

**IN THE HIGH COURT FOR ZAMBIA**

**HP/146/2017**

**HOLDEN AT LUSAKA**

*(Criminal Jurisdiction)*

**BETWEEN:**

**THE PEOPLE**

**VS.**

**VIOLET MVULA**



**Before the Honourable Lady Justice Dr. W. S. Mwenda at  
Lusaka the 26<sup>th</sup> day of January, 2018.**

For the State: Ms. O. Muhwende, State Advocate, National  
Prosecutions Authority

For the Accused: Mr. H. M. Mweemba, Principal Legal Aid  
Counsel, Legal Aid Board

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## **JUDGMENT**

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**Cases referred to:**

1. *Chimbini vs The People* (1973) ZR 192.
2. *David Zulu vs The People* (1977) ZR.151.
3. *Nsofu vs. The People* (1973) ZR 287.
4. *Kezzy Ngulube vs The People* S.C.Z. No. 10 of 2009
5. *Mbinga Nyambe vs The People* (2011) Vol 1 Z.R. 246

**Legislation referred to:**

1. *The Penal Code, Chapter 87 of the Laws of Zambia, ss. 200 & 204*
2. *The Criminal Procedure Code, Chapter 88 of the Laws of Zambia, s. 207 (1)*

The juvenile stands charged with murder contrary to section 200 of the Penal Code, Chapter 87 of the Laws of Zambia.

The particulars of offence are that Violet Mvula, on the 22<sup>nd</sup> day of November, 2016 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, did murder one Hassan Chipeta.

The offence of murder is captured under section 200 which provides that:

*Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of murder.*

Malice aforethought is defined by Section 204 of the Penal Code; the relevant portion of which reads as follows:

*Malice aforethought shall be deemed to be established by evidence proving any one or more of the following circumstances:*

*(a) an intention to cause the death of or to do grievous harm to any person, whether such person is the person actually killed or not;*

*(b) knowledge that the act or omission causing death will probably cause the death of or grievous harm to some person, whether such person is the person actually killed or not, although such knowledge is accompanied by indifference whether death or grievous bodily harm is caused or not, or by a wish that it may not be caused;”*

From the above provisions, the burden rests on the prosecution to prove beyond reasonable doubt that the death of Hassan Chipeta occurred at the instance of the juvenile Violet Mvula who at the time had formed the intention to cause the death or had knowledge that her act or omission would probably cause the death of Hassan Chipeta.

The prosecution called four witnesses in support of the State’s case. PW1, Terrence Mukuka, co-worker and neighbor to the deceased; PW2, Alick Tembo, a peasant farmer; PW3, James Katongo Bilaya, the owner of the farm where the deceased used to work and reside; and PW4, Tracy Chipanzya, a woman constable stationed at Kabangwe Police Station. Briefly, the prosecution evidence through PW1 is that the deceased was found with blood on his head and face



and that the juvenile was seen running to a tap with her hands and face covered in blood. The evidence of the defence is that two people came to the deceased's house and hacked him.

In the main, PW1 testified that he was a co-worker to the deceased and that they worked and resided in a block of flats on a farm belonging to Mr. Katongo (PW3) in Chipumpu Village in Chief Mungule's Area. He testified that on the 19<sup>th</sup> November, 2016, the deceased and the juvenile were fighting and that he went to stop the fight. He stated that he reported the fighting to Mr. Katongo who advised him to speak to an elder in the neighbourhood by the name of Mr. Tembo so that he (Mr. Tembo) could speak to the two (deceased and juvenile) about their fighting.

It was PW1's further testimony that he was present when Mr. Tembo spoke to the deceased and the juvenile and enquired into their fighting. According to PW1's narration of the discussion, the juvenile was asked about the misunderstanding at her home with her husband and her answer was that she did not want him and that he just forced her to get married to him.



