

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