

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

**HJ/163/2014**

**BETWEEN:**

**THE PEOPLE**

**Versus**

**ROYD BANDA**



***Before the Honourable Mrs. Justice J. Z. Mulongoti  
in Open Court on the 12<sup>th</sup> day of December, 2014***

***For the State:*** Mrs. M. P. Lungu, Senior State Advocate & Mrs. S. Kachaka, State Advocate, NPA

***For the Accused:*** Mr. J. Phiri, Senior Legal Aid Counsel & Ms. M. Simataa, Legal Aid Counsel, Legal Aid Board

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**J U D G M E N T**

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**Cases referred to:**

1. Kambarage Kaunda v. The People (1990-92) ZR 215 (SC)
2. Wamundila v. The People (1978) ZR 151
3. Machipisha Kombe v. The People (2009) ZR 282

**Legislation referred to:**

1. The Penal Code, Chapter 87 of the Laws of Zambia, sections 200 and 204

The accused Royd Banda, is indicted on one count of **Murder** contrary to section 200 of the Penal Code, Chapter 87 of the Laws of Zambia.



The particulars of the offence allege that the accused on an unknown date but between the 25<sup>th</sup> and 28<sup>th</sup> day of December 2013 at Chipata in the Eastern Province of the Republic of Zambia, murdered **Dorothy Phiri**, whom I shall refer to as the deceased, in this judgment.

At the trial, the accused pleaded not guilty after the charge was read and explained to him. The onus is therefore, on the prosecution to prove its case beyond reasonable doubt. The accused does not bear the burden to prove his innocence and should be convicted on the strength of the prosecution evidence.

Arising from section 200, the prosecution must prove that the accused by an unlawful act or omission with malice afterthought was responsible directly or indirectly in causing the death of the deceased.

To prove its case, the prosecution led evidence from six witnesses (PWs).

PW1, Caroline Chungu 34, of Mbenjele farms in Chipata, testified that on 25<sup>th</sup> December 2013 which was a Wednesday, she was on her way home from the traditional nyau dancers. She was in the company of her in laws Samson Banda, Emmanuel Banda and Bridget Banda. When they reached the Jehovah's Witness Church they saw a bicycle which they identified to be theirs. It was parked



in the bush abandoned. They decided to take it and Samson rode it. The court heard that the accused had taken the bicycle earlier in the morning that day.

According to PW1, when the accused got home that night, and found the bicycle parked home, he asked her why she had taken the bicycle saying he got confused thinking it had been stolen. She said she told him that they too feared the bicycle could have been stolen since he left it in the bush where there were no houses. A day later PW1 heard that Dorothy Phiri, a child, had gone missing. On Saturday the Chairman organized a search party and PW1 got to hear that the girl had been found dead in the bush. On Monday she learnt that her brother in law, the accused in casu, had been apprehended over the same. She decided to follow the group of people wherever they were taking the accused. When they got to the bush at a certain point, they were told to wait and three people took the accused further. A while later one person returned and asked for two of the accused's relatives. They got her (PW1) and her sister Mike's mother, when they got to where accused and others were, they asked the accused to explain again what he had told the three.

The accused then said, "**it is true, I am the one who killed the child.**" When asked why, he said he used to send the deceased to take messages to his girlfriend and vice versa. On that day, Wednesday 25<sup>th</sup> December 2013, his girlfriend had sent the



deceased to call him from the nyau camp. The girl delivered the message and he started following her asking where his girlfriend was, when they reached the Jehovah's Witness Church the girl told him that she had lied and it was her who wanted to see his thing. And then he did what the girl wanted by having sex with her then the girl said that is what she wanted and she was going to tell her mother. He got upset and hit the girl on her left breast and that is how she died. When PW1 asked the accused why he killed the child over that, he said he did not know that she would die.

PW1 identified the accused in court as his brother in law and also the bicycle 'P1' which she said was found about 500 to 600 meters from where the body was found.

