

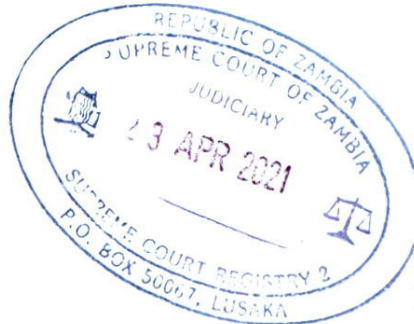
IN THE SUPREME COURT OF ZAMBIA APPEAL NO. 10/2021
HOLDEN AT KABWE
(Criminal Jurisdiction)

BETWEEN:

PETER SAMPA

and

THE PEOPLE



APPELLANT

RESPONDENT

Coram: Hamaundu, Malila and Kaoma, JJS

On 15th April, 2021 and 23rd April, 2021

For the Appellant : Mrs L. Z. Musonda, Legal Aid Counsel

For the State : Mr S. Zulu, State Advocate

JUDGMENT

HAMAUNDU, JS, delivered the judgment of the Court

Cases referred to:

1. **Mwambona v The People (1973) ZR 28**
2. **Musupi v The People (1978) ZR 271**
3. **Nalisa v The People, Appeal No.5 of 2019**
4. **Kamoya Kiavwana v The People, Appeal No. 84 of 2015**
5. **Machobane v The People (1972) ZR (reprint) 136**
6. **Emmanuel Phiri and Others v the People (1978) ZR (reprint) 112**

The appellant appeals against his conviction for the offence of murder. The appeal is on two grounds, couched as follows:

- 1. The learned trial judge erred in law and in fact when she found the defence of provocation and or self defence not available to the appellant which defence(s) might reasonably be true**
- 2. The learned trial judge misdirected herself in law and in fact when she relied on the uncorroborated evidence of a suspect witness PW5, (Lasiwe Rachel Phiri) and convicted the appellant.**

The appellant was charged with the said offence at a session of the High Court held at Kasama in June 2012, presided over by Ngulube, J, (as she then was). It was alleged that on 15th December, 2011 he murdered Pethias Chanda Chilufya.

The trial court heard that the appellant and a witness named Lasiwe Rachel Phiri (PW5) of Malambwa village in Mpika District had been husband and wife, and had divorced just a few months prior to the incident which is the subject of this case. The facts concerning the incident are undisputed, and are that on the material night PW5 took her new boyfriend, the deceased, to her matrimonial home in which she still lived. Later, in the night, the appellant came to the matrimonial home and found PW5 and the deceased in bed. Enraged by

what he saw, the appellant hit the deceased with an iron rod, three times, on the head. This was according to the version of PW5. The appellant's version, however, was that it was the deceased who attacked him, and that, in self defence, he managed to wrest the iron rod from the deceased and hit him back with it. According to the appellant he, together with PW5, took the deceased and put him outside by the road so that he could recover. It was the appellant's testimony that although he had divorced earlier with PW5, they had subsequently reconciled.

After the incident, the couple disappeared from the village. The body of the deceased was discovered a day or two later in a drainage ditch by the roadside, wrapped in a mosquito net. Since the deceased was last seen in the company of PW5 and some other friends, the police picked them all up; and detained them. It is this fact which has given rise to the second ground of appeal. The appellant was later also apprehended. It is then that PW5 and her friends were released. PW5 became a witness for the prosecution.

The learned trial judge treated three witnesses, including PW5, as witnesses with an interest to serve. She warned herself of the possibility of false implication. While the judge looked for, and found,

corroboration of the other two witnesses, she said nothing about the corroboration of the testimony of PW5. However, the learned judge went on to look at the appellant's own account of what transpired and, relying on it, found that the deceased died as a result of the injuries inflicted by the appellant on him.

The judge then considered two defences that the appellant had pleaded, that is, self defence and, in the alternative, provocation. After noting some inconsistencies in the appellant's version of what had transpired in the house, the learned judge chose to believe and accept PW5's testimony over that of the appellant. Consequently, the plea of self defence was rejected. The judge also found that the couple had divorced on 14th June, 2011. That piece of evidence, together with the judge's acceptance of PW5's testimony that she did not have any intimate relationship with the appellant after the divorce, meant that the plea of provocation was untenable as well. In fact, the judge was of the view that the appellant had no business barging into PW5's house, especially that the appellant was now living somewhere else with another woman that he had married. For that reason, that defence was rejected. The appellant was sentenced to death.

For convenience, we shall start with the second ground of appeal. In this ground, Mrs Musonda's argument, on behalf of the appellant, was that PW5, who had first been a co-accused but later turned prosecution witness, had a motive to please the prosecution in order to avoid a possible charge of being an accessory to the murder. When counsel was asked as to what part of PW5's testimony required corroboration, she replied that it was that part which showed that the deceased did not attack the appellant at all. Counsel relied on the cases of **Mwambona v The People**⁽¹⁾ and **Musupi v The People**⁽²⁾.

Mr Zulu, for the State, relying on two unreported cases namely, **Nalisa v The People**⁽³⁾, and **Kamoya Kiavwana v The People**⁽⁴⁾, argued that the trial judge decided to believe PW5 notwithstanding that the judge was aware that PW5 was a suspect witness. Relying particularly on the case of **Kiavwana v The People**⁽⁴⁾ counsel argued that it is the truthfulness, believability and personal knowledge of the matter that matters.

We propose to deal with this ground right away as it will facilitate the resolution of the first ground.

The cases of **Machobane v The People**⁽⁵⁾ and **Emmanuel Phiri and Others v the People**⁽⁶⁾ hold that it is competent to convict on the uncorroborated evidence of an accomplice, but that this should only be so where there are special and compelling grounds or, in other words, something more. And that these compelling grounds are circumstances which though not constituting corroboration as a matter of strict law, yet satisfy the court that the danger that the accused is being falsely implicated has been excluded, and that it is safe to rely on the evidence of the accomplice which is implicating the accused.

In this case, we have noted earlier that the learned judge appears to have forgotten to set out what she found to be corroboration of PW5's testimony. However, it is clear that the appellant's testimony did not materially differ from that of PW5 regarding what happened in the house that night. We consider this to be corroboration, or at least something more which would satisfy a court that PW5 was telling the truth, and not falsely implicating the appellant; and that it was safe to rely on the whole of her testimony, especially that the judge had noted inconsistencies in the appellant's

version. The trial court was, therefore, on firm ground when she accepted, and relied on, the testimony of PW5.

For the above reasons, the second ground of appeal must fail.

The first ground of appeal attacks the learned judge's rejection of the defences pleaded by the appellant. It is important to note that the judge rejected those defences after having accepted PW5's testimony, namely that she had not continued an intimate relationship with the appellant after the divorce, and that on the night of the incident the deceased did not hit, or fight, the appellant at all. We can only say that, having found that the trial judge properly received and accepted PW5's testimony, we find nothing in PW5's narration which suggests the possible existence of either of the two defences. The first ground must therefore collapse, as well.

All in all, we do not find any merit in this appeal. We dismiss it.



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E. M. Hamaundu
SUPREME COURT JUDGE



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R. M. C. Kaoma
SUPREME COURT JUDGE



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M. Malila
SUPREME COURT JUDGE