IN THE COURT OF APPEAL OF ZAMBIA **APPEAL NO. 004/2018**

HOLDEN AT LUSAKA

(Criminal Jurisdiction)

BETWEEN:

MATHEWS HANDULU **APPELLANT**

AND

THE PEOPLE **RESPONDENT**

CORAM: MAKUNGU, *SICHINGA AND NGULUBE, JJA.*
On 23rd April and 25th June, 2019.

For the Appellant: *Mr. C Siatwinda, Legal Aid Counsel, Mr. H.M. Mulunda, Messrs L.M. Chambers.*

For the Respondent: *Mrs. M. Weza, Acting Senior State Advocate, National Prosecution Authority.*

J U D G M E N T

NGULUBE, JA delivered the Judgment of the Court.

Cases referred to:

1. *Issa Mwasumbe v The People (1978) ZR 354.*
2. *Bwalya v The People (1975) Z.R. 125.*
3. *Donald Fumbelo v The People SCZ Appeal Number 476 of 2013.*
4. *Katebe v The People (1975) ZR 13*
5. *Mwewa Murono v The People (2004) ZR 209*
6. *Nelson Banda v The People (1978) ZR 429*
7. *Molley Zulu and Others v The People (1978) ZR 321.*
8. *John Mkandawire v The People (1978) ZR 64.*
9. *R v Turnbull (1977) QB 224*
10. *Li Shu-Ling v R (1989) AC 145-281 at 297*
11. *Boniface Chola and Others v The People (1988-89) ZR 163*

Legislation referred to:

1. *Penal Code, Chapter 87 of the Laws of Zambia.*

This is an appeal against the Judgment of the High Court made on 22nd November, 2018 in which the appellant was convicted of murder contrary to Section 200 of the Penal Code, Chapter 87 of the Laws of Zambia and was sentenced to death.

The particulars of the offence are that *Mathews Handulu*, on an unknown date but between 12th April and 16th April, 2017 at Pemba in the Pemba District of the Southern Province of the Republic of Zambia murdered *Brendman Chazangwe*.

The prosecution evidence before the High Court was that PW1, *Corneius Chazangwe* of Simbule Village in Pemba District was at home at about 18:00 hours on 12th April, 2017 when he received a phone call to the effect that his younger brother, Brendman Chazangwe had been shot at Malawa village where he lived. He rushed to his brother's house by motor bike and upon getting there, he found him lying on the ground near his house. He noticed that his brother had wounds on the hand, the thigh and part of the leg. PW1 organized transport to take him to the hospital and on the way there, they met police officers from Pemba Police Station who stopped them and recorded a statement from Brendman.

He heard his brother tell the Police that he was shot by Mathews Handulu who was in the company of another person, but he only recognized Mathews. Brendman was then taken to Monze Hospital where he later died on 16th April, 2017. PW1 stated that Mathews Handulu is his cousin and that after Brendman was shot, he was not seen in the village. He further stated that Mathews and Brendman did not have a good relationship as they had several court cases in which they litigated against each other as Mathews suspected Brendman of having an affair with his wife.

In cross-examination, PW1 stated that he did not talk to his brother Brendman when he found him lying on the ground at his house on the night he was shot.

PW2, *Carol Lweendo,* was Brendman Chazangwe's widow. Her testimony was that on 12th April, 2017 she was at home with her husband in the evening and served him supper. After he finished eating, as he prepared to go and bath, she heard him say that he had seen some people at a distance from their house. At the time, PW2's husband was with Richmond Choolwe. As she turned to see the people her husband was talking about, she heard a gunshot and

realized that her husband had been shot as he fell to the ground at the door of the house. He then told her that he was shot by Mathews but stated that he could not recognize the second person who was with Mathews. She noticed that he was shot in the stomach and that his right hand was broken. He was picked up and taken to Monze Hospital where he died three days later. PW2 stated that her husband and Mathews had disputes in court over a period of four years and that just before he was shot on the fateful evening, they were due to go to court in Choma to receive a Judgment.