In cross examination, PW1 testified that the group of people that had apprehended the accused and were leading him to the bush was about 50 people and some were threatening to kill him. She said the neighbourhood watch members were there though it was only one Mugwamanyando and the other man Beta just acted as a neighbourhood watch member. PW1 also testified that the three people who went further with the accused were not part of the group that threatened to kill him.

She also testified that the bicycle 'P1' was found by the road off the road. And that the morning when he left home, the accused said he was going to Mbenjele where the nyau dancers were. PW1 said she



would not know if the deceased was also at the nyau dance. When shown the original statement recorded by the Police, she admitted that she did not talk about the accused confessing to killing the girl.

She said it was because the Police told her to restrict her statement to the bicycle only.

When re-examined, she said the bicycle 'P1' was found at the road side on a tree just where the bush starts from.

PW2, James Banda, 32, testified that on 25<sup>th</sup> December, 2013 he went to Mbenjele to celebrate Christmas and just before sunset he decided to get back home. When he got to the Jehovah's Witness Church, he met the accused who is a friend of his. He noted that the accused had mud on his trousers and elbows. He asked him why he was looking like that and wondered if he had a girl with him in the bush. The accused said no and that he was defecating. According to PW2, the accused wore a white jean trousers white sneakers, and that he could not recall the color of his shirt.

PW2 then expressed surprise at how his friend could be so messed up in that manner if he was just defecating. The accused then said he was looking for his bicycle and asked if he had met anyone with a bicycle. He said no and advised the accused to continue searching in the morning and continued on his way.



Later on a Saturday he was informed that a child of Meki Phiri had gone missing. PW2 then informed others and they started searching for the child. A meeting was held later and they were informed that the child had been found dead. It was PW2's testimony that he suspected the accused because of the way he had mud on him when they met and that he looked afraid.

He rushed to where the body was found and he saw it. It was in the bush and was partially buried on the left side. It was lying on the side, the buttocks were uncovered. It was his testimony that the body was about 500 meters away from where he had met the accused on 25<sup>th</sup> December 2013. After burial Mr. Theo visited him and told him that they had a suspect. He then advised Theo to go to Vini's and interrogate the accused. Later he (PW2) heard that the accused had been apprehended.

He said he recognized the accused that day when they met because he was nearby and the sun was about to set. He was also known to him prior. Further, that the two were walking on a gravel road with trees on the side.

In cross examination, PW2 testified that he never met the accused at Mbenjele where the nyau dancers were but at Jehovah's Witness Church, as he walked home. He also testified that the accused



looked confused and disturbed, and said that he was looking for his bicycle.

PW2 agreed with the defence counsel's assertion that when he met the accused the sun had set and visibility was poor. He also agreed that the only white thing the accused wore were his shoes.

When re-examined he reiterated that the accused had mud on his clothes and shoes. He also clarified that in cross he said the only white thing the accused wore were his shoes because he thought the question was about his shoes. He reiterated that the trousers were also white. PW2 also testified that at a distance he did not see accused properly but he recognized him when he drew nearer to him.

PW3, Beta Theo, 48, testified that on 28<sup>th</sup> December 2013 which was a Saturday, around 09:30 hours, he was informed that a body of a child had been found in his farm. He got concerned and rushed to the scene where he saw the body of Dorothy Phiri, the deceased, lying partially buried. Her face was facing the northern direction, her head west and her legs east. Then Vincent Banda, who is the accused's brother was asked to go and report to the Police. The Police came and took pictures of the body.

During the burial he (PW3) overheard James Banda (PW2), who was standing nearby him, telling someone that he (PW2) was afraid



because he had met the accused with mud on his knees and elbows near to where the deceased's body was found.

Further, that PW2 said he had asked the accused why he was looking like that or if he had a girl but the accused said he was defecating. And that the accused's eyes were red and he looked disturbed and afraid.

