

IN THE COURT OF APPEAL FOR ZAMBIA

APPEAL NO. 28/2023

HOLDEN AT NDOLA

(Criminal Jurisdiction)

BETWEEN:

CASSANOVA MAINZA

VS

THE PEOPLE



APPELLANT

RESPONDENT

CORAM: Mchenga DJP, Muzenga and Chembe JJA

ON: 20th February 2024 and 23rd February 2024

For the Appellant: D. Kabuka, Legal Aid Counsel, Legal Aid Board

For the Respondent: M.G. Kashishi, Principal 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. Sakala v. The People [1980] Z.R. 205
2. Mbinga Nyambe v. The People, SCZ Judgment No.5 of 2011
3. Dorothy Mutale v. The People [1975-1997] Z.R. 102
4. Kashenda Njunga v. The People [1988-1989] Z.R. 1.
5. Ernest Mwaba & Others v. The People [1987] Z.R. 19

Legislation referred to:

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

INTRODUCTION

[1] The appellant appeared before the High Court (Sinyangwe, J.), jointly charged with two others, with the offence of murder contrary to **Section 200 of the Penal Code.**

[2] They denied the charge and the matter proceeded to trial.

[3] At the end of the trial, the appellant was convicted, while his co-accused were acquitted.

[4] He was condemned to suffer capital punishment.

[5] He has appealed against the conviction.

CASE BEFORE THE TRIAL COURT

[6] On 23rd June 2021, around 23:00hours, the appellant and two others, took George Cheelo to Joseph Matende, his uncle, who resided in Hamunga village in Monze.

[7] When they arrived at Joseph Matende's house, the appellant was beating George Cheelo with a stick. They informed Joseph Matende that George Cheelo had stolen a pot.

[8] Joseph Matende advised the appellant and his colleagues to stop assaulting George Cheelo and instead take him to the police station. The appellant and his

colleagues left with George Cheelo who was not talking at the time.

[9] The following morning, Joseph Matende went to the appellant's house to enquire the whereabouts of his nephew. The appellant told him that he did not know because he had escaped.

[10] Later that day, Joseph Matende heard that his nephew had died in the house they shared with the appellant. He went to the house and found his nephew's body in the house. The police were then informed.

[11] An inspection of the body showed blood stains, multiple injuries and bruises.

[12] The body was taken to Monze Mission Hospital where it was subjected to a post-mortem. The cause of death was found to be blunt force trauma due to severe head injuries.

[13] In his defence, the appellant denied assaulting George Cheelo. He said his co-accused assaulted him. He said he was also assaulted by the owner of the pot and 3 others who accused him of stealing a goat.

[14] The appellant said he took George Cheelo home after he had been assaulted because he could not walk. The

following day, George Cheelo left home and that is how he told his uncle that he had left.

[15] He went to look for George Cheelo and on his return, the appellant found him in bed dead. That is how he informed the headman.

[16] The trial Judge found that it was safe to convict the appellant even though the evidence came from an uncle, because he opined that there was no motive for him to falsely incriminate the appellant.

[17] He also found that the appellant's claim that George Cheelo ran away was incriminating because he was unable to do so.

[18] The appellant's claim that George Cheelo was beaten by a mob was ruled as an afterthought, because it was raised for the first time in court.

[19] The trial Judge found that the appellant was guilty as charged because he had malice afterthought.

THE APPEAL

[20] The sole ground of appeal is that the prosecution evidence did not warrant a conviction for a charge of murder.

[21] In support of the sole ground of appeal Ms. Kabuka referred to the cases of **Sakala v. The People**¹ and **Mbinga Nyambe v. The People**² and submitted that even though a conviction can be anchored on circumstantial evidence, it was not competent in this case because an inference that the appellant murdered George Cheelo, is not the only inference that could have been drawn on the evidence that was before the trial Judge.

[22] She pointed out that even though Joseph Matende testified that he saw the appellant assault George Cheelo, the nature of beatings he inflicted could not have caused the injuries that led to death as evidenced by the post-mortem report.

[23] In the circumstances, it was wrong for the trial Judge to draw the conclusion that the appellant caused the death of George Cheelo.

[24] Ms. Kabuka also submitted that in the face of evidence that George Cheelo was also assaulted by some other persons, it is possible that his death could have been caused by the injuries inflicted by those persons.

[25] She referred to the case of **Dorothy Mutale v. The People**³ and was submitted that since George Cheelo

could have died from injuries inflicted by others, the court should have drawn that inference, as it was favourable to the appellant.

[26] In response, Ms. Kashishi referred to the case of **Kashenda Njunga v. The People**⁴ and submitted that in the absence of *novus actus interveniens*, the trial Judge rightly concluded that the appellant caused the death of George Cheelo.

[27] Ms. Kashishi also referred to the case of **Ernest Mwaba & Others v. The People**⁵ and submitted that the fact that other persons may have assaulted George Cheelo made no difference where the nature of the assaults were such that their cumulative effect caused his death.

CONSIDERATION OF THE APPEAL

[28] The first issue we will deal with is the argument that George Cheelo could have died from injuries inflicted by other persons.

[29] Ms. Kashishi rightly referred to the case of **Ernest Mwaba & Others v. The People**⁵, in response to that argument. However, we do not find it necessary to deliberate on how the holding in that case impacts on

the appellant's case, because the trial Judge rejected his claim the other persons also assaulted George Cheelo.

[30] The issue is really whether an inference that the appellant murdered George Cheelo is the only inference that could have been drawn on the evidence that was before the trial Judge.

[31] The accepted evidence is that the last time George Cheelo was seen alive, he was in the hands of the appellant. He was weak and showed signs of having been beaten.

[32] In fact, the appellant was seen assaulting him.

[33] The trial Judge rejected the appellant's claim that upon leaving Joseph Matende's house, George Cheelo was assaulted by some other persons or that he ran away.

[34] That being the case, we are satisfied that the trial Judge was entitled to come to the conclusion that the injuries that caused the death of George Cheelo were inflicted by the appellant.

[35] In turn, the trial Judge cannot be faulted for finding that an inference that the appellant murdered George Cheelo, is the only inference that could have been drawn on the circumstantial evidence that was before him.

VERDICT

[36] We find no merits in the sole ground of appeal and we dismiss it.

[37] The sole ground of appeal having failed, we uphold the conviction and sentence imposed on the appellant.



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C.F.R. Mchenga
DEPUTY JUDGE PRESIDENT

.....

K. Muzenga
COURT OF APPEAL JUDGE

.....

Y. Chembe
COURT OF APPEAL JUDGE