

IN THE SUPREME COURT OF ZAMBIA

APPEAL NO. 118 OF 2004

HOLDEN AT NDOLA

(Criminal Jurisdiction)

B E T W E E N:

RICHARD MBEPE

APPELLANT

AND

THE PEOPLE

RESPONDENT

CROMA: LEWANIKA, DCJ., MAMBILIMA, CHITENGI, JJS

On 7th December, 2004

For the Appellant: Mr. E.M. Sikazwe, Deputy Director of Legal Aid

For the Respondent: Mr. C.F.R. Mchenga, Director of Public Prosecutions

J U D G M E N T

LEWANIKA, DCJ, delivered the judgment of the court.

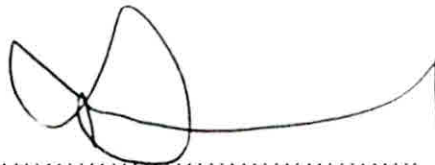
The Appellant was convicted of the offence of murder contrary to Section 200 of the Penal Code.

The particulars of the offence being that the Appellant on a date unknown but between 1st December, 2002 and 31st December, 2002 at Kitwe in the Kitwe District of the Republic of Zambia did murder one Witman Kapanga. The Appellant was sentenced to 15 years imprisonment with hard labour the learned trial Judge having found that there were extenuating circumstances and therefore did not impose the death penalty. The evidence before the lower court in brief was that the appellant had lent a novel in the month of December, 2002 to a friend of his who was PW1 in the court below. On the 20th December, 2002 the Appellant, PW1 and the deceased found themselves at a drinking place in Kitwe when the Appellant asked PW1 to return his novel and a quarrel ensued in the course of which the Appellant is said to have uttered some insulting words

to PW1. The deceased advised the Appellant not to insult PW1 in the presence of the people who were older than they were. The Appellant then turned on the deceased and assaulted him. The deceased fell down and the Appellant is said to have stamped on the deceased's head. This occurred on 20th December, 2002 and there was evidence on record that the deceased sustained some injuries on his forehead. The deceased, however, was able to travel to Solwezi and travel to Lusaka on business although he was complaining about a headache. However, on the 17th January, 2003 the deceased told his wife that he had a severe headache. The wife tried to apply some first aid on him but eventually conveyed him to the hospital where he died a few minutes after arrival.

A post mortem examination conducted on the body of the deceased on 22nd January, 2003 showed the cause of death as brain damage.

Counsel who appeared for the Appellant has urged us to interfere with the sentence on the ground that the learned trial Judge did not exercise enough lenience on the Appellant. We have considered the appeal by the Appellant as well as the evidence on record and we do not consider that a sentence of 15 years imprisonment with hard labour is excessive for an offence of extenuated murder. We therefore find no merit against sentence and we dismiss the appeal accordingly.



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D. M. Lewanika,
DEPUTY CHIEF JUSTICE.



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I.C. Mambilima,
SUPREME COURT JUDGE.



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P.C. Chitengi,
SUPREME COURT JUDGE.