

THE PEOPLE
v
INONGE ANAYAWA
LUBINDA SINJAMBI

HIGH COURT.
DR. MATIBINI, SC, J.
25th JUNE, 2010.
HT/23/2010.

- [1] Criminal law - Confession - When proved - Best evidence that can be proved.
- [2] Criminal law - Circumstantial evidence - Whether competent for a -Court to convict on the basis of circumstantial evidence.
- [3] Criminal Procedure - Evidence - Child of tender years - Necessity for corroboration.

The accused were charged with the offence of murder contrary to section 200 of the Penal Code. The particulars of the offence were that the accused jointly, and whilst acting together, murdered the deceased.

Held:

1. Where a confession is proved, it is the best evidence that can be proved.
2. A 1 was a principal actor in the commission of the murder, and therefore on the basis of the confession, the Court was satisfied beyond reasonable doubt that A 1 was guilty of the offence of murder.
3. It is well established as a matter of law that sworn evidence of a child in criminal cases does not require corroboration. But the Court should warn itself that there is a risk in acting on the uncorroborated evidence of young boys and girls.
4. By reason of immaturity of mind of a child, whether the evidence is sworn or unsworn, falls within the category of what may conveniently called "suspect witness," whose evidence must as a necessity be treated as suspect.
5. A conviction which is founded on suspect evidence cannot be regarded as safe unless such evidence is supported to such an extent as satisfies the giver of facts that the danger therein placing reliance upon suspect evidence has been excluded.
6. It is competent for a Court to convict on the basis of circumstantial evidence.

Cases referred to:

1. R v Baldrey [1852] 2 Den Cr. 120.
2. R v Dossi [1918] Cr. App. Rep. 158.
3. R v Cambell [1956] 2 All E.R. 212.
4. DPP v Hester [1972] 3 ALL E.R. 1056.
5. Zulu v The People (1973) Z.R. 326.
6. Chisha v The People (1980) Z.R. 36.
7. Ngulube v The People (2009) Z.R. 91.

Legislation referred to:

1. Penal Code, cap 87, s. 200.
2. Juveniles Act, cap 53, s. 122.

S. K. Nkandu, State Advocate in Director of Prosecutions Chambers for the People.

O. Ngoma, Senior Legal Aid Counsel; Legal Aid Board for the accused.

DR. MATIBINI, SC, J.: The accused are charged with the offence of murder contrary to section 200 of the Penal Code chapter 87 of the laws of Zambia.

The particulars of the offence are that Inonge Anayawa (hereinafter referred to as A 1) and Lubinda Sinjambi (hereinafter referred to as A 2) between 14th January, 2009, and 15th January, 2009, at Mongu jointly and whilst acting together did murder Anayawa Inonge (hereinafter referred to as the deceased).

The prosecution called five witnesses. The first prosecution witness was Tabo Mashebe. For convenience, I will continue to refer to Tabo Mashebe, as PW1. PW1 recalls that on 14th January, 2009, at around 07 hours, she went to work on her field. She left her children with their father; A 1. The names of the children are the deceased, Inonge Inonge, Mwangala Inonge, and Siluka Inonge. Whilst in the field, Mwangala Inonge came to PW1, and informed her that A 1; wanted her to return home. When PW1 returned home, A 1 asked from PW1 a K5,000.00. PW1 gave A 1 the K5,000 and returned to her field. Whilst still in the field, another of her children by the name of Siluka Inonge came to the field and informed her that A 1 had gone away with the deceased to Limulunga. PW1 returned home around 12:00 hours.

PW1 testified that A 1 returned home at about 18:00 hours, and informed him that the deceased was missing. A 1 is said to have blamed PW1 for the missing child. PW1 reminded A 1 that he had earlier on gone to Limulunga with the deceased. A 1 denied that he had gone to Limulunga with the deceased.

Thereafter, PW1 and A 1 decided to go to a neighbouring village in search of the deceased. The search at Nambwa village was to no avail.

At around 20:00 hours the same day, PW1 and A 1 returned home. A 1 is a traditional healer. And therefore he decided to resort to a gadget called "Taula," crafted from wood, and shaped in the form of a human being to assist him locate the whereabouts of the deceased. Efforts at using the Taula did not yield any positive results. At that point A 1 and other persons present in the Court yard began to cry. Eventually, the gadget is said to have pointed in the eastern direction, and where a canal is located. PW1 could not explain why the Taula eventually pointed in the eastern direction. PW1 testified that the following morning A 1 and his father Anayawa Simulilo, went to Limulunga Police Station to report the matter.

