

IN THE HIGH COURT FOR ZAMBIA
HOLDEN AT MONGU
(Criminal Jurisdiction)

HT/50/2013

BETWEEN:

THE PEOPLE

Versus

MBINJI MBINJI

Before the Hon. Mr. Justice Justin Chashi in Open Court on the 29th day of August, 2013.

For the State: G. Zimba, State Advocate
For the Accused: H M Mweemba, Senior Legal Aid Counsel and G N Mukulwamutiyo (Ms), Assistant Senior Legal Aid Counsel, Legal Aid Board.

J U D G M E N T

Cases referred to:

1. The People v Paul Njobvu (1968) ZR 132
2. R v Nyansio Katunzi (Court of Appeal for East Africa, 1946) CAEA 217.
3. R v Exall (1866) 4 F & F 929
4. Kaluba Ilunga and Another v The People (1981) ZR 102
5. David Zulu v The People (1977) ZR 151

Status referred to:

6. The Penal Code, Chapter 87 of the Laws of Zambia
7. The Criminal Procedure Code, Chapter 88 of the Laws of Zambia.

Other Works referred to:

8. Black's Law Dictionary – Brian A Garner, eighth edition, Thomson West.
9. A Treatise on the Nature Principles and Rules of Circumstantial Evidence, Alexander M Burill 4 (1868)

The Accused person herein, namely **Mbinji Mbinji** was charged with the offence of **Murder** Contrary to Section 200 of the **Penal Code**⁶.

The particulars of the offence being that the Accused on the 22nd day of June 2011 at Namapa Village in the Mongu District of the Republic of Zambia, did murder one **Akatama Nyambe**.

The State in pursuit of its case called six (6) prosecution witnesses.

PW1, Lubasi Sumbanyambe of Namapa Village testified that on the 4th day of June 2011 as he was about to sleep, he heard the Accused who was coming from drinking beer pass through PW3's place. The Accused started insulting that you faeces and annuses have built on my grandfather's land. That the Accused kept insulting until he reached PW1's house. The Accused later passed through a cleared shrub and stated that the person who had cleared the shrub will see.

According to PW1, the shrub had been cleared by her husband, Akatama Nyambe, the Deceased. That the Accused continued insulting and in referring to the Deceased stated that, you wizards who have killed your children, you will see this year.

It was PW1's further testimony that the Accused then said he will beat the Deceased using bottles and if that fails, he would shoot him, and if that as well fails, he will set his house on fire, so that he burns.

PW1, also testified that, when the Accused was leaving he said that it was him Mbinji Mbinji and that whoever feels like following him should do so. That at the time PW1 and the Deceased were in the house.

It was PW1's further testimony that the following day, the Deceased, Mubita Chinyama and PW2 went to see the Accused's father at his house to inform him what the Accused had done.

According to PW1, on the 21st day of June 2013 around 01:00 hours she woke up when she heard the sound of fire and then noticed a fire in the house. She then woke up the Deceased and went and sought the assistance of PW2, her daughter. PW1 tried to stop the fire by pouring water. That since the Deceased was not dressed, PW1 asked him to go back and dress as it would not look good in the presence of PW2. That the Deceased went inside and came back, still undressed. That when the Deceased entered the house again, he never came back. At the time PW1 was also inside the house.

PW1's further evidence was that, after the fire got to the door he called and asked PW2 to find an outlet for them to escape. PW2 managed to create a hole at the corner of the bedroom and PW1 managed to escape. PW2 started calling for the Deceased, but the fire intensified and he never came out.

According to PW1, nothing was retrieved from the house apart from a chitenge material she had wrapped around herself. PW1 was later told that the Deceased had been burnt to ashes.

PW1 stated that the roof of the house was made of asbestos sheets and the rest of the house was made of grass. That property worth more than K5,000,000 was lost in the fire.

PW1 identified the Accused in Court whom she said she had known from his childhood.

In cross examination, PW1 asserted that when she heard someone insulting, she did not go outside the house. According to PW1, each person has a different voice and therefore one is able to identify one's voice. That the Accused's voice is hoarse like.