In cross-examination, PW2 stated that her husband spoke to his brother PW1 at their home before they left for the hospital.

PW3, *Richmond Choolwe* testified that on 12th April, 2017, he was at Brendman Chazangwe's house in the evening. After they had supper together, he heard a gunshot and soon thereafter, Brendman said that he had been shot and he fell down. He told him that he was shot by Mathews and he noticed that Brendman's hand broke into two parts. He also observed that he had another injury around the ribs.

In cross-examination, PW3 stated that Brendman was shot at 19:00hours and that it was not dark at the time as there was

moonlight. He further stated that when PW1 arrived at Brendman's house, he saw him talking to his brother Brendman.

PW4, *Simon Mwiinga*, a herbalist of Hanele Village, Chief Moonze, testified that on 16th April, 2017, he was asleep in his house when he was called by one of his grandchildren who informed him that someone wanted to see him outside. He went there and invited the visitor into the house whom he came to know him as Mathews Simunyanga. He told PW4 that he needed help because he had killed a person by shooting him using a firearm. He asked Mathews to sleep in the visitors' room of his house and told him that he would attend to him the following day. Soon thereafter, his grandson told him that another person wanted to see him outside the house. He came to know the person who was outside as Mathews' wife. When Mathews got out of the house to see her, he was apprehended by the Police and taken away. He identified the appellant as Mathews Simanyanga.

In cross-examination, PW4 stated that Mathews went to see him because he wanted to be assisted with African medicine.

PW5, *Hatchwell Hamalambo*, of Sibajene Village, testified that on 13th April, 2017 at about 08:00hours, he received a phone call from

Corneius Chazangwe who requested for transport as he wanted to go and see his brother who was admitted to the hospital. When Corneius returned, he told PW5 that his brother Brendman was in a critical condition. On 15th April, 2017, he went to see Brendman at the hospital in the company of his brother, PW1 and three other people. Brendman told PW5 that he was shot by Mathews who was in the company of another person he did not recognize. The following day, 16th April, 2017, he received a phone call that Brendman had died. PW5 went back to Monze hospital and picked up the people who were nursing him and after he left them at the funeral house, the Police asked PW5 if they could use his motor vehicle to look for the person who shot Brendman.

PW5 and the Police went to a village where they found Mathews Handulu and he was apprehended. At about 01:00hours, he led PW5 and the Police to a place in the bush where there was an anthill as well as thick vegetation and brought out a gun with four rounds of ammunition which were red in colour. He then gave them to the Police. PW5 was also present when Mathews led the Police to Brendman's house where he demonstrated how he shot him on the

material day. He described the gun that was recovered in the bush as a greener shot gun, which was about 34 inches long and the ammunition was red in colour. He identified the gun as well as the ammunition in Court. He also identified Mathews Handulu, since he knew him prior to this matter as his son in-law, as Mathews' younger brother married his daughter.

In cross-examination, PW5 stated that Mathews was not beaten during the course of investigations when he led the police to the recovery of the gun and the ammunition.

PW6, *Kenneth Mwangala*, Detective Sergeant of Pemba Police Post testified that on 12th April, 2017, he received a call from Cornius Chazangwe who told him that his cousin Brendman Chazangwe was shot at Malawa Village. PW6 set out for the village but on the way, he saw the canter that was used to transport Brendman, and he stopped it. Upon examining Brendman, he noticed that he had bullet wounds on one side of the ribs as well as on the right arm. He spoke to Brendman who told him that he had no hope of recovery and that he was shot by two people but only recognized one of the them who he named as Mathews Handulu. PW6 then recorded a dying declaration

from Brendman and took him to the Police station where he was issued with a medical report form. Subsequently, he was taken to Monze Hospital and was admitted there.