In the meantime, the search for the deceased by the villagers continued. In the course of the search, one Mundia Kafungwa located the body of the deceased near Lyamutinga canal. PW1 was unable to get close to the body because at the time she was carrying a baby on her back. Notwithstanding, PW1 was able to notice from a distance that the deceased had suffered a deep cut on the side of his body. Ultimately, PW1 during examination-in-chief identified A 1 in Court.

During cross-examination, PW1 confirmed that on the material date PW1 was summoned back home to give a A1 a K5,000.00. PW1 also confirmed that she did not see A 1 leave their home with the deceased. PW1 further confirmed that when A 1 returned from Limulunga, he denied that he had gone to Limulunga with the deceased.

The second witness called by the prosecution was Sianga Inonge. I was informed by Mr S.K Nkandu, that the proposed witness was aged about 14 years. I immediately formed the opinion that the proposed witness is a juvenile, and in terms of section 122 of the Juveniles Act, chapter 53 of the laws of Zambia, there was need to conduct a *voire dire*.

Sianga Inonge took a stand in the witness box. He informed me he was aged 16 years and was school going. I asked him whether he knew what an oath is; he replied in the affirmative. I also asked him what an oath is. He explained that an oath is when you swear to speak the truth. Inonge Sianga further explained that he has been taught at church to speak the truth, and that if he did not speak the truth, God would punish him. I was satisfied that in terms of section 122(1) of the Juveniles Act, the witness understood the nature of an oath, and recognised the duty to speak the truth. I was also satisfied that he was possessed of sufficient intelligence to justify the reception of his evidence on oath. (See *Zulu v The People* (5)).

Thus, Sianga Inonge gave evidence on oath, and was designated as PW2. PW2 recalled the events of 14th January, 2009. PW2 had the previous night spent a night at his uncle's house, Mr Munalula Anayawa. Early in the morning, on 14th January, 2009, PW2 went back home and found his father; A 1, and A 2, seated in the Court yard. PW2 also testified that his brothers and sisters, including the deceased were also around the homestead playing.

Later, in the morning of 14th January, 2009, PW2 went to the stream to fetch water. When PW2 completed the chore, he returned home. Upon his return home, he did not find A1 and A 2.

Further, PW2 testified that save for the deceased, all the other siblings were present around the homestead. Shortly afterwards, PW2 proceeded to school.

Later in the day around 12 00 hours, when PW2 returned from school, his mother; PW1, enquired from him the whereabouts of the deceased. PW2 replied that he did not know his whereabouts. Thereafter, PW2 joined the search team for the deceased. PW2 testified that after they failed to locate the deceased, A 1 decided in the evening to consult the Taula. PW2 testified that eventually the Taula pointed in the eastern direction. According to PW2, A1 said that the Taula by pointing in the eastern direction, meant that the deceased was lying somewhere in the canal known as Lyamutinga. PW2 testified that the following morning, the matter was reported to the Limulunga Police Station. PW2 also testified that he has known A 2, as a friend to A 1. Ultimately, PW2 identified A1 and A2 in Court.

PW2 confirmed during cross-examination that he was not present when A 1 left home on the material date. PW2 also confirmed during cross-examination that A 2, had on several occasions visited A 1. And on all those occasions, none of his siblings had ever been reported missing. PW2 reiterated during re-examination that when he went to fetch water, he left A 1 with A 2.

The third prosecution witness was Manikwani Kaundula. For convenience, I will continue to refer to him as a PW3. PW3 recalled that on 19th January, 2009, whilst at the kraal skinning one head of cattle, he was approached by A 1. PW3 testified that A 1 told him that whatever he was doing, was a waste of time, because there was a white man who was ready to pay a sum of K40 billion for fat of a child. PW3 testified that he asked A 1 how the human fat is procured. A 1 is said to have responded that by killing a child, and opening the stomach. PW 3 testified that A 1 cautioned him against killing the children of his in-law Siseho, because he would find out using lightening. A 1 is said to have proposed that they kill Kalaluka's children because they are poor. PW3 testified that after the conversation, A 1 left. PW3 testified that he informed others about A 1's proposed scheme. PW3 recalls having told Mashebe Mashebe, and Nawa Kafungwa.