Further that during the afternoon of the day in issue, the Accused was not around, but he however heard him in the night. PW1 further asserted that in their village when one person accuses another of witchcraft, that person is usually questioned and later taken to the Police. That at the time this incident happened, there was no Induna. That if there was one, they would have engaged him first.

It was PW1's further assertion that between the 4th and the 21st of June 2013, no action was taken against the Accused.

That the fire in issue was not the first one. PW1 recalled that the Accused person once set his house on fire. That she had seen him do so as it was during day light.

According to PW1, on the 21st day of June 2011, she did not see how the fire started neither did she see the Accused set the house on fire.

PW1 also asserted that witchcraft does exist and that it was her desire that someone must be punished as the loss of the Deceased and property had caused her trauma.

PW2, Sibeso Akatama also of Namapa Village recalled that on the 4th day of June 2011 whilst asleep, she was awoken by a person who was insulting. That she listened carefully. The person was insulting all the

people in the village calling them faeces and annuses. That he was saying the village is his and whoever was going to claim the village was going to face him.

PW2 testified that as the person continued walking, he also continued insulting.

According to PW2, he came to learn that the voice was that of Mbinji, the Accused. That he has known the Accused as he has stayed with him in the village since his birth. That as the Accused went near the Deceased's house, PW2 peeped outside and confirmed that it was indeed the Accused. That he was able to see him as there was moon light.

PW2 further testified that he heard the Accused saying the Deceased had cleared the shrubs in his field and that where he has built the house it is on the Accused's field. The Accused further stated that the Deceased is going to see this year. That he was going to kill him by either using bottles or his father's gun. That if he fails, he will burn his house or use some other means.

According to PW2, the Accused further stated that the Deceased is a wizard who has bewitched his own children and he should not be allowed to touch the Accused's children. That thereafter the Accused left whilst insulting and headed towards his father's house. That at the time the Accused was leaving he said I am Mbinji whoever feels like following me can do so.

PW2 further testified that the following day she, together with the Deceased and her auntie Mubita Chinyama went to see the father to the Accused. After the Deceased narrated to him what had transpired, he said he was not surprised as the Accused had arrived at the house whilst insulting. That the

Accused's father further stated that the Accused has troubled him so much and even got him arrested on three occasions.

He then said you can take him wherever you want, even the Court, because if he is incarcerated then him as the father can have time to breath.

Further according to PW2, the Deceased decided to have a discussion at home. That his idea was to gather people so that they could meet the Accused and his father.

However, this was not done because PW4 who was supposed to preside over the meeting had a contract near Shoprite where he went to stay and that when he went back Mubita Sinyama also left for a funeral.

It was PW2's testimony that on the 21st day of June 2013, the Deceased decided that he was going to book a vehicle and go to town to pick up the Police so that they could apprehend the Accused. According to PW2, that very night between 01:00 and 02:00 hours the Accused set the Deceased's house on fire. That when PW2 got to the scene, she found her mother and father. That the father was only wearing a pant. That this is when her parents entered the house and the fire spread and they had no means of coming out.

PW2 testified that, later on her mother (PW1) called out to her to create an exit, which she did and PW1 came out after pulling her out. That by the time the father went to the exit the fire had spread and that's how he died inside the house.

PW2 also testified that when the house was still on fire, she went behind the house to check where the fire had started from and found a foot print. That PW1 said it was that of the Accused. That the footprint was where the fire had started and went into the bush.

According to PW2 she later saw the Accused standing beside her. When she asked him if he was Mbinji, he remained mute. On the third occasion that is when he acknowledged. PW2 further testified that she told the Accused that since he had achieved what he wanted by killing the Deceased, he can go and celebrate elsewhere and not there. That, that's when he left.

According to PW2, she was surprised to see the Accused because her neighbours who were near were not at the scene but the Accused who stays in the plains was already at the scene. On the issue of the foot print, PW2 re asserted that the footprint was there and at the time she saw the Accused, he was bare footed.