PW6 visited Brendman at the hospital the following morning and he maintained that he was shot by Mathews Handulu who wore a white and black stripped shirt. He visited the scene at Malawa village where he picked up three pellets which were in a deformed state. He also went to Mathews Handulu's house and found that he was not there. Two days later, PW6 was informed that Brendman had died.

At about 17:00hrs while PW6 was at Pemba Police Station, a woman he came to know as Happiness Kaimba, who was Mathews Handulu's wife was taken to the Police station. Upon searching her, PW6 found that she had a black and white stripped shirt in a bag as well as a clean vest which had charms on it. After PW6 interviewed her, she led him to where her husband, Mathews Habdulu was hiding at the home of PW4, Simon Mwiinga. PW6 warned and cautioned Mathews verbally and apprehended him. He then led PW6 into the bush at an ant hill where the firearm he allegedly used was recovered. He also recovered four rounds of ammunition. PW6 attended the postmortem

examination that was conducted on the body of Brendman where two pellets were removed from the body. The cause of death was said to be gunshot wounds. He took the recovered pellets as well as the firearm to Lusaka for ballistic examination. He charged and arrested Mathews Handulu for the offence of murder.

In cross-examination, PW6 stated that Brendman mentioned the colour of the shirt Mathews wore during the shooting when he visited him at the hospital. He denied having been told of an alibi by the accused.

PW7, Detective Chief Inspector *Vincent Rick Chibesa*, the forensic ballistic expert who was also stationed at Police service headquarters testified that he examined a firearm as well as four cartridges, five pellets and one plastic ward. He found that the firearm was a greener shotgun, capable of loading and discharging cartridges of 18.5 mm and that its firing mechanism was perfect. He also found that the four exhibit cartridges were of 18.5mm calibre and that the five pellets which were discharged at high speed hit a hard substance and got deformed. He concluded that the firearm was a dangerous

commercial weapon and compiled a report which was admitted into evidence as exhibit P6.

In his defence, *Mathews Handulu*, the appellant stated that on 12th April, 2017, he took his sister-in-law to Batoka clinic as she was unwell. He was later advised to take her to the hospital in Choma because she was critically ill. While he was at the clinic, he was informed of a shooting incident at the village. He then decided to return the village and upon getting there at 23:00hrs, he asked his children what happened. On 14th April, 2017, he decided to go and visit his uncle, PW4, Mr. Mwiinga who lived between Pemba and Monze. While there, he was apprehended by the Police and agreed to take the Police to where his gun was hidden. On the way, his cousin Corneius hit him on the foot and broke his teeth. He stated that although he showed the police where his gun was, he did not know anything about the shooting of Brendman as he was at the hospital with Asson Simweemba, Beauty Munsaka and two other people, when the shooting occurred.

DW2's *Francis Mwiinga Muzoka's* testimony was that his niece was unwell on 12th April, 2017. She was admitted to hospital and he was

informed that the appellant was one of the people who was nursing the patient at the hospital. He however stated that he did not see the appellant at the hospital.

DW3, *Sunday Mayela*, a security guard at Batoka Clinic, testified that on 12th April, 2017 at about 18:00 hours, he saw the appellant with a number of people at the clinic. They requested for a place to sleep for the night and he directed them to the verandah. At 22:00hrs, the appellant bade him farewell because he was returning to the village as he had just received information that someone had been shot there. He however had no records to prove that the Mathew's niece was admitted to Batoka clinic that night.

DW4, *Beauty Musaka*, gave evidence that on 12th April, 2017, she took her daughter who was ill to Batoka clinic and stated that one of the people who were with her was the appellant. She however had no medical report to show that her child was unwell that day.

DW5, *Asson Simweemba* testified that he was with the appellant at Batoka clinic on 12th April, 2017, having taken DW4's child who was unwell. However, they returned to the village late that evening when they received information that a relative was shot. He stated that he

was beaten by the Police at Pemba but he had no medical report to prove this.