PW1 further testified that on 21<sup>st</sup> November, 2016, whilst sleeping around 04:00 hours, he heard a voice crying and that when he came outside, he saw Mrs. Hassan (juvenile) coming out of their house and going to the tap and that she had blood on her hands and face. He said that when he asked her what the matter was, she just told him to go inside her house and see but that he did not go inside and instead went to call PW2 who came along and the two went inside the deceased's house and found the deceased screaming and dragging himself to the sitting-room and that there was blood all over the place.

PW1 testified further that the deceased had injuries on his head which appeared as if he had been axed and that he had no clothes on at the time. PW1 said that the juvenile brought some clothes and the deceased was clothed. Mr. Katongo (PW3) was called and came around 06:00 hours and took the deceased to Kabangwe Police Post. PW1 further said that he knew the deceased for a period of two weeks. He identified the juvenile in court.

In cross-examination, PW1 said that he did not see the couple fight but that he heard the deceased screaming and when he got there

with PW2, the deceased was not able to talk but was just screaming “oh no! oh no! oh no!” On further cross-examination, PW1 said that he did not mention seeing the juvenile with blood in her hands in the warn and caution statement but that, that is what he saw when he rushed to the couple’s house two minutes after hearing the screams and further that he never heard the story about two strangers entering the couple’s house.

PW2 testified that he was approached on 20<sup>th</sup> November, 2016 by PW1 on advice from PW3 to speak to the juvenile and the deceased about their fighting. He stated that when he went to speak to the couple, the deceased narrated that the fight resulted from a phone call on the couple’s phone which came in the night of the 19<sup>th</sup> and that the juvenile stopped the deceased from talking to the caller. It was PW2’s testimony that the juvenile confessed to having a boyfriend whom he said she had phoned to pick her up on the night of the 19<sup>th</sup> following the fight with the deceased.

PW2 further testified that on 21<sup>st</sup> November, 2016 around 05:00 hours, PW1 woke him up and said that the people he had counseled had fought and that when he went to the couple’s place, he found the

deceased naked and covered in blood and dragging himself to the sitting-room. He told the court that the juvenile had blood on her hands and clothes. PW2 testified further that PW3 was phoned and he arrived between 07:00 hours and 08:00 hours; that the deceased passed away on their way to hospital and that is how they took the body to Kabangwe Police Post and then to UTH mortuary.

In cross-examination PW2 stated that he did not say anything to the juvenile apart from asking her for clothes for the deceased and that the deceased did not say who had injured him as he was not able to talk.

PW3 testified that he received a call on 20<sup>th</sup> November, 2016 from PW1 telling him that the juvenile and the deceased were fighting and that he referred PW1 to PW2 so that he (PW2) could counsel the couple. He testified further that the next day around 05:00 hours he received a call from PW1 that the deceased had been axed and that when he got there he found the deceased in a pool of blood and the juvenile was crying. He stated that the deceased was taken to Kabangwe Police Post and the officer there, Simushi, told them to take the deceased to UTH but that by the time they got to UTH, the



deceased had died and was taken to the Brought In Dead (BID) Section. PW3 was not cross-examined.

PW4 testified that on 22<sup>nd</sup> November, 2016, she received a report from PW3 that the deceased had been axed by the juvenile. She said that after recording a statement from PW3 she visited the crime scene, a semi-detached flat, with the CIO, Detective Inspector Mulenga. The deceased and the juvenile occupied one flat whilst the other was occupied by PW1. She testified that there were pools of blood in the sitting-room and on the mattress in the bedroom.

It was PW4's further testimony that she saw an axe blade with blood on the ground outside the bedroom window and that about 100 metres from the axe blade, there was an axe handle. She said that finger prints could not be lifted as the items were soiled. She told the Court that when she recorded a warn and caution statement from PW1, she was told that the juvenile was seen running from the house after PW1 heard the deceased screaming in agony.

