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IN THE HIGH COURT FOR ZAMBIA
HOLDEN AT MONGU
(CRIMINAL JURISDICTION)

HP/70/2013



BETWEEN

THE PEOPLE

VS

JACKSON SAKALA
MATHEWS NJOBVO

Accused No. 1
Accused No. 2

CORAM: Honorable Justice Mr. Mubanga M. Kondolo, SC

MARSHALL: Ethel Phiri

For the People: Ms. G. Nyalugwe – State Advocate

For the Accused: Mr. J.M. Chimembe of Messrs J.M.C & Associates ✓

J U D G M E N T

CITED LEGISLATION

1. *section 22 (1) of the Penal Code Cap 87, Laws of Zambia*
2. *Section 294 (1) of the Penal Code Cap 87, Laws of Zambia*
3. *Section 200, Penal Code, Chapter 87, Laws of Zambia*
4. *Section 201 (1) (2) (a) of the Penal Code, Chapter 87, Laws of Zambia*

CITED CASES

1. *George Nswana v The People (1988 - 1989) Z.R. 174 (S.C.)*
2. *George Chileshe v The People (1977) Z.R. 176 (S.C.),*

The Accused in this matter Jackson Sakala and Mathews Njobvu, herein referred to as A1 and A2, respectively stand charged with two counts.

Under Count one they are charged with the offence of Aggravated Robbery contrary to **section 294 (1) of the Penal Code Cap 87 Laws of Zambia** of which the particulars allege on 30th April, 2012 at Lusaka in the Lusaka District of the Lusaka Province of the Republic of Zambia, jointly and whilst acting together and whilst being armed with an unknown object did steal 1 bag, 2 grinders, 1 cutting saw, 1 Pluto, 1 cutting disc, 2 bulbs with cordes 5 meters measuring tape, 1 steel shine and 1 DVD player altogether valued at K6,610 the property of ZHANG CHAO and at or immediately before or immediately after the time of such stealing did use or threaten to use actual violence to the said ZHANG CHAO in order to obtain, retain or prevent or overcome resistance from its being stolen.

Under count two A1 and A2 are charged with the offence of **Murder contrary to section 200 of the Penal Code Cap 87 Laws of Zambia** of which the particulars allege that they, on the 30th day of May, 2012 did murder Zhang Chao.

The accused denied the charge and the prosecution led evidence with 5 witnesses in support of its case against them hereinafter referred to as PW1 to PW5.

PW 1- Fang Chen Xu

PW1 was Fang Chen Xu, a manager at Zhang Cheng Company who testified that between 08:00 and 08:30 on 1st May, 2012 he was shocked when he received information that the site foreman Zhang Chao had been killed at the place where they were doing some works. When he got to the site he found lots of people already there and these included company officials, relatives and the staff from the Chinese embassy.

PW1 said he saw Zhang Chao's body by the wall near an electrical control box. His head was facing the gate and it was covered with blood and there was also blood on the ground. He further said that the windows and doors of Zhang's house were all open and the room in which he lived looked like it had been searched. He also observed that some tools were missing namely, two grinders, a circular saw, a DVD player, a standby light and many other hand tools.

PW1 said he knew the tools which were missing because they used to keep records. He described the missing items as follows;

1. *A Sinotech DVD player.*

2. *Dong Cheng branded power tools.*
3. *A working light with red wire.*
4. *A brick laying tool.*
5. *A brownish suitcase with a pull handle and wheels.*
6. *Passport was also missing.*
7. *ZMK2 million (KR2000), Site money.*

PW1 estimated the value of stolen items as being about K5,000.

About two days later Woodland Police Station informed PW1 that some suspects had been apprehended and some of the stolen property recovered. He was able to identify the property because he was the one who'd bought them. He identified the following items;

- 1) *Suitcase identified*
- 2) *Circular Saw*
- 3) *Grinders*
- 4) *DVD player (Sinotech & remotes for DVD and TV)*
- 5) *Working lights*
- 6) *Hand tools and measuring tapes*

PW 1 testified that the last time he saw Zhang alive was about a week before he was murdered and he was in very good health.

Under cross examination PW1 stated that although there was nothing special by which he could identify the items he'd identified in court, they were not available in local shops and could only be bought in China.