PW2 identified the Accused in Court.

In cross examination, PW2 asserted that on the 5th day of June 2011, they did not visit any other place apart from the Accused father's place. Further that between the 4th and the 21st day of June 2011, neither PW2 nor the Deceased reported the matter to the Police.

PW2 further asserted that she has never seen such an incident in the village apart from when a jealous man had set his house ablaze over the wife and when the Accused set his house ablaze.

PW2 further asserted that there were a lot of people who came to the scene, including people from Nalisila village and notable amongst them was Nabiana.

According to PW2, PW1 made an effort to stop the fire at the source, but she was not aware that the Deceased also went to the source of the fire. Further

that people surrounded the house when it had already been engulfed with fire.

Further that at the time the fire started, she was asleep and did not therefore see the person that started the fire. That however the person who had threatened to kill the Deceased was at the scene. PW2 further asserted that when she saw the Accused at the scene, things added up as he is the only person she suspected as he is the only person who had threatened to do harm to the Deceased.

PW2 also asserted that she believes witchcraft exists and she came to learn later that the Accused called the Deceased a witch and suspected him of being a wizard.

PW3, Inambao Akatama, also of Namapa village gave evidence that on the 4th day of June 2011 whilst asleep at night, he heard a person shouting behind his house. That the person was insulting and saying you have built on my field and you should vacate. That he listened to the voice and that it was the voice of the Accused. That he has known the Accused from childhood and he is his cousin.

That he got scared and went outside as the Accused had a tendency of setting houses ablaze, as in 2008 he had set his own house on fire, which was about ten metres away from PW3's house. That when he went outside, he saw the Accused stop at a distance. The Accused started shouting and insulting the entire village, saying that he was insulting everybody and whoever felt like following him let them do so as he was Mbinji Mbinji.

It was PW3's further testimony that the Accused said the Deceased was a wizard who was busy killing his own children. That this year the Deceased will be killed. That he will make sure the Deceased will be burnt in the house

or he will shoot him. That the Accused continued insulting as he headed for the roadside towards his parents place.

PW3 further testified that on the 21st day of June 2011 around midnight he was awakened by the sound of asbestos. That he went to the scene and found that the Deceased's house was already on fire and some poles and asbestos were already falling. That he was informed by PW2 that the Deceased was in the house. They tried to stop the fire with water but failed. That the Deceased died in the house.

According to PW3, the matter was then reported to the Police. PW3 identified the Accused in Court.

In cross examination, PW3 conceded that he had never seen the Accused directly setting houses on fire and that he was just told that the Accused has a tendency of doing so and that therefore his statement to that effect is mischievous and overzealous.

According to PW3, he does not enjoy a good relationship with the Accused. PW3 further asserted that on the day in issue, he was able to recognize the Accused as there was moonlight.

Further that when the Police came to investigate, they were directed to the Accused as the suspect. PW3 also asserted that witchcraft does exist, however he did not know if the Deceased was suspected of being a wizard.

In re examination, PW3 asserted that he did not know if the Accused burnt his house accidentally as he was not at the village at the time.

PW4, Bernard Kazuma, also of Namapa village testified that on the 4th day of June 2011 the Accused started insulting from PW3's yard, whilst walking towards the upper land. That when he reached the Deceased's

house, he said the Deceased is a wizard who has killed his own children and should stop there and not extend to other children. That the Accused further stated that he was going to kill the Deceased by burning him in the house or just kill him because he was settling on the Accused's grandfathers land. That the Accused further stated that he is Mbinji and whatever person wanted, should follow him.

According to PW4, the Deceased went to see him the following day and asked him if he heard how the Accused had insulted him. That he then asked the Deceased what steps he was going to take to which he said he would come later, so that they could go together to the Accused's father. However he never showed up.

According to PW4, he used to be neighbours with the Deceased as their houses were adjacent to each other. PW4 further testified that on the 21st day of June 2011, he was awakened when the Deceased's house was engulfed with fire. That when he went to the house, the Deceased was still inside.