PW4 testified further that a postmortem was conducted by Dr. Musakhanov and it revealed that the deceased died from severe bleeding as a result of the injuries. She said that after interviewing

the juvenile and not getting a satisfactory answer and having in mind the background of misunderstanding between the two, she made up her mind to charge and arrest the juvenile for the offence of murder. It was PW4's testimony that there were no signs of breaking in; that the couple was living in an isolated area and that she learnt that the couple had lived there for two weeks only. PW4 tendered into court the postmortem report, the axe blade and axe handle which were admitted and marked Exhibits "P1", "P2", and "P3", respectively.

In cross-examination, PW4 said that she would not know the activities of the deceased and that the juvenile said that two people intercepted her as she was about to go to the field and asked to see the deceased who told her to allow them in and that the juvenile only found the deceased husband in blood. PW4 further stated that the only sure way to know who handled the axe was by way of finger prints but that due to the history of the quarrels between the juvenile and the deceased, the juvenile was the only suspect.

Following submissions on case or no case to answer, the juvenile was found with a case to answer and put on her defence in accordance

with section 207 (1) of the Criminal Procedure Code, Chapter 88 of the Laws of Zambia.

The juvenile (DW1) elected to give sworn evidence and did not call any witnesses. In her defence, she testified that the day following the 22<sup>nd</sup> November, she told the deceased husband that she was going to the field and that the deceased said that he was not coming along as he had a headache. She said that she met two young men outside whom she did not know and the young men wanted to see her deceased husband. That when she told the deceased that there were two young men looking for him, the deceased told her to let them in and that she left for the field. She further testified that a short while later, she heard screaming from her home and that when she rushed there she saw the two men running away.

DW1 further testified that when she went inside the house, she found her husband crying and bleeding from his head and mouth. That she started screaming and the neighbour (PW1) came and the two phoned their boss (PW3) who came and took the deceased to the hospital.



DW1 further told Court that she did not go to the hospital as she was told to wait and that she was surprised that a while later, the police came and took her to the police where she was asked what had happened and that she told the police that her husband was beaten by two young men. She said that she did not know what the prosecution had said but that she and her husband loved each other and that she never wanted to leave him.

In cross-examination, the juvenile stated that there was one house with two rooms and that she and the deceased occupied one of the rooms and a young man whose name she did not know occupied the other room. She stated that PW1's house was not near her house but later said that the two houses were about seven (7) metres apart. On further cross-examination, DW1 said that the axe had always been kept in their bedroom and that although on the material day it was bright outside, it was dark inside but that a person could still see the axe because it was not in a hidden place. It was the DW1's further response that the two young men did not have an axe when they came to ask for her husband.

The State filed in written submissions while the defence did not. Ms. Muhwende submitted for the State that notwithstanding that there was no direct evidence, the circumstantial evidence was overwhelming against the juvenile. That they were fortified by the Supreme Court holding in the case of **Chimbini vs. The People**<sup>1</sup> wherein the Court held *inter alia*, that:

*Where the evidence against an accused person is purely circumstantial and his guilt entirely a matter of inference, an inference of guilt may not be drawn unless it is the only inference which can reasonably be drawn from the facts.*

Counsel further submitted that the test to be applied in cases of circumstantial evidence was laid down in **David Zulu vs. The People**<sup>2</sup> where the Supreme Court held *inter alia*, that:

*It is incumbent on the trial Judge that he should guard against drawing wrong inferences from the circumstantial evidence at his disposal before he can feel safe to convict. The Judge must be satisfied that the circumstantial evidence has taken the case out of the realm of conjecture so that it attains such a degree of cogency which can permit only an inference of guilt.*

Counsel submitted that there was evidence from the prosecution witnesses, PW1 and PW2 that the juvenile had told them that she did not love the deceased but loved someone else and that she was forced into marrying the deceased. This, according to Counsel for the State, shows that the juvenile had motive to kill the deceased and that malice aforethought had been proved by this. In addition, that the juvenile confirmed that she did not have any dispute with both PW1 and PW2 and that therefore, they had no reason to lie about what she had told them in the meeting.