Then on Monday PW3 decided to go and see PW2 to ask about what he overheard him saying at the graveyard. He was in the company of Macha Banda and Dan Nundwe. They met PW2 and he told them exactly as he had overheard him saying. PW3 then decided to go and see Vincent Banda who had the contact details for the Police but he did not tell Vincent that his brother, the accused, was the suspect. After they got the Police's number, they went and apprehended the accused and took him to the deceased's parents' home. They informed them that he was the suspect in the death of the deceased.

The accused then asked to speak to a few people aside. PW3, Macha and another person walked with him at a short distance where he confessed to them that he had killed the deceased. When asked why he said she was a messenger between him and his girlfriend. PW3 narrated like PW1 how the girl propositioned him and after he had sex with her she said she would tell her mother. Then he panicked, hit her with a fist on her left breast and that is



how she died. That he tried to resuscitate her to no avail, then he went home and got a hoe and tried to bury her. PW3 like PW1 testified that they called two of his relatives being PW1 and her sister and accused confessed in their presence as well.

Later they took him to the chairman and he confessed again. Then people were threatening to kill him and he was taken to Lunkuswe area for safety, where the Police picked him from. Again he confessed to the Police. PW3 identified accused in court as someone he has known for years.

The court heard that the Jehovah's Witness Church was on the way to PW3's farm.

In cross examination, PW3 testified that he was never a suspect but his young brother Kaduku and another farmer were. When shown his statement which was recorded by Police and signed by him and in which he had said people were passing silly comments saying he was the one who could have done it, PW3 said he told the Police his brother was a suspect. And that his family all lived at the same farm. He also testified that there were more than 50 people when the accused was taken to the deceased's parent's farm and that the intention was not for him to be harmed.

Further, that he spoke to the accused after he had spoken to PW2. And that before he confessed, the accused was not threatened but



afterwards some people made death threats at him. PW3 denied threatening the accused that he would be buried alive if he did not confess neither did he hit him with a stick.

Under further cross examination, PW3 testified that PW2 never told him that the accused had mud like someone who had fallen but rather like someone who was having sex with a girl. PW3 also testified that PW2 never told him that the accused was looking for a bicycle.

PW4, Medrick Phiri, 60, of Mbenjele farms testified that on 25<sup>th</sup> December 2013 around 15:00 hours, his daughter the deceased left home to go to Mbenjele shops and never returned. The following day which was a Thursday, around 11:00 hours after seeing that the deceased had still not returned, he decided to alert his neighbours. His wife even inquired from Vincent Banda's farm who was one of the neighbours and Vincent told her that he had seen the deceased at a distance at Mbenjele at the nyau dance. PW4 also inquired from Macha Banda's daughter, Gile, who told him that the deceased had left her behind at the nyau dance. And that she left around 17:00 hours. On 27<sup>th</sup> December, 2013 PW4 went as far as searching with her school mates and Isaac's daughter told him that she had not seen the deceased since they closed schools. PW4 also inquired from the head of the nyau dance all to no avail. He also sent his son Philip to check at Njolomole village but he too found no trace of the deceased.



He then decided to involve the chairman of the block, Mr. Kenya Zulu. Mr. Zulu suggested that they hold a search party.

On Saturday morning people gathered and Mr. Zulu informed them why they had gathered. They split up and started searching for the deceased. PW4 returned home. While he was at home, David Tembo went to his home and informed him that they had found the deceased's dead body in the farm of Beta Theo (PW3). They rushed there and PW4 confirmed the body to be that of his daughter.

The Police were called and they came and took pictures. After that they advised the family to bury and to mark the grave for exhumation whenever the Pathologist would be available to do postmortem which was done eventually. Again after burial on Sunday there was a gathering at which it was agreed that the perpetrator must be found and apprehended. On Monday, he was at his home when PW3, Macha and others brought the accused as the suspect. After that they took him away at a distance from his home where he was interrogated. PW4 was later informed that the accused had confessed to killing the deceased. The court heard that later the accused led the Police to the scene and demonstrated where he had stopped. PW4 identified the accused in court.