PW2-Michael Phiri

PW2 was Michael Phiri a cousin to Jackson Sakala, A1. He recalled that on 1st May, 2012 A1 informed him by phone that he was going to visit him. PW2 met A1 at Chawama station around 11:00 hours. A1 was with a bag and they went to PW2's house. This was the first time A1 was visiting PW2's house and he told PW2 that he was planning to move near his house because he wanted to live near his relatives and that he would move as soon as he was paid for some piece work he had done.

A1 asked PW2 to keep his bag for him and showed him its contents which included a big grinder, a small grinder, a cutting machine, a remote and two lights. There was also a cutting disc, other building tools and a measuring tape. A1 asked PW2 to sell one cutting machine

because he had no use for it. A1 told PW2 that he was given some of the items by his Chinese boss and that he had bought some of the others over a period of time.

PW2 further testified that A1 phoned him again around 19:00hours the same day and asked to be picked up because he was unable to locate his house. At the station PW2 found A1 in the custody of the police whilst in handcuffed. The police told PW2 that they wanted the things he had been given by A1. PW2 obliged and he was detained in cells. He was only released after 5 days when the police were satisfied that the items had only been taken to his house by A1 for safe keeping.

PW2 identified A1 as his cousin Jackson Sakala and he also identified the following items in court;

- 1) *Suitcase*
- 2) *Cutter circular saw with cutting disc*
- 3) *Big & small grinders*
- 4) *Lights*
- 5) *Hand tools*
- 6) *DVD player*

Under cross examination PW2 stated that he was detained because the police treated him as a suspect. He denied having been beaten by the police. It was put to PW2 that he had turned against A1 because he was not his blood relative. PW2 agreed that A1 was not his blood relative as he was his uncle's sister's son but denied that he had turned against him. When pressed PW2 stated that if A1 had been his blood relative, he would not have testified against him.

Under further cross examination PW2 said he knew that A1 was employed but he did not know what kind of work he did and neither did he know if A1 had the capacity to buy the items he'd left with him. PW2 also stated that he had told the police that the bag A1 left with him was brown and that he denied knowing 2nd accused Mathews Njobvu.

PW3-Richard Siandyomba

PW3 was Detective Constable Ricahrd Siandyomba who testified that on the morning of 1st May, 2012, he was told to accompany the scenes of crime officer D/Sergent Mwamba and the CIO Chief Inspector Mwanamwalye to a scene of aggravated robbery in Kabulonga along Green lane where some Chinese were building a studio for the Roman Catholic Church.

When they got to the scene they found Zhang Chan`s naked dead body lying in a pool of blood about 10 meters away from his house. The body had a deep cut on the top of the head and on the side of the chin.

PW3 said that after PW1 described the items which were missing from the scene, he asked his informers for information. Around 15:00 hours the same day, one of his informers told him that two former workers of Zhan Chin Company had been seen carrying a brown suitcase.

Acting on that information PW3 and other officers apprehended the accused persons herein and took them to Woodlands Police Station. When interrogated, they both admitted having robbed and murdered Zhang Chao, a Chinese national. PW3 informed the court that when asked about the brown bag, the suspects said they had taken it to PW2, Michael Phiri who was A1`s relative.

PW3 further testified that the items described by PW1 valued at about K6, 610 were recovered from PW2`s house and PW2 was also taken into custody. He identified A1 and A2 as the people he apprehended. He also identified the following items as the items he recovered from PW2`s house;

- 1) *Suitcase*
- 2) *Circular Saw*
- 3) *Grinders*
- 4) *DVD player (Sinotech) & remotes for DVD and TV.*
- 5) *Working lights*
- 6) *Hand tools and measuring tapes*

Under cross examination PW3 said he was not calling his informers to testify and that he did not know which of the two accused persons allegedly killed the deceased. He stated that he was sure that the items he`d identified in court were the actual items stolen from the deceased because the accused persons led the police to their recovery the same day they were apprehended.

PW4 –Robam Mwamba

PW4 was the scenes of crime officer Detective Sergeant Robam Mwamba who testified that on 1st May, 2012 he visited a scene of crime at a construction site at 10, Green Lane, Kabulonga where he found a dead body of Zhang Chao lying facing upwards with his head covered with blood. He observed that the body had a deep cut on the head and another one near the chin.