PW3 testified that they planned to apprehend A1, and report him to the Police. A 1 was not apprehended as planned, because PW3 testified that the plan was revealed to A 1. Ultimately, PW 3 testified that he has known A 1 for about twenty years. PW3 confirmed during cross-examination that at the time he was approached by A 1, the deceased was already dead.

The fourth prosecution witness was Muyunda Mulemwa. For convenience, I will continue to refer to him as PW4. PW4 recalled that on 14th January, 2009, some women found the body of the deceased. When PW4 was informed about the discovery, he rushed to Limulunga Police Station alone where he reported the discovery. In response, the Police went to the scene and picked up the body. At the time, PW4 observed that the body of the deceased had a big cut on the area around the abdomen. PW4 further testified that the body was found in an area known as Moombo, and near a canal by the name of Lyamutinga. During cross-examination, PW4 confirmed that he gave a statement to the Police.

The fifth prosecution witness was Macfallen Mwansa. For convenience sake, I will continue to refer to him as PW5. PW5 testified that he received a docket in which it was alleged that A 1, and A 2, between 14th January, and 15th January, 2009, at Mongu, and whilst acting together did murder the deceased. PW5 testified that accompanying the docket, was a suspect A 1, and father to the deceased. At that point, a post-mortem had already been conducted.

PW5 testified that acting on the docket, PW5 interviewed A 1. A1 confessed having committed the subject offence. At that point, Mr Ngoma, counsel for the accused objected to the admission of the confession. As a result of the objection, I ruled that a trial-within-a-trial must be conducted. Following the trial-within-a-trial, in a separate ruling dated 22nd June, 2010, I ordered the admission of the statement. The confession that was admitted is couched in the following terms:

“WARN AND CAUTION”

“Name: Inonge Anayawa

R/add:

B/add: Moombo Basic School

Occup: P/farmer.Witch doctor

V: Imunyingi

C: Chiengele

D: Mongu

Nat/T: Zambian/Lozi

Sex/A: M/40 years

Taken today 11/03/09 around 12:30 hours at Mongu Police station in the presence of D/Sgt Siampule, the father to the suspect m/Anayawa Simulilo, the mother to the suspect F/Namwaka Inonge, two other uncles m/Kalumiana Silumesii and Michael Malumo Kamuti. You are being warned and cautioned that the Police is making some investigations in an alleged case of murder c/s 200 cap 87 of the laws of Zambia in which it is alleged that you m/Inonge Anayawa between 14/01/2009 12:00 hours and 15/01/2009 around 18:00 hours at Imunyingi village in Limulunga Royal village area in Mongu District, whilst working and acting together, with another one known, did murder a m/j/Anayawa Inonge by ripping open his chest and stomach, using unknown type of instrument. Do you understand the charge?

Yes, I do understand: Signed: Inonge Anayawa

- Witt: 1. Anayawa Simulilo father: Signed
2. Kalumiana Silumesii, uncle: Signed
3. Malumo Michael Kamuti, uncle: Signed
4. Namwaka Inonge, mother: Signed

Signed

Witt. Signed

You are further warned and cautioned that you are not obliged to say anything in answer to this charge, but whatever you say shall be taken down in writing and may be produced as evidence against you in the Court of law. Do you wish to say anything. Yes, what really happened, I came to know Lubinda Sinjambi a Police Officer in October, 2008, when I was giving him some medicines for promotions at work and good luck in life. He continued coming to my village to get charms and my family came to know him. But on 01/012009, m/Sinjambi, he made another trip to my house and told me that there was a white man who was looking for some human fat at a price of K40 billion. I refused and told him that I couldn't do it. He came to me six times trying to persuade me because I had 10 children, and only one could make me rich. But on 13/01/09, I agreed to Sinjambi's idea that may be, I can become rich and then me and Sinjambi agreed that he comes the following day early in the morning and I would find him by the road side. Then on 14/01/09, I went to check to the road around 06:00 hours, and found him by this time my two wives had gone to our fields. At home, I had remained with my children Siyanga Inonge, Siluka Inonge and the late Anayawa Inonge. So I sent the eldest son m/Siyanga to go and fetch water so that he could not see me go with Anayawa and when he left I told the late Anayawa Inonge to accompany me to the road and when the young son m/Siluka wanted to follow us where we were going, I told him I was going to Mongu and would bring him scones from Mongu and clothes. The kid understood and went back. I went with the kid to where m/Sinjambi was, I handed him my son to kill so that he can remove the human fat. Sinjambi forced my son to the ground, he stepped on his two legs and the other leg on the neck and produced a knife which he unfolded and ripped open the stomach of my son and the chest. He pulled out the intestines and removed some fat from them. He wrapped them in a plastic paper and later in a white cloth together with the knife and then we started off to Sinjambi's buyer on foot who stays in Mongu. We passed by his home and proceeded to Mongu. We went straight to Airport area, and he led me to a Mr Maketo's place where we found his wife. We asked for her husband and we were told that he was out to Kaoma. Then m/Sinjambi talked to the woman aside who also phoned the husband and later she brought a hoe and a shovel. She told Sinjambi to put them where they leave others. So then we went into one room of an uncompleted house and then Sinjambi dug a hole and put the fat there. We went to sit under the tree and later bid goodbye to the wife. So then Sinjambi told me that he was going to call me back once the man was back. When we reached Limulunga junction, Mr Sinjambi produced a K5,000.00, which he gave me for transport and he told me that he was going to Mongu Police station. I jumped on a bus and went home. I waited for Sinjambi's call but there was nothing. Each time I tried to call him, he was unreachable. I kept silent to the Police thinking he would bring money but to no avail. I then decided to reveal the truth because I cannot lose a child and money at the same time. READ OVER AND ADMITTED TO BE CORRECTLY RECORDED.