In cross examination he testified that there were lots of people when the accused was brought to his home and that they took him away



from his home for questioning. PW4 further testified that he was not aware that the accused was threatened to be buried alive or taken to the nyau dancers to be killed if he did not confess.

Under further cross, PW4 testified that when the accused led the Police to the scene he was in the company of three officers and one had a gun.

PW5, Detective Inspector Francis Ng'andwe Ngosa, 41, informed the court that he was a scenes of crime officer and he trained as such at Lilayi in 1999. It was his testimony that on 28<sup>th</sup> December 2013 he visited a scene of crime in Mbenjele, involving a body of a human being a juvenile aged 11, named Dorothy Phiri who had gone missing. He further testified that he was in the company of the investigating officer Detective Sergeant Sakanya. They found the body at the scene. It was partially buried and decomposed. He took various shots of the body from the back, the front, the head etc as shown in the photo album P2.

On 30<sup>th</sup> December 2013 after the accused was apprehended from the village, the Police went and picked him. On 3<sup>rd</sup> January 2014 he led the Police to the scene, after he was verbally cautioned, and PW5 took various pictures of him as he pointed to various points in the bush and finally to where the body was found.



In cross examination, PW5 testified that he visited the scene twice, on 28<sup>th</sup> December 2013 and 3<sup>rd</sup> January 2014. And that at the second visit they went with the accused. He also disclosed that no physical evidence was recovered at the scene on 28<sup>th</sup> December 2013.

PW6, Detective Sergeant Lazarous Sakanya, 40, testified that on 28<sup>th</sup> December 2013 he was investigating a case of murder reported by Medrick Phiri (PW4). The report was that the deceased had gone missing on 25<sup>th</sup> December 2013 and was discovered dead on 28<sup>th</sup> December 2013. PW6 in the company of PW5 visited the scene where the body was found. It was about 100 meters from the road, partially buried. When they checked physically, they noticed that she wore a chitenge which was torn on the buttocks, and the body was in a semi decomposed state. The pictures were taken by PW5 and family advised to bury.

A few days later he was informed that the suspect had been apprehended. They rushed there but met the suspect on the way with PW3 and two others. The Police took him from the hands of the three villagers and took him to Chipata Central Police, where he was detained. On 2<sup>nd</sup> January 2014 he warned and cautioned the accused and he confessed to committing the crime. However, after trial within a trial which resulted in the ruling dated 9<sup>th</sup> December 2014, the confession statement was not admitted in evidence.



PW6 further testified that his investigations and interviews with the accused also led him to discover about the bicycle 'P1'. It was his testimony that the bicycle was left by the accused near to where the body of the deceased was found. It was found by PW1. PW6 further testified that he also recovered a hoe 'P3' which was used to bury the deceased. PW6 also testified that the postmortem was conducted per postmortem report 'P4'. The accused was identified in court. During cross examination, PW6 testified that according to his investigations the deceased was seen at Mbenjele at the nyau dance.

That was the case for the prosecution. I found the accused with a case to answer.

When called upon to defend himself, accused also referred to as DW1 opted to give evidence on oath and called no witness. It was his testimony that on 25<sup>th</sup> December 2013 he left his home early in the morning to go to Mbenjele for drinks. He was with his friends Lyson Mtonga and the owner of the bar whose names he could not recall. They took the illicit drink or sachet beer known as tujilijili. They started drinking after 13:00 hours and stopped at 16:00hours. Then he decided to go to the nyau dance but because he was drunk he failed to stand properly and decided to go home and sleep. This was around 17:00hours. It was his testimony that due to his drunkenness he staggered as he cycled. He came across a pool of water from the rains and as he gave way to people who were going



in the opposite direction, he slipped and fell to the ground. When he got up he was covered in mud and decided to roll his bicycle and not ride it.

The court heard that when he by passed the Jehovah's Witness Church he suffered some stomach upset and decided to go to the bush to defecate. He left the bicycle parked by the road, about 20 meters from, the bush. After defecating, he went back where he had left the bicycle but he did not find it. He started searching for it and met PW2 in the process. He asked PW2 if he had seen anyone get his bicycle but the latter said no. He continued on his way home and when he got there he found the bicycle parked. He asked who had got it and PW1 said she did together with Samson and Emmanuel Banda.