PW4 said he also visited the deceased's room where he observed that things were scattered in a disarranged manner. He said he took photographs of the scene which included photos of the body and the room.

The photos were admitted into evidence without objection by the defence and the defence also dispensed with cross examining PW4.

PW5- David Kalaluka Mwanamwalye

PW5 was Inspector David Kalaluka Mwanamwalye who testified that after they visited the scene of crime the body of the deceased was taken to UTH mortuary where it was pronounced dead. He said that two suspects Jackson Sakala and Mathews Njobvu were apprehended and that although he was not there when they were apprehended he interviewed them in connection with the offence.

PW5 testified that the two suspects admitted robbing and murdering the deceased and they explained to him that A1 went to the deceased's room whilst A2 went to the meter box and switched off the lights. They explained that the idea was to force the deceased to go and check on the lights so that A1 would have access to his room and steal from there. When the deceased went to check on the meter box he was struck by A2 and upon seeing that the deceased was overpowered they left the premises with the stolen property. PW4 further testified that A2 did not say anything about whether or not he is the one who struck the Chinese.

PW4 informed the court that later in the day A1 led the police to PW2 where some stolen items were recovered. The following items valued at about K6, 610 were identified by PW4 as those recovered from PW2 and were admitted into evidence

- 1) *Suitcase*
- 2) *Cutting disc*
- 3) *DVD player*
- 4) *Hand tools*
- 5) *Measuring tape*
- 6) *Electric cables*
- 7) *Cutting machine*

Under cross examination PW4 stated that he was not the one who apprehended the suspects but that he thought they were apprehended on 4th May, 2012 and that he interviewed the suspects as the arresting officer on the same day. PW4 further stated that the account of how the robbery was conducted was narrated to him by A1.

PW4 agreed that PW2 was locked up in cells and he also agreed that he did not lift any finger prints from any of the alleged stolen items. PW4 said that he visited the scene of crime in his capacity as the Criminal Investigations Officer and was in the company of experts.

The Prosecution closed its case and Accused 1, Jackson Sakala and Accused 2 Matthew Njobvu were put on their defence.

Accused No. 1 – Jackson Sakala

A1 testified that he was employed by Zhang Cheng in Chipata on 5th October, 2009. He was later transferred to Lusaka on 3rd October, 2010. He recalled that on 5th April, 2012 he together with eight other employees were put on forced leave because one of their friends stole K6, 500 from the company. They were told that they would be paid later and they were indeed paid.

He further testified that whilst at home on 29th April, 2012 he received a phone call from his friend Phiri who informed him that that a Chinese national had been killed in Kabulonga. He conveyed the message to his friend Mathews Njovu, A2 by phone.

A1 told the court that later in the day around 16:00 hours on his way from doing peace work in Mtendere he saw his friend Phiri standing next to a car about 50 meters ahead of him in the company of somebody he'd never seen before. That person greeted A1 and asked him where he had taken the bag he'd had earlier.

A1 told the same man that he'd taken the bag to one of his cousins and the man asked him to get into the car together with Mr. Phiri and other people. He said he only got in the car because Phiri was his friend and he identified one of the other occupants of the car as Kasanda. They proceeded to Kalikiliki Police Station where he was put in cells and then to Woodlands Police Station where he was asked if they could go and collect the bag he had taken to his cousins' house. A1 said he agreed to go get the bag because it was his bag.

A1 explained that they went and retrieved the bag from his cousin Mark Phiri, PW2. A1 asked the police to leave PW2 alone but they decided that he should accompany them to the police station but he was later released. A1 said that the police did not check what was in the bag in his presence.

A1 said that on 21st May, 2012 the police took him to Zhang Cheng in Kabulonga and forced him to demonstrate how he had stolen from there but he denied having stolen and refused to do the demonstration. He was taken back to Woodlands police Station.

A1 further testified that later that day he was taken back to Zhang Cheng but now together with A2 where they were forced to demonstrate how they had stolen. A1 was taken to the Chinese mans bedroom and A2 was taken to where the electricity breakers were and A1 said that even though there was nothing to demonstrate he finally agreed to do so because one of the 2 police officers had a gun. A1 said A2 was his friend and he had found him in the cells at Kalikiliki earlier in the day.