Further that he has known the Accused since he was a child and that they stay in the same village. PW4 identified the Accused in Court.

In cross examination, PW4 asserted that he stays in the same village as the Accused. That he did not see the Accused on the 4th day of June 2013 until he mentioned his name. PW4 further asserted that there was no agreement in the village to point at the Accused. PW4 further asserted that witchcraft does exist in the village, however he was not aware that the Deceased was a wizard.

PW5, Akatama Akatama of Katoya floods, the son to the Deceased testified that on the 21st day of June 2011, he received a phone call from PW2 asking him to go to Namapa village as some houses had been burnt.

That he then started off and when he was about to reach the village he met the father to the Accused. That as they were in the midst of the bush they saw a person coming ahead of them who attempted to hide in the shrubs. That his father identified him as the Accused and asked him where he was coming from in the night to which he replied that he was coming from Nalisila village. That when his father asked him if he had heard what had happened in the lower land, he responded in the negative.

According to PW5, when he arrived at the village together with the father to the Accused, he noted that the Deceased's house was gutted. PW5 was then told by PW2 that the charcoal that you are seeing, that is your father. PW5 was further told by PW2 that the person who had threatened to burn the Deceased was present.

PW5 further testified that he then contacted his brother Nyambe Akatama and later reported the matter to Mongu Central Police Station and together with the Police went to the scene. That when the Police asked if there was a suspect, PW2 stated that the Accused had been threatening the Deceased and that's how the Police left instructions for the Accused to be apprehended.

PW5 further testified that when they went to the Accused's father, the father said he did not know where the Accused was, but he confirmed that the Deceased had been to see him to report the threats. That the Accused was later apprehended. PW5 identified the Accused in Court.

In cross examination, PW5 asserted that he found a lot of family members at the scene and only saw Nabiana after an hour. That he singled out the Accused because PW2 had mentioned him.

According to PW5, he does not believe in witchcraft and he was not aware that the Deceased was being suspected of being a wizard.

PW6, inspector Morrison Siampule based at Mongu Central Police Station testified that on the 21st day of June 2011, he received information from PW5 that his father, the Deceased had been burnt to death after his house was set on fire by unknown persons, on the 21st day of June 2011 between 01:00 hours and 02:00 hours at Namapa village. That he visited the scene of the crime the same day in the company of other Police Officers and interviewed PW1, PW2, PW3, PW4 and PW5 who confirmed that prior to the incident, the Accused had threatened to kill the Deceased by burning him in his house or by hiring gunmen to kill him because he was a wizard who had killed his children and he was also squatting on a piece of land which belonged to the Accused's grandfather.

PW6 further testified that he was shown the remains of the Deceased which had been burnt to ashes. That the Accused at the time was not there and a manhunt for him was launched and was later apprehended by members of the public the same day and taken to Mongu Police Station.

According to PW6, he interviewed the Accused in connection with the offence of Murder and recorded a statement. That whilst at the Police Station, the Accused was identified by PW1, PW2, PW3, PW4 and PW5 as the person who had threatened to kill the Deceased. That he then made up his mind to arrest the Accused who after a warn and caution statement gave a free and voluntary statement denying the charge.

PW6 identified the Accused in Court. PW6 further testified that according to the investigations, the Accused was met by PW5 coming from the scene around 02:00 hours. According to PW6, when he asked the Accused where he was coming from at that time, he said, he was coming from Mukolo

village where he had gone drinking and only left the village for his home in the plains around 20:00 hours.

That acting on that information, PW6 went to Mukolo village on the 22nd day of June 2013 to confirm with Katungu Sililo the person who had been serving the beer on that day and she confirmed that the Accused left at 20:00 hours. Further, according to PW6, Mukolo village is about half a kilometer to Namapa village and it would only take one about thirty minutes. That it was therefore surprising that the Accused was found near the scene of the crime around 02:00 hours by PW5.