Three days later, the neighbourhood watch picked him from his home and took him to PW4 [the deceased's parents' home] where they continued questioning him about the deceased. He said he knew nothing. Then PW3 and Macha beat him with an axe handle on the right ear. They threatened to take him to the nyau camp so he could be killed. Later PW3, Macha and another person took him into the bush about 120 meters away from the others and threatened to kill him and to bury him alive and they continued beating him. It was then that he decided to confess by admitting to having killed the deceased. Then PW1 who is his sister in law was called to witness his confession. The court heard that the



confession was fake for fear of being killed. He testified further that he confessed again in the presence of PW1 that the deceased had approached him at the nyau dance that day, 25<sup>th</sup> December 2013, and conveyed a message from his girlfriend who wanted to see him.

However, when he got to the spot he was supposed to meet his girlfriend he did not find her but noticed the deceased was following him. Then the two of them went into the bush to have sex, but the deceased changed her mind and that is why he killed her. He reiterated that he was forced to say so otherwise the confession was fake and a lie. He was then handed over to the neighbourhood watch member who has an identity card. Then they met the Police on the way and he was surrendered to them. He said he did not hear PW1 call out his name when she found the bicycle on the road. He said he wore a white trousers, black T-shirt and brown sandals on the material day.

In cross examination, DW1 testified that when he fell, he landed on his face and his knees, legs and body were all covered in mud while the bicycle fell inside the water. He confirmed that when he met PW2 his clothes were covered in mud. He also confirmed that when he first confessed he was with PW3, Macha and Thole and PW1 was called afterwards and he repeated his confession in her presence. He reiterated that he confessed because he was beaten. In response to a question from the court, DW1 agreed that he knew the deceased and that she used to do piecework at their farm. He



said he did not see her at the nyau dance. He said his girlfriend is Nezesi Zulu but he denied sending the deceased to take messages to Nezesi or vice versa.

He agreed that PW1 was his sister in law, wife to his elder brother Vincent. He branded as lies PW1's testimony that he said he beat the girl and did not know that she would die. He also said he and PW1 never got on well.

When re-examined he said he was not staying well with PW1 because she used to tell her husband that he was going out with Nezesi who was sick. He reiterated that he made up the confession story for fear of being killed. That was the case for the Defence.

After careful consideration of the evidence adduced in this case, I find the following are common cause and thus proved:

1. On 25<sup>th</sup> December 2013 there were nyau dancers performing at Mbenjele in Chipata. Several residents of Mbenjele attended the dance including PW1, PW2 the accused and the deceased.
2. The accused who is PW1's brother in law left home at the family farm early in the morning and got the bicycle. PW1 in the company of her other in laws, on their way home from watching the nyau dancers, found their bicycle which accused had taken parked off the road on a tree near the Jehovah's Witness Church and to near PW3's farm.
3. PW2 also on his way home from the nyau dance, met accused near the Jehovah's Witness Church, with his clothes covered in mud and he told him he was looking for his bicycle.



4. When accused got home, he found the bicycle 'P1' parked and inquired as to who got it from where he had parked it. PW1 owned up and said they found it abandoned.
5. The deceased who had also attended the nyau dance performance never returned home after that. Her lifeless body was discovered on 28<sup>th</sup> December 2013, partially buried in PW3's farm.
6. Her body was found after her parents, the neighbourhood watch, PW3, PW2 and others held a search party.
7. After discovery of the body Vincent Banda, the deceased's elder brother was tasked by others to report to the Police. The Police officers PW5 and PW6 visited the scene and took pictures as shown in the photo album 'P2". This was still on 28<sup>th</sup> December 2013.
8. A postmortem was later conducted. The cause of death was not established due to advanced decomposition.
9. PW6 was informed that accused was apprehended in connection with the deceased's death by PW3, Macha & Others etc. The accused was charged with murder.