On the evidence before the court, the learned trial Judge accepted exhibit P7, the dying declaration that Brendman made to PW6 two hours after he was shot as conclusive evidence of the identity of the person who shot him. The court discounted the appellant's alibi, that he was at Batoka clinic with a patient on the day Brendman was shot because there was no evidence to prove it. The court found that odd coincidences supported the evidence against the appellant as well as the dying declaration and convicted the appellant of the offence of murder and sentenced him to death.

Six grounds of appeal have been advanced in support of the appeal couched as follows-

1. That the Court below misdirected itself in law and fact by accepting the dying declaration without considering whether the danger that the deceased made an honest mistake was excluded especially that there was no opportunity for good observation.

2. That the trial Court erred both in law and fact by accepting the hearsay evidence of the prosecution witnesses that the deceased gave a description of what the appellant wore at the material time he recorded the dying declaration, P7 which does not contain any description.
3. That the lower court fell into error by rejecting the appellant's alibi, which was not investigated by the police despite evidence on record that it was made at the earliest available opportunity.
4. The learned trial Judge erred in law and in fact when she convicted the appellant of the offence of murder despite there being no evidence linking the appellant's firearm to the scene of crime.
5. The court below erred in law and in fact when it convicted the appellant of murder despite acknowledging that the prosecution did not investigate the alibi.
6. That the learned trial Judge erred in law and in fact when she convicted the appellant on the basis of P7, the dying declaration.

At the hearing of the appeal, Mr. Mulunda relied on the heads of argument filed on 1st April, 2019 as well as the supplementary heads of argument filed on 25th April, 2019 which he complimented with oral submissions.

In the heads of argument, it was submitted that the court accepted the identification of the appellant as the offender based on the dying declaration. Counsel argued that this placed the case in the same category as that of a single identifying witness. It was submitted that the court did not warn itself of the need to exclude an honest mistake and that the court misdirected itself in the manner it evaluated the evidence on record. It was contended that the Court did not exclude the possibility of honest mistake as this was not considered.

We were referred to the cases of **Issa Mwasumbe v The People[1] and Bwalya v The People[2]** on identification and how the possibility of an honest mistake must be ruled out. It was contended that the deceased did not mention how far the assailant was from where he sat and that no evidence was led by the prosecution to clarify the aspect of distance.

It was contended that Brendman did not mention the features which made him recognize the appellant, nor did he give a description of what the appellant wore. Counsel further submitted that it was surprising that PW2 and PW3 who were with Brendman when he was shot did not see his assailant. Counsel contended that it was not clear whether the appellant saw his assailant before or after the shooting and whether he had time to observe his assailant.

It was further argued that PW2 and PW3 were not consistent and forthright on the visibility and source of lighting that evening as they contradicted each other about the visibility at 19:00hours. PW2 stated that it was dark at 19:00hrs while PW3 stated that it was not dark and that the moon was rising. Counsel submitted that the visibility was not good and that this was why PW2 and PW3 did not see the person who shot Brendman.

It was argued that the Court should have looked for supporting evidence to buttress the weak evidence of identification. He contended that there was no supporting evidence and that the fact that the appellant led the police to the recovery of his firearm was not supporting evidence.

It was argued that no evidence was led to show that the appellant's firearm had discharged any ammunition in the recent past nor was there evidence to prove that the pellets that were recovered at the scene were discharged from the appellant's firearm.

It was further submitted that there was a dereliction of duty on the part of the arresting officer as the cartridges that were picked at the crime scene were not taken for ballistic examination and that this must operate in favour of the appellant. We were urged to uphold grounds one and two of the appeal as the evidence of identification was weak and the possibility of honest mistake was not excluded.

On ground three, it was submitted that the lower Court fell into error by rejecting the appellant's alibi which was not investigated by the police despite the evidence on record that it was made at the earliest available opportunity. Counsel contended that the appellant was consistent with his alibi which he also alluded to in his defence and that he was consistent with the version which he first gave the Police. It was contended that it should not have been dismissed as an afterthought. We were referred to the case of **Donald Fumbelo**

v The People[3] in this regard. It was argued that the Police had a duty to investigate the alibi and that the failure to do so was a dereliction of duty.