In cross examination, PW6 asserted that the written statement from PW5 does not indicate that PW5 met the Accused. That at the time, he went to the scene, he found a lot of people at the scene.

PW6 further asserted that amongst the neighbourhood watchdog members he interviewed, was the Accused's father and Sitali Mezi and none of them confirmed that they had received any information of threats. PW6 also asserted that he did take time to investigate the genesis of the fire. That when he arrived at the scene, he was shown foot prints close to the source of the fire which were not very clear.

According to PW6, the Accused when he was asked where he was coming from on the 21st day of June 2011, he did offer an explanation that he was headed home in the plains from a drinking spree. That he did not however tell PW6 that as he was staggering home, he got alerted by an inferno in Namapa village.

It was also PW6's assertion that no one saw the Accused set the house on fire and neither did the Accused hold back the Deceased in his house whilst the house was burning.

At the end of the Prosecution's case, the Accused was found with a case to answer and was put on his defence pursuant to **Section 207 (1) of The Criminal Procedure Code**⁷.

The Accused elected to give unsworn evidence and did not call any witnesses.

According to the Accused's testimony, on the 20th day of June 2011 he was sleeping at his garden in the plains, guarding his crops. He was awoken by loud noises of people shouting for help. That he went outside and looked towards the direction of the noise and saw a fire.

It was the Accused's testimony that when he realized that the fire was coming from his village, he went to the village and found a house which belonged to the Deceased burning. That at the time he arrived, he found some other people had already arrived amongst them was Nabiana Kabombo from Nalisila village.

According to the Accused, after realizing that someone had been burnt in the house, an hour later he went back to his garden and slept. That the following morning when he went to his house he found his grandfather and young brother who informed him that people were alleging that he is the one who had burnt the Deceased's house, the reason being that on the 4th day of June 2011, someone who was drunk had insulted the people in the village and he had said he would kill someone, who had now died.

It was the testimony of the Accused that, that person had mentioned that he was the Accused, when that was not the case.

That thereafter, he left for the funeral, but before he could reach, he met the Deceased's family members who got hold of him and started beating him, until other villagers went to his rescue. That at the funeral, he denied the allegations that he is the one who had burnt the house.

According to the Accused, he was taken to the Police on the 21st day of June 2011. The Accused suspects the villagers picked on him because of his successful garden out of which he was able to sustain his livelihood and also that because they suspected that he was the only one who was capable of chasing his grandfather from the village as he was supposed to be chased.

At the end of the trial neither the State nor the Defence filed any written submissions despite having indicated that they would do so.

Nevertheless, I have carefully considered and evaluated the evidence by the Prosecution's witnesses and the unsworn testimony of the Accused on record.

As earlier alluded to, the charge against the Accused is that of **Murder Contrary to Section 200 of The Penal Code**⁷. In proving this charge, the onus is upon the Prosecution to establish the guilty of the Accused beyond all reasonable doubt. Any doubt raised should be resolved in favour of the Accused.

Section 200 of **The Penal Code**⁶ states as follows:

“Any person who of malice aforethought causes the death of another person by an unlawful act or omission is guilty of Murder.”

The ingredients of Murder are basically derived from the aforesaid Section. Those are the ingredients which have to be satisfied in order for a conviction of Murder to be sustained.

Section 204 of The Penal Code⁶ highlights what constitutes malice aforethought 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 death of or to do grievous harm to any person whether such person is the person 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 killed or not although such knowledge is accompanied by indifference whether death or grievous harm is caused or not, or by a wish that it may be caused.

(c) An intent to commit a felony

(d).....(not relevant).”

In the case in **CASU**, there is no dispute that the Deceased died as a result of the fire which was set to his house. That the Deceased's body was reduced to ashes.

The Deceased's house was made out of asbestos and grass. By setting such a house on fire, it was evident to whoever set the house on fire that there was a likelihood of causing death to the occupants of the house and even death through such an act of arson. Therefore, whoever set the house on fire which killed the Deceased did so with malice aforethought as demonstrated by the act of arson, of setting such a house on fire whilst people were sleeping inside the house.