Counsel further submitted that it was important to note that PW1's evidence that he did not see any other person except the juvenile who was covered in blood was not discredited and that the allegation by the juvenile that PW1 was not home when the incident took place was an afterthought. It was Ms. Muhwende's further submission that PW4, the woman constable, mentioned that the setup of where the juvenile and the deceased used to stay was such that it could not have been possible for intruders to have escaped without PW1 seeing them and further that the juvenile and the deceased were not capable of associating with people in that area due to language barrier.



Counsel further submitted that the juvenile's evidence that the two people alleged to have committed the act were not carrying anything and that it was dark in the bedroom goes to show that the person who hacked the deceased knew where the axe was kept in the house. Further, that PW1's evidence that the juvenile was dashing out of the house when he arrived there, places her at the crime scene. In addition, that she had opportunity to commit the offence.

Counsel referred this court to the case of **Nsofu vs. The People**<sup>3</sup> where the Supreme Court stated that "mere opportunity alone does not amount to corroboration but ... the opportunity may be of such character as to bring in the element of suspicion." This authority was cited to augment the State's assertion that the juvenile had opportunity which opportunity brought in suspicion. Ms. Muhwende finally submitted that in light of the foregoing, the circumstantial evidence had taken the case out of the realm of conjecture and permitted only an inference of guilt and prayed that the court records a finding of guilty against the juvenile.

I have considered the evidence for and against the charge. Facts in issue can be proved either by direct evidence or circumstantial

evidence. Whereas direct evidence does not place such a high degree of mental process on the trial Judge as regards drawing the correct inferences, the trial Judge is tasked with a higher degree of mental process of drawing the correct inferences where the evidence is purely circumstantial. The test to be applied where a case rests on circumstantial evidence, as submitted by Counsel for the State, is that laid down in the case of *David Zulu vs. The People (supra)*. The holding in the David Zulu case has been approved in a number of cases such as **Kezzy Ngulube vs. The People**<sup>4</sup> and **Mbinga Nyambe vs. The People**<sup>5</sup>. In the case of Mbinga Nyambe, the Supreme Court held *inter alia* that:

*... where a conclusion is based purely on inference, that inference may be drawn only if it is the only reasonable inference on the evidence; an examination of the alternative and a consideration of whether they or any of them may be said to be reasonably possible cannot be condemned as speculation.*

I have examined the alternative inference in this case which is that two strangers came and the juvenile allowed them into the house on advice by the deceased and that the two are the ones who hacked the deceased. Whilst this is reasonably possible, I hold the view that it is

not reasonably probable. This view is premised on the evidence of both the juvenile and PW1.

PW1 said that he got to the deceased's house approximately some two minutes after he heard some screams and that he did not see any other person at the deceased's house or indeed in the vicinity except the juvenile who was running to a tap with her hands covered in blood. PW1 further testified that the crime scene, a farm land, is such that there is no way the alleged two strange men could have disappeared within such a short time interval without being seen as the area is open.

PW4, the arresting officer also testified to the effect that the crime scene is an isolated area. This testimony confirms and corroborates that of PW1 who said that had there been other people at the material time, he would have seen them get away as the place is open. The juvenile stated that she had barely arrived at the field when she heard the deceased husband screaming and that she rushed back to the house only to find the two strangers she had left running away. Had that been the case, PW1 would surely have seen the men.



PW4 did assert that the deceased and the juvenile were new in the area and that they could not have had associations as a result and also on the basis of language barrier. I however, hasten to state that much as this opinion sounds plausible, the possibility that the deceased and the juvenile, much as they were new in the area, had made associations and were somewhat able to communicate, cannot be ruled out completely.

That notwithstanding, on the basis of the testimonies of the juvenile, PW1 and PW4, I am inclined to hold the view that there were no other people there apart from the juvenile and the deceased. In other words, I am here called to consider if, assuming the deceased had indeed drunk beer from the strangers' tavern, it is logical that they would have allowed the deceased, who was a stranger to them, to take alcohol on credit. And supposing they did allow the deceased to take alcohol on credit the previous night, was it reasonable for the strangers to have followed the deceased just a few hours after he left the tavern?