Signed Inonge Anayawa

- Witt: 1. Anayawa Simulilo father Signed
 2. Kalumiana Silumesi, uncle: Signed
 3. Malumo Michael Kamuti, uncle: Signed
 4. Namwaka Inonge, mother: Signed

Signed
33476 D/Sub/Insp Mwansa

Witt. Signed
33125/D/Sgt Siampule

After the trial-within-a-trial, the hearing in the main trial resumed, and PW5 continued testifying. PW5 testified that after A 1 made a confession to him, PW5 made arrangements for A 1's relatives to come and witness the recording of the warn and caution statement referred to above.

PW5 also testified that on 8th March, 2009, A1 led PW5 to an uncompleted building in the airport area where A 1 and A 2 were alleged to have buried the human fat. PW5 testified that they did not find the human fat. PW5 testified that on the same day 8th March, 2009, he apprehended A2.

PW5 testified that on 11th March, 2009, PW5 recorded the warn and caution statement from A 1, in the presence of his relatives. Before recording the statement, PW5 testified that he warned, and cautioned A1, and also counselled him about his right to remain silent, if he so elected. After recording the confession, PW5 made up his mind to charge A 1 and A 2 of the subject offence. A 1 admitted the charge. A 2 denied the charge. This was the case for the prosecution. At the close of the prosecution case, I ruled that a prima facie case had been established against the accused persons, and I put them on their defence.

The accused persons elected not to call any witnesses. A 1 was the first to testify. A1 testified that he is aged 41 years old and is a Traditional Healer by vocation. A1 recalled that on 14th January, 2009, he informed his two wives that he was travelling to Mongu to deliver herbs to A 2 for use by his child. After delivering the herbs to A 2, A1 passed through Luena Hardware in Mongu, before returning home. A1 testified that on the material date, he arrived home at around 19:00 hours. When he arrived home, he received a report from one of his two wives that the deceased was missing. A1 recalled that he had left the deceased home, playing with his siblings. A1 testified that he blamed his wives for failing to look after the children. A1 said he was very harsh with his wives. He almost beat both of them.

A 1 testified that he decided that they should look for the deceased at his school. At the school, A1 testified, they were informed that the deceased had been seen playing around at the school with a ream of a bicycle. Since it was late and dark, A1 decided that the matter should be reported to the Police Station the following day. However, before retiring to bed, A1 suggested to his father that he should consult the Taula, to assist him locate the whereabouts of the deceased. A1 testified that after he consulted the Taula, it pointed in all directions North, South, West and East. As a result, A 1 was not able to ascertain the whereabouts of the deceased. A 1 testified that to date he does not know where the deceased is.

A 1 testified that the following day on 15th January, 2009, he decided to report the matter to Limulunga Police Station. Whilst at Limulunga Police Station, one Poni Mulemwa came through and informed A1, and his father that the body of the deceased had been located. Poni Mulemwa informed the Police officers that the body of the deceased had been discovered by some women. When asked

the state of the body, Poni Mulemwa informed the Police that the body had a cut near the ribs. A 1 testified that, later, he was arrested, warn, and cautioned at Limulunga Police Station.