An act of arson is not only unlawful but carries with it the intended consequence of an actual intention to kill or to cause grievous harm to the people who were in the house.

This shows a callous attitude on the part of the person who set the house on fire and the action falls squarely in the realms of Section 204 (a) of **The Penal Code**⁶. As was held in the case of **The People v Paul Njobvu**¹:

“To establish malice aforethought, the prosecution must prove either that the Accused had an actual intention to kill or to cause grievous harm to the Deceased or that his actions would be likely to cause death or grievous harm to someone.”

Malice aforethought is therefore established. Whilst on the subject matter of malice aforethought there was evidence from PW1 and PW2 that the Accused came out of the burning house together with PW1 but they later decided to go back inside. According to PW1, he had told the Deceased to go back and dress as he had come out of the house naked and that, that would not look good in the eyes of PW2, their daughter.

This is an issue which was abundantly addressed in the case of **The R v Nyansio Katunzi**². The facts in that case being that the Appellant set fire to a hut with the intention of causing either the death of or grievous harm to its occupants. Zabalirwa his son in law Kahunga and four helpless children were in the hut at the time. Zabalirwa with the help of Kahunga evacuated the children. Then Zabalirwa under the mistaken impression that one of the children was still in the burning hut re entered it and received injuries from which he died the following day. The Appellant was convicted of Murder. On dismissing the Appeal this is what **Bartley J** had to say:

“With regard to the question as to whether in the circumstances the Accused was guilty of Murder we also see no reason to disagree with the finding of the trial Judge. In setting fire to a native hut made of fillet stalks, a hut with only one door and the hut being set on fire close to that door the Accused must be held to have intended to cause the death or to cause grievous harm to the six occupants of the hut. Certainly, must have had knowledge that his act would probably cause death or grievous harm to one or other if not all the occupants. It is true that had Zabalirwa not returned into the hut in the mistaken impression that one of his children was still in the hut, he would have escaped injury, but malice aforethought having been established the fact that the act of Zabalirwa in re entering the hut intervened between the unlawful act of the Accused and the fatal burning, the result of the unlawful act is in the circumstances no defence to the charge as the Learned trial Judge properly held.”

I have no hesitation in applying Bartley J’s holding to this matter. Having established malice aforethought, the re entering of the house by the Deceased is inconsequential and cannot be a defence to whoever set the house on fire.

What is then left for this Court’s determination is the issue of who set the house on fire and consequently caused the death of the Deceased.

There is of course no direct evidence linking the Accused to the offence as no one saw him set the house on fire. Therefore the Court has to look elsewhere and that is in the direction of circumstantial evidence.

Circumstantial evidence is defined in **The Blacks Law Dictionary**⁸ as:

“Evidence based on inference and not on personal knowledge or observation.”

Alexander M Burill in A Treatise on the Nature, Principles and Rules of Circumstantial Evidence⁹ had this to say:

“Circumstantial evidence is that indirect evidence which is applied to the principal fact indirectly through the medium of other facts establishing certain circumstances or minor facts already described as evidentiary from which the principal fact is extracted and gathered by a process of special inferences.....”

If the only evidence which could be adduced were that directly of facts in issue or what is known as direct evidence, many claims would fail for lack of adequate proof. At some stage a resort must always be had to circumstantial evidence from which a Court may infer the existence of a fact in issue.

Therefore circumstantial evidence derives its main force from the fact that it usually consists of a number of items pointing to the same conclusion.

In giving an apt example of circumstantial evidence **Pollock C B** in the case of **R v Exall**³ had this to say:

“It has been said that circumstantial evidence is to be considered as a chain and each piece of evidence as a link in the chain but that is not so, for then if any one link breaks the chain would fall: It is more like the case of a rope comprised of several cords. One strand of the cord might be insufficient to sustain the weight but three stranded together may be quite of sufficient strength. Thus it may be in circumstantial evidence - There may be a combination of circumstances no one of which would raise a reasonable conviction or more than a mere

suspicion but the three taken together may create a conclusion of guilty with as much certainty as human affairs can require of it.”