In the alternative, is it reasonably possible that the two strangers thought that the deceased had in the early hours, around 05:00

hours managed to find money to pay for the alcohol that the deceased is alleged to have drunk on credit? Whilst it is reasonably possible, it is not reasonably probable on the testimony as proffered by the juvenile, that the strangers would have thought that the deceased had their money so early in the morning and barely a few hours after he had left their tavern.

The juvenile argued that there were two strangers who came in the early hours on the fateful day, around 05:00 hours in the morning to look for the deceased and that she left after ushering them into the house; that a short while later she heard the deceased screaming and when she rushed there, she saw the two strangers running out and found the deceased bleeding from the head and mouth. She further alleged that the deceased had told her that he had drunk alcohol from the tavern where he had gone the previous night.

The two men who it is alleged hacked the deceased were not named and there was no attempt by the juvenile to describe them. There is also no evidence on record that the tavern where the deceased is alleged to have gone drinking was visited. Whilst the burden to prove beyond all reasonable doubt rests on the prosecution throughout

trial, the defence has the evidentiary burden to rebut that which the prosecution alleges. Where there is no evidence in rebuttal, it is trite that, that which has been proffered by the prosecution stands. In the instant case, the prosecution testified that there were neither strangers at the deceased's house at the material time nor a tavern in the vicinity and further that if it were strangers who hacked the deceased, they could have been seen getting away as the area is open.

At this point, it became incumbent upon the defence to rebut this by adducing evidence of at least the presence of a tavern in the area. In the absence of such rebuttal, this evidence remains unresolved as I am not tasked with imputing facts into the evidence. On the contrary, it is within my province to draw inferences from the evidence as it stands.

In addition, there is evidence which was not discredited, that the axe blade was found outside under the window to the deceased's and juvenile's bedroom. If I were to go by the juvenile's testimony that she had just left the house when she heard the deceased screaming, meaning that there was very little time that lapsed; would it be reasonable to hold that the strangers, in the short time, managed to



demand for their money, possibly got a negative response and hacked the deceased and at the same time tried to hide the axe blade? Coupled with this, would it be reasonable to hold that the strangers presumably in a panic mode, would remember to open the window and throw the axe blade outside?

I find it difficult to envision that strangers who did not set out to commit a heinous act as was the case in this matter, would care to try and get rid of the tool(s) used in the crime. I have made this extrapolation on the testimony of the juvenile that the strangers were not carrying anything when they came to ask for her husband but that they, however, saw the axe that was in their bedroom, dark as it was. The woman constable testified that there was no evidence of a break in. In a similar vein, PW1 testified that there was a time lapse of about two minutes between the time he heard the screaming and when he got to the deceased's house and that he did not see anybody else apart from the juvenile.

From the evidence before court, I find that the juvenile was unhappy in the marriage with the deceased and that she wanted to sever the relationship. As a result of her unhappiness, there were

misunderstandings between the deceased and herself; one of which was mediated upon by PW2 but unfortunately recurred on the fateful day and resulted in the deceased's death. The juvenile had motive and did execute her motive by hacking the deceased resulting in his death. She was the only one with the deceased on that fateful night and had opportunity. In its totality, the circumstantial evidence has taken this case out of the realm of conjecture. It is thus competent for me to draw an inference of guilt.

I am satisfied that the prosecution has led compelling evidence proving both elements of the charge of murder. The prosecution has proved beyond all reasonable doubt that Violet Mvula, on 22<sup>nd</sup> November, 2016, murdered Hassan Chipeta. I therefore, enter a finding of guilty in respect of the juvenile.

Delivered at Lusaka the 26<sup>th</sup> day of January, 2018.

  
W. S. Mwenda (Dr)  
**HIGH COURT JUDGE**