

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

Appeal No. 149/2022

BETWEEN:

CHRISTOPHER MPANZA



APPELLANT

AND

THE PEOPLE

RESPONDENT

CORAM: Mchenga DJP, Ngulube and Muzenga, JJA

ON: 17th May 2023 and 21st June 2024

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

For the Respondent: A. Kennedy-Mwanza, Senior State
Advocate, National Prosecution
Authority

J U D G M E N T

Mchenga DJP, delivered the judgment of the court.

Cases referred to:

1. Chombo and Others v. The People [1982] Z.R. 20
2. Kaira and Others v. The People, SCZ Appeal No. 56 -
58 of 2021
3. Dorothy Mutale v. The People [1995-1997] Z.R. 102
4. Ilunga Kabala and John Masefu v. The People [1981]
Z.R. 102
5. Kenious Sialuzi v. The People [2006] Z.R. 81

6. Christopher Nonde Lushinga v. The People 2 Z.R [2011]
301

Legislation referred to:

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

INTRODUCTION

- [1] The appellant appeared before the High Court (Makubalo, J.), charged with the offence of murder contrary to **Section 200 of the Penal Code.**
- [2] He denied the charge and the matter proceeded to trial. At the end of the trial, he was found guilty of committing the offence, and condemned to suffer capital punishment.
- [3] He has appealed against the conviction.

CASE BEFORE THE TRIAL COURT

- [4] On 3rd August 2021, Amos Chisali and Sam Banda, of Mchini Compound in Chipata, set out to drink at a house within the compound. At about 23:30 hours, they started walking back home. Just about 15 meters from where they stayed, they got to another house where beer was being sold.

[15] They found three men standing near that house. Sam Banda asked the men whether beer was still available, but the question appeared to anger the men. One of them, who had a bottle in his hands, broke it on the ground and attempted to stab Amos Chisali.

[16] Amos Chisali ran away, leaving his friend Sam Banda behind. He ran past their home, to a stream where he remained for a considerable period of time.

[17] At about that time, Charles Banda, the son to Sam Banda's landlord, heard people quarrelling outside the house. He went outside the house with a torch and saw three men who were standing about 9 meters from his house.

[18] When he shone the light on them, he was able to identify the appellant. Charles Banda said he recognised the appellant because he had grown up with him, in the same neighbourhood. Further, at that time, he was still wearing the same jersey he had seen him wearing earlier that day.

[19] Upon being shone with the torch, three men all ran

away.

[110] Soon thereafter, Sam Banda emerged from the back of the house with a deep cut on the hand. Charles Banda immediately went to inform his father about the incident, but on their return, they did not find Sam Banda. Charles Banda then retired to bed.

[111] Amos Chisali, who had been in hiding for over 40 minutes, reappeared. In the company of the of the landlord, they started looking for Sam Banda.

[112] Later that morning, Sam Banda's body was found about 1.5 kilometres from the place where Amos Chisali had fled after being confronted by the three men. The matter was reported to the police who apprehended the appellant later that morning. He was found wearing trousers that had blood stains on it.

[113] The trousers and blood from Sam Banda, was collected and sent to a forensic laboratory for comparison. However, the results had not been received by the prosecutor at the time of the trial.

[14] In his defence, the appellant elected to remain silent.

GROUND OF APPEAL AND ARGUMENTS IN SUPPORT

[15] Two grounds have been advanced in support of the appeal. They are set out as follows:

- (1) The learned trial court erred in law and fact when it failed to and neglected to warn itself in its finding that the appellant had been properly or sufficiently been identified by the second prosecution witness; and
- (2) The learned trial court erred in law and in fact when it convicted the appellant of the offence of murder in the absence of corroborative evidence or odd coincidences placing him at the scene.

[16] In support of the two grounds of appeal, the cases of **Chombo and Others v. The People¹** and **Kaira (deceased) and Others v. The People²**, were referred to and it was submitted that even where a witness identifies a person he recognizes, there is still need to rule out the danger of an honest, but mistaken identification.

[17] In this case, the appellant was identified in circumstances in which the possibility of an honest, but mistaken identification, should not have been ruled out.

[18] It was also submitted that the fact that blood was seen on the appellant's trousers, in the absence of DNA evidence confirming that it was Sam Banda's blood, could not be corroborate because it is possible that the blood was for someone else; The case of **Dorothy Mutale and Another v. The People**³, was referred to in support of the proposition.

ARGUMENTS AGAINST THE TWO GROUNDS OF APPEAL

[19] In response to the two grounds of appeal it was submitted that the trial Judge rightly ruled out the possibility of an honest but mistaken identification, on the basis of the blood seen on the appellant's trousers.

[20] The case of **Ilunga Kabala and John Masefu v. The People**⁴, was referred to and it was submitted that even if a DNA test did not prove that the blood found

on the appellant's trousers was for Sam Banda, the finding of the blood was an odd coincidence that supported Charles Banda's identification evidence.