It should also be noted from the case of **Kaluba Ilunga and Another v The People**⁴ as was held inter alia therein that:

“it is trite law that odd coincidences if unexplained may be supporting evidence. An explanation which cannot reasonably be true is in this connection no explanation at all.”

In the case before this Court, PW1, PW2, PW3 and PW4 were all emphatic and consistent in their evidence that it is indeed the Accused they heard insulting in the village whilst coming from a drinking spree on the 4th day of June 2011.

The evidence of these witnesses whom in my view did not have any interests of their own to serve corroborated each other. Further these witnesses have known the Accused from childhood as they stay in the same village. They were therefore able to recognize him from his voice which was later confirmed by the Accused himself mentioning his name at the end of the day. There was also evidence from PW2 that she peeped from her house and saw the Accused. There is also the further evidence by PW3 that when he heard the Accused insulting, he went outside and confirmed that it was indeed the Accused.

In view of the aforestated, I have no hesitation in making a finding of facts that the drunk person coming from a drinking spree insulting the village at large and threatening the Deceased with death by all means amongst them by fire, indeed was the Accused person. I am fortified in my finding by the fact that even the Accused’s father confirmed that the Accused on that day had arrived whilst insulting and also that the following day as per the evidence of PW2, she and the Deceased had gone to see the Accused’s

father to complain about the events of that day. This evidence by the Prosecution witness was not rebutted.

In my view, may be if the Accused had called his father to give evidence to the contrary, the case could have taken a different dimension. There is also evidence from PW2, that despite the Accused staying in the plains, he was amongst the first people to be seen at the scene.

PW5, also testified that whilst going to the Deceased's village in the company of the Accused's father, the Accused attempted to hide. And when asked by his father where he was coming from, he said he was coming from Nalisila village and also that he had not heard of anything having happened in the lower land.

That evidence is on a tagent with the evidence the Accused gave to PW6 when asked where he had been on the fateful night. He told the Accused that he had been at Mukolo village drinking. This fact was confirmed by PW6 who however was told by Katungu Sililo the person who had been serving beer on that day that the Accused left at 20:00 hours and it would only have taken him thirty minutes to Namapa village.

According to PW6, it was surprising that the Accused was found near the scene of the crime around 02:00 hours by PW5.

If the evidence of the Accused in his unsworn testimony is anything to go by, it is at variance and does not tally with what he mentioned to PW5 and his own father and PW6 and it would in my view seem to be a complete afterthought and clearly shows how unskilled a liar the Accused is.

I believe it is not a mere coincidence that the life of the Deceased would be threatened on the 4th of June 2011 and that he would meet his death on the 21st day of June 2011 in the same manner prophesized by the Accused

person on the day he had made up his mind to go and report the matter to the Police so that they could come and pick the Accused.

In the case in **CASU**, there are numerous evidentiary facts from which it can safely and satisfactorily be inferred that the Accused committed the offence. There are indeed a number of unexplained odd coincidences arising from the conduct of the Accused for which the explanation which was rendered in his defence when he bore the evidential burden cannot reasonably be true. The coincidences are so glaring that they can only point to the inference that the Accused committed the offence.

I am therefore satisfied that the circumstantial evidence was over whelming.

I am also satisfied in line with the holding in the case of **David Zulu v The People**⁵ that the circumstantial evidence had taken the case out of the realm of conjecture so as to attain the degree of cogency which can only permit an inference of the Accused's guilty. I am also satisfied that there are un explained odd coincidences which strongly support the guilty of the Accused and places him at the scene of the crime.

In view of the aforesated, the Prosecution has proved its case beyond reasonable doubt.

I therefore find the Accused guilty of the offence of Murder as per **Section 200 of The Penal Code**⁶ and **ACCORDINGLY CONVICT** him.

Delivered at Mongu this 29th day of August, 2013.

Justin Chashi
HIGH COURT JUDGE