In arguing ground four, it was submitted that had the police examined the cartridge, it could have established that it was not the appellant's gun that fired the fatal shots which killed the deceased. It was further submitted that even the said clothes which were allegedly worn by the appellant on the date of the alleged shooting were not found with the appellant but his spouse. Counsel contended that there was no indication that the appellant wore the shirt on the material day.

In arguing ground five, it was submitted that the requirement of the law is that the prosecution should investigate the alibi, and that in the event that the alibi is not investigated, the Court has no option but to acquit. We were referred to the case of **Katebe v The People**[4] where it was held *inter alia* that-

> ***"Where a defence of alibi is set up and there is some evidence of such an alibi, it is for the prosecution to***

negative it. There is no onus on an accused person to establish his alibi...."

Counsel submitted that the circumstances under which the purported identification was done could not have allowed the deceased to amply and ably recognize or identify the appellant.

In arguing ground six, it was submitted that the dying declaration, exhibit P7 cannot be relied upon as the circumstances leading to its recording did not amount to moments of involvement. Counsel submitted that the deceased had time to recollect and make the said dying declaration and that the witnesses who were with Brendman after he was shot did not depict that he was in a state of hopelessness. Counsel argued that the arresting officer was a person who was known to the deceased and that there was a possibility of the dying declaration being doctored.

We were referred to the case of **Mwewa Murono v The People**[5] where the Court held that-

"***The statements made by the deceased were not contemporaneous or spontaneous with the event. The possibility of concoction or distortion was very high in the circumstances of the case.***"

We were therefore urged to quash the conviction and allow the appeal.

The respondent filed heads of argument on 16th April, 2019 wherein it was submitted that the trial Court was on firm ground when it accepted the dying declaration as it considered the dangers of honest mistake and excluded them. We were referred to the case of **Nelson Banda v The People**[6] where the Court stated that-

> ***"There is no rule in our law that the evidence of more than one witness is required to prove a particular fact."***

Counsel argued that the trial Court considered the issue of mistake and accepted the dying declaration as conclusive evidence of the identity of the shooter. We were referred to the case of **Molley Zulu and Others v The People**[7]where the Court held that-

> ***"Although recognition of a person one knows is less likely to be mistaken than the identification of a stranger, even in cases of recognition, the danger of mistake is present and must be considered."***

Counsel argued that the trial Court did consider whether or not the deceased rightly observed his assailant when she referred to the

lighting on that day and argued that the appellant was well known to Brendman as they were cousins. He was able to see the appellant because of the moonlight. It was further submitted that the appellant demonstrated to the police how he stood in front of the maize field before he aimed at the deceased, thus corroborating the dying declaration that Brendman made.

It was argued that the evidence on record was that Brendman remained calm and told PW3 not to run away, showing that he was not traumatized and was able to observe his assailants well, thus identifying the appellant.

We were referred to the case of **John Mkandawire v The People**[8], where the Court held that-

> ***"Odd coincidences can, if unexplained be supporting evidence."***

It was further submitted that the appellant went to the home of PW4 who was a herbalist to seek help after Brendman died on 16th April, 2017. It was PW4's evidence that the appellant told him that he had killed someone by shooting him with a firearm. Counsel contended that this evidence supported the evidence of identification and that

the appellant led the police to the deceased's house where he demonstrated how he shot him at a distance of about ten or fifteen metres. The appellant also led the police to the recovery of the gun that he used in shooting Brendman.

It was argued that the odd coincidences highlighted above provided the connecting link between the appellant and the murder and ruled out the possibility of honest mistake in the identification of the appellant. Counsel urged us to dismiss grounds one and two for lack of merit.