The issue for determination is whether the accused with malice afterthought, attacked the deceased and caused her death. It is also imperative for me to determine whether the confession he made at the village was a fake story or a lie due to the beatings. It is indisputable that the deceased is dead. The postmortem report confirmed this and all the prosecution witnesses testified to this fact. PW1, 2, 3 and 4 all testified how her dead body was found, partially buried and decomposed in PW3's farm. I saw the pictures of the body in the photo album 'P2' and they confirm the state in which the body was found as testified by the witnesses.



On the facts of this case it is clear that the cause of death was an unlawful act or omission considering the girl was fine and she went missing only to be found dead and partially buried 2 to 3 days later. The postmortem report 'P4' does not disclose the cause of death due to the decomposed state of the body.

It is trite that malice afterthought as defined in section 204 of the Penal Code, in part, that it **"shall be deemed to be established by evidence proving anyone or more of the following:**

**(a) an intention to cause the death of or to do grievous harm to any person whether such person is the person killed or not..."** is a mental element and thus difficult to prove. However, it is also well established that it can be inferred from the surrounding circumstances of the case like nature of the weapon used if any, the conduct of the assailants before, during and after the attack, the body part targeted. The prosecution must prove that the perpetrator had the intention to kill or cause grievous bodily harm or ought to have known that attacking the deceased in that manner would cause death or grievous bodily harm.

The prosecution through PWs1, 2, and 3 have connected the accused to the commission of this horrific crime. According to PW1 and PW3 the accused confessed to killing the deceased after she threatened to report to her mother that he had sex with her. I note the deceased was a minor aged 11. I am alive to the fact that PW1



being a relative to the accused and a neighbour to the deceased is a witness with a possible interest to serve. So is PW4, who is the father to the deceased. It is settled law that the testimony of such a witness is not safe to rely on unless there is something more like corroboration or lack of a motive to falsely implicate the accused. As was held by the Supreme Court in cases like **Kambarage Kaunda v. The People (1)**. In **Wamundila v. The People (2)** it was held that "*where there is no corroboration of the evidence of a witness with an interest to serve, it is not safe to convict on that evidence.*" This also applies to PW3 in whose farm the body of the deceased was found and who was initially a suspect though he swore it was his brother who was a suspect.

The question therefore is, was PW1 and PW3's testimonies corroborated, such that it is safe for me to rely on it and convict on it? I observed PW1, PW2 and PW3 as they testified. I must state that I was impressed with the manner in which they conducted themselves. They struck me as candid and did not exaggerate their testimonies. For instance, PW1 admitted when shown her statement that she did not tell the Police about the confession the accused made in her presence because she was advised by Police to stick to the issue of the bicycle. This to me is a valid explanation. PW3 admitted that he did not attend the nyau dance and none of them said or suggested in any way that they saw the accused with the girl. They also admitted that others had threatened to kill him. The witnesses did not crack even under extreme cross examination



by the Defence counsel, who I commend for putting up a spirited defence, but the witnesses did not contradict themselves one bit. PW1 and PW3 were consistent that the accused was apprehended then taken to PW4's house and later he was taken to the bush, where he was taken aside by PW3, Macha and a third person. He confessed to the three and later one of them was sent to call for his relatives if there was any in the mob. PW1 and her sister happened to be there and they were taken to where accused was and he repeated his confession that he killed the deceased after she threatened to report him to her mother for having sex with her.

The accused corroborated this testimony of PW1 and PW3 except now he claims it was a lie and only confessed after he was beaten. It is very hard for me to accept that this confession story is fake and all lies due to the strong corroboration evidence, as I shall elaborate later.

