

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

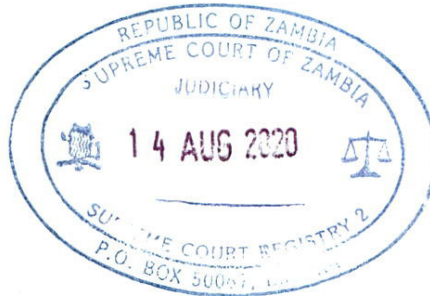
APPEAL NO. 61/19

BETWEEN:

DAVY SIKAUMBWE

V

THE PEOPLE



APPELLANT

RESPONDENT

Coram: Muyovwe, Hamaundu and Chinyama, JJS

On 2nd June, 2020 and 14th August, 2020

For the Appellants : Mrs. M. K. Liswaniso, Legal Aid Counsel

For the State : Mr. M. C. Chipawa, State Advocate

JUDGMENT

HAMAUNDU, JS, delivered the Judgment of the Court.

Cases referred to:

- 1. Justin Mumbi V The People (2004) Z.R. 106**
- 2. Chanda & Another V The People (2002) Z.R. 124**
- 3. Kahale Kanyanga V The People (Appeal No.145/2011, unreported)**
- 4. Jose Antonio Golliadi V The People (Appeal No. 26/2017, unreported)**

The appellant appeals against the sentence of death imposed on him by the High court.

The appellant was charged with murder in the court below, presided over by Ngulube, J. It was alleged that on 25th March, 2012, at Muzizi village, in the District of Mpulungu, the appellant murdered Moses Siulapwa.

The facts, as found by the court below, were that on 24th March, 2012, in the afternoon, Sunday Sikazwe, PW1, was sharing some local brew with two other men named David Siame and Moses Siulapwa, the deceased. This was at PW1's daughter's house, PW2, Given Nakazwe. In the course of the afternoon, the appellant, who lived within that family village, comprising several homesteads of relatives, came to PW2's yard. Eye witness accounts were unanimous in their observation that the appellant was, visibly, drunk. The appellant asked the trio to share some of their beer with him. The trio refused. The appellant then made some sexual advances on PW2, who was his niece. The latter rejected those advances. The appellant started hurling a string of insults at anybody, and everybody. This annoyed David Siame, who then slapped the appellant. Angered by the slap, the appellant picked a

stick and hit David Siame with it. The latter fled the scene, with the appellant in pursuit. When the appellant failed to catch up with David Siame, he came back to PW2's yard where he went into a rage, and started kicking anything in sight. PW1 and PW2 ran into the house. However, Moses Siulapwa, (the deceased) who felt that he had not wronged the appellant at all, stood his ground. The appellant hit him with a stick once. Moses Siulapwa fell to the ground, and became unconscious. He did not regain consciousness, up to the time that he died at the hospital the following morning. In the meantime, shortly after the assault, upon realizing what he had done, the appellant attempted to flee the village but he was apprehended and handed over to the police.

The appellant's version in his defence was that somebody that he did not know came to provoke him while he was seated on the verandah of his house. That, that person, who was drunk, kicked the appellant's beer and attempted to punch him. However, he missed and fell on a tree stump thereby injuring himself. The said injuries led to that intruder's death.

The court below disbelieved the appellants version and made the findings of fact that we have set out. On those facts, the court

convicted the appellant for murder. Finding no extenuating circumstances, the court sentenced the appellant to death.

The appellant's sole ground of appeal is against the High court's finding that there were no extenuating circumstances. Mrs. Liswaniso, for the appellant, drew our attention to the case of **Justin Mumbi v The People**⁽¹⁾ where we held that:

“Drunken circumstances generally attending upon the occasion sufficiently reduce the amount of moral culpability so that there is extenuation”

She also referred us to the case of **Jack Chanda & Another v The People**⁽²⁾, where we had earlier applied that holding. She then went on to point out several instances in the testimony for the prosecution where the witnesses confirmed that the appellant was evidently drunk at the time of the incident, and argued that on the authority of the above cases, the learned High Court Judge should have found extenuating circumstances in the case, and spared the appellant the sentence of death.

Mr. Chipawa, for the state, countered the above argument with two of our relatively recent decisions on the issue. First, was the case of **Kahale Kanyanga v The People**⁽³⁾ where we said that each

case must be treated on its peculiar facts. We proceeded to distinguish the facts in that instant case from those in **Jack Chanda & Another v The People**⁽²⁾.

Secondly, was the case of **Jose Antonio Golliadi v The People**⁽⁴⁾ where again we warned against the blanket application of drunkenness as an extenuating circumstance.

With those authorities, Mr. Chipawa pointed out that, in this case, the attack on the deceased was unprovoked; that in all the circumstances the deceased was the aggressor; and that, notwithstanding his purported "*drunken*" state, the appellant had been able to run after PW2, David Siame, whom he had also assaulted, and that he had still been able to ride a bicycle in an attempt to flee the village and scene of crime.

We have heard the arguments in this case. We wish to go by what we said in the two cases that have been referred to us by the prosecution. Each case should be considered on its own peculiar facts. In this case, it cannot be said that there was general drunkenness attendant to the occasion. Instead the appellant came from wherever he had been, looking already intoxicated. He came to provoke people who were quietly enjoying their beer in an orderly

manner. In the same manner that in the **Kahale Kanyanga** case we refused to let an appellant who provoked and killed people seek the protection of drunkenness, so in this case we cannot allow the appellant to now claim that he went on rampage, provoking and assaulted innocent people just because he was drunk. Otherwise that would be a passport for anyone to drink and start provoking, even killing, others and hide under the guise of being drunk. The learned High court judge was, therefore, on firm ground when she held that there were no extenuating circumstances in this case. We find no merit in the appeal, we dismiss it.

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E. N. C. Muyovwe
SUPREME COURT JUDGE

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E. M. Hamaundu
SUPREME COURT JUDGE

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J. Chinyama
SUPREME COURT JUDGE