A1 said that the contents of the bag he took to PW2's house were as follows;

- 1) *1 bag and 1 small grinder*
- 2) *DVD player*
- 3) *2 bulbs and cables*
- 4) *Building tools (Mpeni)*
- 5) *30 meters yellow measuring tape*
- 6) *1 barber machine (hair clipper)*
- 7) *Cutting discs*
- 8) *Remote controls*
- 9) *A grey bag which contains papers and building materials. The papers were receipts for the items which were in the bag.*

A1 testified that he was arrested on 29th April, 2012 and all the listed items belonged to him. He said that he'd earlier forgotten to mention that after PW2 took the bag he'd shown him the listed items together with the receipts for the items and had told him to sell the machine for cutting planks because he didn't need it. He also said that he'd told PW2 that the building tools were given to him by the Chinese man but that he had bought the other items himself.

Under cross examination A1 stated that he was employed as a general worker and was familiar with the Zhang Cheng offices in Kamanga and Kabulonga because he used to work there. He also said that he understood why he was put on forced leave from 5th April to 5th May, 2012.

A1 insisted that the alleged stolen items belonged to him and the receipts for the said items were in the bag. When asked how he could prove that the items were his, he said he had changed the start button on the big grinder from yellow to black and the grinding pin on the small cutter was a bit finished because he used it a lot in the compound for his peace work a.

He also stated that he started buying the items, which were all second-hand, one at a time in 2001. He bought the grinder and the hair clippers from Soweto Market. He bought the DVD from a barber. He said he was given the building materials by a person for whom he had done

some work in Mtendere but he did not know his name, only knew him facially. The person didn't give him a receipt but if brought to court he could vouch for A1.

A1 said he left the receipts with his cousin for safe keeping and when reminded that his cousin PW2 did not mention any receipts, A1 said he didn't know what happened to PW2 but he had shown him the receipts.

Under further cross examination A1 insisted that the police had forced the two accused persons to demonstrate how they allegedly committed the offence when they were not the ones who did it and he denied admitting to the police that he had committed the offence. He said he knew PW2 before the incident because they used to work together and he denied that the two of them had murdered the deceased.

Under re-examination, he said that the items he bought are common items which could be bought easily and the receipts were in the bag. He concluded by saying he never robbed and killed the deceased.

ACCUSED NO. 2

A2 testified that he worked for Zhang Cheng initially in Chipata and rejoined them in Lusaka on 5th April, 2012. He explained that he was put on forced leave after the stores man stole K6,500 from the company

A2 further testified that he did some piece work for a Mr. Mwale from 9th to 29th April 2012. He said that on the 29th April,, 2012 he was surprised when Phiri, a driver from Zhang Chang Construction Company, visited his house with two people he didn't know. They asked him if he knew Jackson Sakala, A1. He told them that he did and was asked to accompany them. When they got to the car, they found Felix Kasanda who asked why he was in Mtendere Plots on that day. A2 said that Felix Kasanda was a brick layer at Zhang Construction.

A2 told the court that one of the men asked to use his phone and when A2 wanted to get it back the man refused to give him and instead ordered him to get into the car, which he did. The man only told him he was from Woodlands and asked A2 to show him Jackson Sakala, A1. From there they took A2 to Mtendere basic school and after about an hour he was surprised when A1 was also brought there and they were taken to Kalikiliki Police Station.

From Kalikiliki Police Station they were taken directly to the CID Office at Woodlands Police Station where A2 was asked what he knew about Zhang Chang Construction Company. He told the police that he knew nothing about it and one of the officers took him to the reception. After

five minutes A2 was taken back to the CID office and was informed that A1 had agreed to take the police to recover the items stolen from Zhang Chang Company. He further said that he was nonetheless beaten, handcuffed and forcibly taken to Chawama to recover the allegedly stolen items. However, he was taken back to Woodlands Police Station Cells because after waiting at Chawama market for a while, the police later realized that the other team with A1 had already collected the items.

A2 further testified that the following morning he was asked to make a statement and he denied knowing anything about the murder and the police put him on a swing, "kempelwa" and after the first round he was told that if he didn't admit, they would kill him. He still denied and they put him back on the swing and when he still denied they went to drink beer and left him hanging there. A2 said A1 was then brought to where he was and A1 told the police that he and A2 had parted ever since they were laid off. He said he was put back on the swing for a third time but he still denied where after he was taken to the cells.