I note also the odd coincidences regarding the bicycle 'P1' which was found parked by the road side at Jehovah's Witness Church. PW1 was corroborated by PW2 who met him near the church looking for the bicycle. The accused corroborated the duo on this score. Then there is also the issue of accused being seen by PW2 covered in mud on his trousers on the knees and elbows and that he wore a white trousers. Again accused confirmed this testimony of PW2 except he said he was defecating in the bush. PW2 was



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categorical that accused appeared disturbed and afraid when he met him and he wondered if he was with a girl in the bush.

The accused also testified as did the prosecution witnesses how he was taken to PW4's home, how he first confessed to PW3 and two others, how he was surrendered to the neighbourhood watch, he even said the one with an identity card. All of them plus himself confirmed that PW3 was not a member of the neighbourhood watch. He also confirmed that he was surrendered to the Police in particular PW6, after they met the Police on the way. This was in line with PW6's testimony.

I, therefore, find that the prosecution witnesses had no motive to falsely implicate him and that though some may be witnesses with a possible interest to serve their testimonies was corroborated and is safe to rely on.

I find the coincides as highlighted to be something more, compelling me to accept the evidence of the witnesses. Also as noted the manner in which they handled themselves the three were credible witnesses who spoke the truth.

It is trite law that corroboration is independent evidence which tends to confirm that the witness is telling the truth when he or she says that the offence was committed and that it was the accused who committed it. This was held in **Machipisha Kombe v. The**



**People (3).** The issue of odd coincidences amounting to corroboration was also discussed in that case. I therefore, find that the confession accused made at the village was not fake or a lie. I discern or decipher therefore, that the only fake story is the beatings he said he suffered at the village. The villagers, if anything, acted fairly by involving his relatives and took him from the mob threatening to kill him. The accused even confirmed that he was taken aside and later to a neighbourhood watch member with an identity card by the three and PW1 confirmed the three were not part of the group threatening him. PW2's testimony that he wore white trousers. He confirmed the prosecution witnesses in all material aspects. Like PW1 and PW2 he confirmed that he had parked his bicycle 'P1' at the Jehovah's Witness Church. Even his confession is consistent with the photos exhibited in court and the testimony by the Police officers and PW2, that the deceased's chitenge was torn on the buttocks and they were exposed. Suggesting struggle with the sex act like he had confessed.

I am of the firm view that even without the confession, there is strong circumstantial evidence connecting the accused to the commission of the horrific crime. As aforementioned the bicycle which was parked at Jehovah's Witness and he admitted he parked there, the muddy clothes like someone who was in the bush with a girl, and the partially buried body of the girl in the bush, etc.



I have no doubt in my mind and I find as a fact therefore, that the accused attacked the deceased and caused her death, and partially buried her in the bush. PW2 said the left part of her body was partially buried, and he said he attacked her on the left breast. He even alluded to his girlfriend even in court and he admitted to knowing the deceased. Both of them were at the nyau dance as already determined. It was from there that he followed her on her way home and attacked her. He said he left the nyau dance around 17:00 hours and PW4 testified the deceased's friends told him she had left for home around 17:00 hours. The odd coincidences are just too much and these can only infer one thing, that is the guilt of the accused.

It was his confession to PW1 and PW3 that he hit her on the left breast then she died. I note that the breast being on the chest close to the heart is a delicate part of the body. He therefore had malice aforethought as required by section 204. And his conduct when PW2 met him was that of panic, the act of partially burying her is also a clear indication of malice aforethought. I also take judicial notice that defilement is a serious offence attracting a minimum penalty of 15 years and so when the girl who was aged 11 threatened to report to her mother, he attacked her with the intention of killing her and thus silencing her forever to avoid being imprisoned for defilement. He is now saying the confession is not true to avoid imprisonment like he avoided the charge of defilement



by killing the girl, in such an awful and disgraceful way. This is clearly an afterthought and defence mechanism, which has backfired.

On the totality of the evidence, I find that the prosecution has proved its case beyond reasonable doubt. I find the accused guilty of murder contrary to section 200 of the Penal Code and I convict him.

Delivered at Chipata this 12<sup>th</sup> day of December, 2014.

  
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J. Z. Mulongoti  
**HIGH COURT JUDGE**