

IN THE SUPREME COURT OF ZAMBIA

SCZ APPEAL NOS 36,37 OF 2002

HOLDEN AT KABWE

(CRIMINAL JURISDICTION)

BETWEEN:

THOMAS KOLLE

1ST APPELLANT

WILLIAM EMMANUEL

2ND APPELLANT

AND

THE PEOPLE

RESPONDENT

CORAM: SAKALA, CJ., MAMBILIMA AND SILOMBA, JJS

On 3rd August, 2004

For the Appellants: Captain F.B. Nanguzyambo, Director of Legal Aid

For the State: Mr. J. Mwanakatwe, Deputy Chief State Advocate

J U D G M E N T

Sakala, CJ., delivered the judgment of the Court.

The Appellants, who were initially charged with murder, pleaded guilty to an amended charge of manslaughter contrary to Section 199 of the Penal Code.

The particulars of the offence were that the two Appellants, on the 18th of December 2000, at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together, unlawfully caused the death of Christine Phiri.

The facts of the case as read out in the court and accepted as correct by the Appellants were that on 18th December 2000, the two Appellants were part of a group of the Power of Christ Church, which had gathered at Makaka Hill, along Kabwe Road. The gathering was for Church services. On that day, an old lady, the deceased, by the name of Christine Phiri, was brought to the two Appellants. She

was alleged to have bewitched her grandson. The Appellants, with others, prayed for her that the evil spirit that made her practice witchcraft could be cast out. Regrettably, the prayers appeared not to have been answered. They then asked her to confess to being a witch, which she declined to do, alleging that the best person to make the confession was her husband.

The two Appellants subsequently took sticks and started beating her so that she could release the baby she was alleged to have been bewitching. They stopped beating her when the old lady looked tired. They requested her to take a rest. She lay down at a place where she was later discovered dead.

The Appellants were subsequently arrested and charged with the offence of murder, which was in the course of trial reduced to one of manslaughter. The postmortem examination, conducted on the body of the deceased, revealed that the deceased suffered severe internal injuries and that the cause of death was multiple injuries.

After the facts were read and accepted, the learned trial Judge went into a long dialogue with the Appellants. The matter was adjourned to another date for sentence. On the date of sentence, the court again addressed the Appellants before sentencing them to 20 years imprisonment with hard labour. The two have appealed against the sentences of 20 years imprisonment with hard labour.

On behalf of the Appellants, the learned Director of Legal Aid observed that although a sentence for the offence of manslaughter may go as far as life imprisonment, in the instant case, no circumstances merited a sentence of 20 years, as there was nothing aggravating in that only sticks were used.

According to the learned Director, whatever the denomination and the Christian belief of the Appellants, 20 years imprisonment with hard labour was on the higher side. The learned Director pointed out that the Appellants are young Liberian Refugees, aged 29 years at the time of the commission of the offence; that they are both first offenders entitled to leniency; that they were remorseful of the

death that resulted in the loss of an innocent life of an old lady. The Director informed the court that the appellants have promised to keep peace after the sentence. He concluded his submission by pointing out that a shorter sentence would serve the taxpayers money.

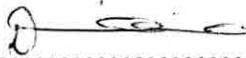
We have considered the submissions on behalf of the two Appellants. This was a death of an old lady suspected to be a witch. We have said in this court before that witchcraft can never be used as an excuse to take the life of an innocent person particularly in this case where the old lady was already in injury time of her life. Prayer services are intended to reconcile people and not to take their lives. Of course, God never answers prayers immediately you want him to answer.

We have a duty as a court to ensure that the belief in witchcraft is minimized among our people, if not completely eliminated. Indeed, we have in this court upheld sentences of more than 20 years where death has been caused as a result of a belief in witchcraft. It is unfortunate that a gathering which was intended to be for prayers to God must have resulted in a death. In any event, prayers are not intended to lead to causing death.

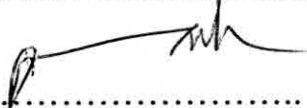
A sentence of 20 years imprisonment with hard labour does not appear to us to be on the higher side. The appeals against sentences are dismissed.



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E.L. SAKALA
CHIEF JUSTICE



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I.C. MAMBILIMA
SUPREME COURT JUDGE



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S.S. SILOMBA
SUPREME COURT JUDGE