On ground three, Counsel submitted that the learned trial Court was on firm ground when it rejected the appellant's alibi because the evidence of the defence witnesses that related to the alibi was full of inconsistencies. Counsel argued that the witnesses who were called on behalf of the appellant were witnesses with a motive of their own to serve, that is, to give false evidence to save the appellant from conviction. It was submitted that although the alibi was not investigated, there was overwhelming evidence against the appellant and that the prejudice that he may have suffered for not investigating the alibi was offset by the overwhelming evidence.

Responding to ground four of the appeal, it was submitted that the learned trial Judge was on firm ground when she convicted the appellant of the offence of murder as the appellant's firearm was linked to the scene of crime. Counsel submitted that PW7, the forensic ballistic expert examined the appellant's firearm and found that it was able to discharge cartridges of 18.5 calibre. Further, the three pellets that PW6 picked from the scene of crime were in a deformed state but were found to be a component of a cartridge of 18.5 calibre. Counsel contended that the evidence on record was that the appellant led the Police to the recovery of a firearm and cartridges whose size matched the size of the pellets that were recovered at the scene while two were extracted from the deceased's body during the postmortem examination. Counsel submitted that the pellets linked the appellant's firearm to the crime scene and the murder of the deceased.

It was argued that the odd coincidence of size of pellets and the evidence of leading was supporting evidence which linked the firearm to the death of the deceased. The fact that the appellant's wife was found with a black and white stripped shirt which matched the

description of the one that Brendman described as the one the appellant wore during the attack confirmed that indeed, the appellant wore the said stripped shirt when he shot Brendman. We were urged to dismiss ground four of the appeal for lack of merit.

Responding to ground five, Counsel adopted the arguments and submissions that were made in response to ground three.

Responding to ground six, Counsel contended that the learned trial Judge was on firm ground when she admitted exhibit P7 and convicted the appellant. Counsel submitted that there was no possibility of concoction by Brendman because soon after he was shot, he told PW2 and PW3 who were at the scene that he was shot by the appellant. Counsel further submitted that the evidence on record was that by the time PW6 recorded the dying declaration, there was no hope of the deceased surviving the attack. He did not recover from the gunshot wounds. The dying declaration was rightly admitted as Brendman's death was imminent. We were therefore urged to dismiss grounds four and five of the appeal, and dismiss the appeal in its entirety for lack of merit.

We have considered the evidence led in the court below, the Judgment of the trial Judge as well as the submissions advanced by the parties.

The first and sixth grounds of appeal assail the trial court's acceptance of the dying declaration and whether the Court considered the possibility of the deceased making an honest mistake in identifying the appellant as the person who shot him on the material night.

In analyzing the evidence on record, the learned trial Judge stated that Brendman told PW2 immediately after he was shot that he had recognized the appellant as the person who shot him. The court further found that the arresting officer, PW6 recorded a dying declaration from Brendman as he was being transported to the hospital which the court accepted as conclusive evidence of the identity of the offender. This was because the said declaration was made soon after Brendman had been shot and was at the point of death without any hope of survival.

Given the circumstances which prevailed when the said dying declaration was made, we cannot fault the trial Judge for accepting

it. Further, the evidence of PW5 and PW6 is that soon after he was apprehended, the appellant led them to the bush where his firearm which he allegedly used in shooting Brendman was recovered. The appellant later led PW6 to Brendman's home where he demonstrated how he aimed and shot Brendman on the material evening. As was stated by Lord Widgery in the case of **R V Turnbull**,[9] odd coincidences can be supporting evidence. We therefore form the view that by leading the police to the recovery of the firearm that was used to shoot the deceased and by demonstrating how he shot him the evidence of the appellant himself supported the evidence of the identification and the dying declaration. We therefore do not find merit in grounds one and six of the appeal and they are accordingly dismissed.

On the second ground of appeal, in resolving the issue of Brendman giving a description of what his attacker wore during the shooting, the evidence on record is that while he was admitted to hospital, PW6 visited him and was told that the appellant wore a black shirt which had some white stripes during the attack.

