

IN THE SUPREME COURT OF ZAMBIA

SCZ APPEAL NO. 170/98

HOLDEN AT NDOLA

(CRIMINAL JURISDICTION)

KILLIAN SALAD MWIIKA

APPELLANT

AND

THE PEOPLE

RESPONDENT

Coram: Sakala, CJ., Chibesakunda and Chitengi JJS

7th September 2004

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

For the State: Mrs. J. C Kaumba, Deputy Chief State Advocate

J U D G M E N T

Sakala, CJ., delivered the Judgment of the Court

The Appellant was originally jointly charged with three others on three counts of murder. The particulars of the offence on the three counts were that, between 11th and 14th January 1997, at Monze, they jointly and whilst acting together, murdered Douglas Milambo, on the first count, Dalla Milambo on

the second count and Precious Milambo on the third count. The other three co-accused were discharged after the state entered a nolle prosequi. The Appellant was convicted on the three counts and sentenced to death on each count. He has appealed against both convictions and sentences.

The fact that the three deceased died from these gruesome murders was not in dispute. It was also not in dispute that there was no direct evidence connecting the Appellant to these offences. The issue for determination by the learned trial court was as to who killed these three deceased persons in these terrible circumstances.

During the trial, the learned trial Judge, properly so in our view, rejected, after trial within a trial, a confession statement allegedly made by the Appellant to the Police. But in his Judgment, the trial Judge accepted the evidence of a Witch Doctor which suggested that when the Appellant went for consultations, he was asked whether he was not involved in these murders together with his mother and the three co-accused. It is alleged that the Appellant did admit to the Witch Doctor that he was involved in these murders. The court also accepted the alleged earlier confession statement of the Appellant made to the Police allegedly in the presence of his mother.

On behalf of the Appellant, Mr. Sikazwe has criticized the learned trial court for accepting evidence of the Witch Doctor as well as the evidence of his mother arguing that the evidence given by the mother which was a repetition of the rejected confession should not have been accepted by the learned trial Judge.

Mrs. Kaumba, on behalf of the State, initially indicated that she supported the convictions. When we pointed out to her as to the status of the evidence of

the Witch Doctor and the evidence of the Appellant's mother which was a repetition of the rejected Warn and Caution Statement, she conceded that she was not supporting the convictions as there was no evidence direct or circumstantial connecting the Appellant to the three counts charged.

We agree with the position taken by the Deputy Chief State Advocate that there was no evidence direct or circumstantial connecting the Appellant to these offences. Obviously, the evidence of a Witch Doctor, whatever the artefacts used, cannot be taken to be evidence connecting the Appellant to the offences. The evidence of PW5, the Appellant's mother, was a repetition of the rejected confession statement. We find it very unsafe to uphold these convictions. We take note that the three innocent people died in very gruesome circumstances but we cannot say the Appellant killed these three deceased persons. The appeal is allowed, the convictions are quashed and the sentences set aside. The Appellant stands acquitted on all the three counts charged and is set at liberty for those offences.



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E. L. Sakala
CHIEF JUSTICE



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L. P. Chibesakunda
SUPREME COURT JUDGE



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P. Chitengi
SUPREME COURT JUDGE