On 7th March, 2009, A1 testified that he was transferred from Limulunga Police Station to Mongu Central Police. A 1 further testified that when the warn and caution was administered, the Police Officers did not explain to him his rights. A 1 also denied having discussed with PW3; Manikwani Kaundula, about the prospects of killing a child in order to raise K40 billion from the sell of human fat.

During cross-examination A1 was reminded that PW2 Sianga Inonge, had testified that the Taula had pointed to the eastern direction, and the body was the following day found in the same direction. A1 was requested to explain the coincidence. A1 denied that the Taula pointed in the eastern direction. A1 testified that the Taula pointed in all the four directions East, West, North and South. In re-examination, A1 maintained that on the material date he left the deceased at home with his two wives.

The second witness for the defence was A 2. A 2 aged 42 years is a Police Officer in the Zambia Police Service. A 2 testified that on 10th January, 2009, since he had a newly born baby, he was given directions and advised to obtain some traditional medicine from A 1 by his mother. The directions given by his mother, led A 2 to Imunyingi village. When A 2 eventually got to A 1's residence, he was given the medicine he sought, and charged K500,000.00. A 2 made a part-payment of K250,000.00, leaving a balance of K250,000.00. The balance was to be paid at the end of January, 2009. A 2 testified that prior to the transaction referred to above, he had not met or known A1.

A2 also testified that on 16th February, 2009, he was arrested and taken to the CID offices at Mongu Central Police, where he was charged with murder. During examination-in-chief, A 2 testified that on the day the deceased went missing, A 2 was not with A 1. When asked in examination-in-chief why A 1 implicated him in the confession, A 2 replied that he was implicated because he had not settled the balance in the sum of K250,000.00.

A 2 also testified in examination-in-chief that on the material date, 14th January, 2009, he was at home in Limulunga. During cross-examination, A 2 testified that he learnt about A 1's residence through directions obtained from his mother.

A2 reiterated during cross-examination that on 14th January, 2009, he was at home. A2 was in this regard reminded during cross-examination that PW2 Sianga Inonge had testified that on 14th January, 2009, A2 was seen in the company of A1 at A1's residence. A2 insisted that the only time that he had been to A1's residence was the 10th January, 2009. During cross-examination it was put to A2 that the reason why A2 was implicated in the confession is because A2 owes A1, K40 billion.

During cross-examination, A 2 was asked why he had not called his wife to testify, and confirm that he was with her on the material date. A 2 replied, after a long pause that he expected the Police to summon his wife to Court. Finally, during cross-examination it was suggested to A 2 that the evidence A

2 gave the Court was not true. The evidence was aimed at, if I may use the expression employed by counsel, to save his skin.

During re-examination, A 2 maintained that on 14th January, 2009, he was at home. Finally, A 2 testified during re-examination that he did not kill the deceased. That was the case for the accused persons.

As regards A 1, after the trial-within-a-trial, I ruled that the confession of A 1 was admissible in evidence. I warn myself at the outset that it is trite law that the confession of A 1 cannot be resorted to, to implicate A 2. After admitting the confession, the veracity of the confession was not challenged by A1. Erlye J, in discussing the effect of a confession in *R v Baldrey (1)*, stated that:

“I am of the opinion that where a confession is proved, it is the best evidence that can be produced.”

It is clear from the confession that A 1 was a principal actor in the commission of the murder, and therefore on the basis of the confession, I am satisfied beyond reasonable doubt that A1 is guilty of the offence of murder.

As regards A 2, it will be recalled that PW2, a juvenile, testified on oath. Before advertng to the testimony of PW2, it is necessary to discuss the nature and effect of the sworn evidence of a child. The leading case on this point is the case of *Chisha v The People (6)*. In the *Chisha* case (*supra*), the case against the applicant rested solely on the evidence of a boy aged fourteen years. The trial judge conducted a perfectly, proper *voire dire*, at the end of which he was satisfied that the boy was able to give evidence on oath.

The issue was whether the sworn evidence of a child is to be treated like the sworn evidence by any other witness. Chief Justice Silungwe, as was then, delivered the judgment of the Court. Chief Justice Silungwe observed that the main issue in the case was whether the sworn evidence of a child is to be treated like the sworn evidence by any other witness. Chief justice Silungwe observed that it is well established as a matter of law that sworn evidence of a child in criminal cases does not require corroboration, but that the Court should warn itself that there is a risk in acting on the uncorroborated evidence of young boys and girls (See per Lord Goddard in *R v Campbell (3)*).