[21] In conclusion, on the basis of the case of **Kenious Sialuzi v. The People**⁵; it was submitted that the appellant having elected to remain silent, the court could not speculate on where the blood had come from. In the circumstances, the possibility of the blood coming from elsewhere did not arise.

COURT'S CONSIDERATION OF THE APPEAL AND DECISION

[22] We will deal with the two grounds of appeal at the same time as they essentially deal with the same issue; whether an inference that the appellant murdered Sam Banda, was the only inference that could have been drawn on the evidence that was before the trial Judge.

[23] In her judgment, the trial Judge noted the fact that the evidence incriminating the appellant came from a single identifying witness. She considered the fact that Charles Banda had grown up with, and had seen

the appellant, earlier that day. She also considered the fact that even if it was at night, he had the opportunity to identify him.

[24] On the evidence that was before the trial Judge, we find no basis to fault her for ruling out the possibility of an honest, but mistaken identification of the appellant.

[25] The circumstances of the identification, which was the recognition of a known person, was in an environment not compromised by fright, because there was no hostility towards the witness, nor was it in a "fleeting glance".

[26] It was also submitted that the inference of guilty should not have been arrived at in the absence of DNA evidence conclusively proving that the blood found on the appellant's trousers, was that of Sam Banda.

[27] According to the trial Judge, the circumstantial evidence against the appellant is that three men attacked Sam Banda and Amos Chisali. The commotion attracted Charles Banda's attention and he found

three men in the vicinity, one of whom was the appellant. The three fled on seeing Charles Banda. On being apprehended, the appellant was wearing trousers with blood on it.

[28] The trial Judge found that in the circumstances, it would be an odd coincidence, if the appellant was not one of the assailants, for him to be found with bloodied trousers. She concluded that the finding of blood on the appellant's trousers, was corroborative, particularly that he had no injury on his person.

[29] The identification evidence in this case did not identify the appellant as the assailant. It placed him on the scene, in the sense that Amos Chisali and Sam Banda were attacked by three men, the appellant and 2 others were found in the vicinity of the attack, contemporaneous to the attack.

[30] Since the results of the DNA test were not received, it is common cause that there is no proof that the blood on the appellant's trousers was that for Sam Banda. The trial Judge concluded that the

significance of the finding of blood on the appellant's trousers, is that it corroborated the evidence identifying him as one of the assailants, by Charles Banda. This is because although he was not injured, the appellant had blood on his trousers and he had earlier been seen fleeing from the area where Sam Banda was injured.

[31] In the case of **Christopher Nonde Lushinga v. The People⁶**, corroborative evidence was described as follows:

"There is no magical meaning in the word "corroboration". It simply means evidence which confirms the commission of the offence and the identity of the perpetrator of that offence. Put differently, corroboration means supporting or confirming evidence".

[32] In this case, had DNA tests proved that the blood found on the appellant was that of Sam Banda, that evidence on its own, would have probably warranted a conviction in the absence of a good explanation.

However, even if the source of the blood was not proved, the probative value attached to it by the trial Judge must be considered on the basis of the other evidence that was before her.

[33] As pointed out earlier on, the circumstantial evidence incriminating the appellant is that he fled from the scene where Sam Banda, was, moments later, found injured. There is no evidence of there being any other persons in the vicinity. This being the case, the trial Judge was entitled to come to the conclusion that the finding of blood on his trousers, was corroborative of Charles Banda's identification evidence.

[34] It was submitted that since Sam Banda was found 1.5 kilometres away from the scene of the attack, he could have been injured by some other persons. There is no evidence that he had any wound, other than the wound seen by Charles Banda soon after he came out of the house.

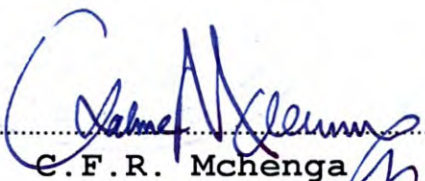
[35] In the circumstances, the principal in the case of

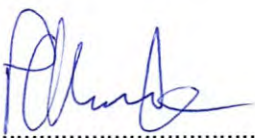
Dorothy Mutale and Another v. The People, cannot be applied because there is no evidence on which the possibility of Sam Banda dying, after suffering other injuries following the attack near his home, can be drawn.


[36] We are satisfied that on the evidence before her, the trial Judge properly drew the inference that the appellant was part of a group of persons that attacked and inflicted the injuries that led to Sam Banda's death.

VERDICT

[37] We find no merit in the appeal and we dismiss it. We uphold the sentence imposed by the trial Judge.


.....
C.F.R. Mchenga
DEPUTY JUDGE PRESIDENT


.....
P.C.M. Ngulube
COURT OF APPEAL JUDGE


.....
K. Muzenga
COURT OF APPEAL JUDGE