts, we do not see how the trial judge can be faulted for coming to the conclusion that it is the appellant who strangled her mother.

8.42. Mr. Sichone, submitted that it is possible that Rita Bwanga could have strangled the appellant's mother or even an intruder. First of all, there is no evidence that anyone entered or may have entered the house, after Rachael Kapambwe went to take a bath.

8.43. Neither is there evidence that Rita Bwanga entered the bedroom after she went to take a bath. Only two people entered the bedroom, the appellant and her child who was a toddler. The inescapable inference, is that appellant who strangled her mother as it is most unlikely that her child would have managed to do so.

8.44. Mr. Sichone suggested that being drunk could have been the basis of the appellant's 'erratic' behaviour. The appellant denied being drunk. Neither was there any cogent evidence of the extent of her drunkenness.

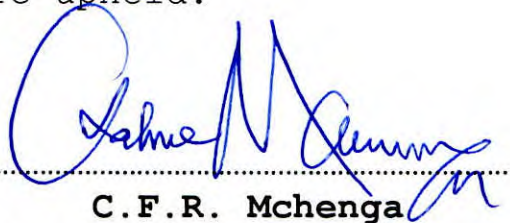
8.45. All in all, we are satisfied that the trial judge's finding that the appellant strangled her mother is well ground. It is the only inference that could

have been drawn on the evidence that was before the trial judge.

8.46. This being the case, we find no merit in the 1st, 2nd and 3rd grounds of appeal.

9. VERDICT

9.1. All the grounds of appeal having failed, this appeal is dismissed. The conviction and sentence of the lower court are upheld.


C.F.R. Mchenga
DEPUTY JUDGE PRESIDENT


B.M. Majula
COURT OF APPEAL JUDGE


K. Muzenga
COURT OF APPEAL JUDGE