The evidence of PW6 was that after Brendman had died, the appellant's wife was taken to the Police station and upon searching her, she was found with a black and white stripped shirt contained in a black bag. The shirt also had some charms on it. The appellant's wife then led the police to the apprehension of her husband.

We are of the view that the learned trial Judge properly applied herself when she accepted that the black and white shirt which was found with the appellant's wife when she was taken to the Police station was in fact the one that Brendman said the appellant wore on the night he was shot. Coincidentally, the appellant's wife led the Police to the village where he was apprehended at the home of PW4. The evidence of PW4 was that the appellant went to his house and told him that he needed some traditional medicine because he had shot a person. We are of the view that the evidence of PW4 as well as that of PW6 on finding the appellant's wife with the black and white stripped shirt corroborates the evidence that Brendman stated that the appellant wore a black and white stripped shirt on the night that he shot him. We do not find merit in ground two of the appeal and it is dismissed.

The third and fifth grounds of appeal are interrelated. They are to the effect that the Court erred by rejecting the appellant's alibi which was not investigated by the police despite the evidence on record that it was made at the earliest available opportunity. The evidence on record is that the appellant called four witnesses to show that he was at Batoka clinic on the night that Brendman was shot. However, upon hearing the evidence from these witnesses, the Court concluded that they gave inconsistent statements which made it conclude that their testimonies were fabricated. They had no evidence to show that indeed, they had a patient admitted to Batoka hospital on the material night.

We have considered the learned trial Judge's findings of fact on the said alibi and how she rejected it because of the witnesses' inconsistencies. Indeed, if the appellant was at the clinic when the deceased was shot, he would not have gone to see PW4 for African medicine stating that he needed help because he had shot a person. Further, the appellant would not have led the arresting officer to the recovery of the firearm that was allegedly used in the attack nor would he have demonstrated how he shot Brendman on the material

night. As was stated in the case of **Li Shu-Ling v R**[10] quoted in the case of **Boniface Chola and others v The People**[11]:

> ***"The truth is that if an accused person has voluntarily agreed to demonstrate how he committed a crime, it is very much more difficult for him to escape the visual record of his confession than it is to challenge an oral confession with suggestions that he was misunderstood or misrecorded or had words put in his mouth."***

The evidence on record is that the appellant was warned and cautioned before he led the Police to the recovery of the firearm as well as when he went to demonstrate how he shot Brendman.

We are of the view that in light of the overwhelming evidence against him, the appellant did not suffer any prejudice when the police did not investigate the alibi which was discounted by the learned trial Judge. We do not find merit in grounds three and five of the appeal and they accordingly fail.

Ground four assails the learned trial Judge's conviction of the appellant for the offence of murder despite there being no evidence linking the appellant's firearm to the scene of crime. The evidence against the appellant includes Brendman's testimony that he saw the

appellant wearing a stripped shirt on the night that he was shot. Brendman stated that the appellant shot him while in the company of a second person.

The evidence of PW6 is that the appellant's wife was found with a stripped shirt which had charms on it. She later led the Police to the place where her husband was hiding. This happened to be the home of PW4, Simon Mwiinga, who the appellant confessed to that he had shot a person. Upon his apprehension, the appellant led the Police to the recovery of his firearm in the bush, which upon being examined by the forensic ballistic expert, PW7 was found to have pellets whose size matched those which were found at the scene and were recovered from the deceased's body. The appellant then led the Police to Brendman's house where he demonstrated how he shot the deceased. We are of the view that apart from the appellant's confession to PW4, there was overwhelming evidence against the appellant which connected him to the shooting of Brendman. We therefore find no merit in ground four of the appeal, and it fails.

The appellant's six grounds of appeal having failed, the net result is that the appeal fails and it is accordingly dismissed. We uphold the conviction and sentence of the lower court.

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C. K. MAKUNGU
COURT OF APPEAL JUDGE

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D. L. Y. SICHINGA
COURT OF APPEAL JUDGE

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P. C. M. NGULUBE
COURT OF APPEAL JUDGE