It was argued on behalf of the respondent (The People), that once a child is properly allowed to give evidence on oath, such evidence should be placed on an equal footing as the sworn evidence of any other witness in respect of which it is not necessary for the Court to warn itself.

In response, the Supreme Court observed that clearly, the effect of the submission, if accepted would be to overturn the well established rule of practice in which case the need for the warning, and the need to look for corroboration, in all cases involving children who give sworn evidence, would no longer arise.

In responding to this argument, the Supreme Court found it necessary to examine why it is that certain statutory enactments impose the necessity in some instances, of having more than one witness before there can be a conviction.

On this point, the following passage from the judgment of Lord Morris of Barth-y-Gest in *D.P.P. v Hester* (4) is both relevant, and instructive:

“The accumulated experience of Courts of law, reflecting accepted general knowledge of the ways of the world has shown that there are many circumstances and situations in which it is unwise to find settled conclusions on the testimony of one person alone. The reason for this are diverse. There are some suggestions which can be readily be made, but which are only with more difficulty rebutted. There may, in some case, be motives of self-interest or self -exculpation; or of vindictiveness. In some situations, the straight line of truth is diverted by influence of emotion or of hysteria or of alarm or of remorse. Sometimes it may be that owing to immaturity or perhaps by lively imaginative gifts, there is no true appreciation of the gulf that separates truth from falsehood. It must therefore be sound policy to have rules of law or practice which are designed to arrest the peril that findings of guilt may be insecurely based.”

In *D.P.P. v Hester* (supra), Lord Diplock spoke to the same effect at page 1072, when he said:

“But common sense the mother of the common law suggests that there are certain categories of witnesses whose testimony as to particular matters may well be unreliable either because they may have some interest of their own to serve by telling a false story or through defect of intellect or understanding or as in the case of those alleging sexual acts committed on them by others because experience shows the dangers that fantasy may support or supplement genuine recollection.”

Thus, the Supreme Court in the *Chisha* case (supra) concluded that by reason of immaturity of mind of a child, whether the evidence is sworn or unsworn falls within the category of what may conveniently called “suspect witness,” whose evidence must as a necessity be treated as suspect. The Supreme Court went on to point out that a conviction which is founded on suspect evidence, cannot be regarded as safe unless such evidence is supported to such an extent as satisfies the giver of facts that the danger therein in placing reliance upon suspect evidence has been excluded.

Although children may be less likely to be fraudulent or acting from improper motives than adults, yet there are, as Atkin J, observed in *R v Dossi* (2), at 161:

“Possibly more under the influence of third persons sometimes their parents than are adults and they are apt to allow their imaginations to run away with them to invent untrue stores.”

I therefore warn myself of the danger of relying on the evidence of PW2. The essential point, however about the testimony of PW2 is that, he testified that not only did he see A 2 with A1 on the material date, but he also knew A 2. Yet A 2 denied vehemently, that he was at A1's residence at the material date or having previously known A1. A 2 further testified that he only knew A1's residence after obtaining directions from his mother.

It seems to me remote in the extreme, that PW2 could have lied about seeing A 2 and A 1 on the material date, and knowing him as a friend to his father. I am therefore inclined to believe the testimony of PW2. Conversely, I have formed the opinion that the only reason why A 2 denied that he was not present at A 1's residence is to distance himself from the allegation that he participated in the killing of the deceased.

During examination-in-chief, A 2 testified that on the material date he was at home the whole day with his wife. During cross-examination A 2 was asked why he did not call his wife to attest to that fact. A 1 replied after a long pause, that he expected the Police to summon his wife. Granted that A 2 was facing a serious charge; a capital offence, it is rather odd that A 2 did not call his wife to come and testify that he was with her the whole day.

Mr A Tembo submitted that the prosecution has largely relied on circumstantial evidence to link A 2 to the crime. In the case of *Zulu v The People* (5), the Supreme Court observed at page 152 that:

“It is palpably clear that the evidence available at the trial was circumstantial evidence. It is competent for a Court to convict on such evidence. (see *Zulu v The People* (supra) and *Ngulube v The People* (7)).

On the basis of the evidence adduced, and on authorities cited above, I find that A 1 and A 2 are guilty of the offence of murder contrary to section 200 of the Penal Code.

Accused persons convicted of murder.