A2 then said that the following day A1 and himself were taken to the scene of crime where he was asked to demonstrate how they stole and when he refused the police beat him saying he was too stubborn. He said the police put him on the wall fence and also lifted him up to the meter box.

The Defence counsel asked A2 if he knew who Sara Njovu was and he said when he was made to stand by the meter box, Sara Njovu was a police officer who stood next to him holding a round bar which she attempted to give to him but he refused to take it. He said that she told him that the deceased had two cuts which meant that he had been hit with either a round bar or a plank. He said that the police were taking photos during this whole episode.

A2 insisted that he knew nothing about this case.

Under cross examination A2 said he worked for Zhang Chang in the building department for 9 months and he knew the premises well and he knew the tools which he used in his department. He said he was not acquainted with any of the exhibit tools. It was put to him that he was acquainted with the tools because PW1 had informed the court that those were the tools his deceased boss used to use. A2 responded by saying that he knew the tools that he (A2) used to use and none of them were brought to court.

Under further cross examination A2 said he wasn't upset about being placed on forced leave because he knew that he would find another job which he did within two days. When asked why only he and A1 were arrested out of all the other workers who were placed on forced

leave, he replied that their friends left for Chipata as soon as they were paid. It was put to A2 that A1 linked him to the offence and described in his presence how A2 had hit the deceased with an iron bar and that both A1 and A2 demonstrated to the police how they carried out the crime. A2 denied the allegation and said he knew nothing about the offence and didn't know how the deceased was robbed and killed. A2 further said he and A1 had no grudge against each other and therefore didn't know why A1 would implicate him in this offence or tell lies about him. A2 also insisted that he was beaten by the police.

Under re-examination A2 said he and A1 did not lead the police to the scene of crime; it was the police who took them there. He also said he was not found with any of the items exhibited in court and he was examined at the clinic and was referred to UTH and put on medication.

The Defence called no other witnesses and closed its case. Both counsel for the state and the defence indicated that they would file written submissions which they have not done.

It is not in dispute that an aggravated robbery occurred at Chang Zhan Construction Company in Kabulonga during the course of which one Zhang Chao was murdered.

PW3 testified and A1 has not disputed that he, A1, led the police to his cousin PW2 Michael Phiri, where he had taken a suitcase for safe keeping and it was confirmed by PW3, PW2 and A1 that the bag A1 had taken for safe keeping contained the following items;

- 1) *Suitcase*
- 2) *Circular Saw*
- 3) *Grinders*
- 4) *DVD player (Sinotech) & remotes for DVD and TV.*
- 5) *Working lights*
- 6) *Hand tools and measuring tapes*

These are the same items which were displayed in court and identified by PW1 as items which had been stolen during the aggravated robbery in which Zhang Chao was murdered. PW1 stated that even though the items had no special identifying marks on them he was able to identify them because he had personally purchased them from China and they were not available in Zambian shops.

A1 on the other hand, said the items belonged to him. He said he had bought most of the items second hand starting with the grinder which he bought in 2001 at Soweto Market from where he had also bought hair clippers. He said he bought the DVD from a barber. He said he was given the building materials by a person for whom he did piece work in Mtendere but whose

name he didn't know and could only remember him facially. The person didn't give him a receipt but if brought to court he could vouch for A1.

A1 further testified that he had changed the start button on the big grinder from yellow to black and the grinding pin on the small cutter was a bit finished because he used to use it a lot in the compound for his own piece work after he stopped work.

Over and above this the accused claimed that he actually had receipts for all the items and the receipts were in the bag that he had given to PW2 and that he had actually shown PW2 the receipts. He said he didn't know why PW2 did not tell the police about the receipts.

As regards A1, I don't think it is necessary to consider any of the other evidence such as the alleged confession statement alluded to by PW5 which in any event was not produced in court. I would for the record state that A1 denied the offence and there was nothing found at the scene of crime which connected him to the offence and there was no eyewitness to the robbery and murder.

The only thing that connects A1 to the offence is the allegation by PW1 that the items A1 took to him, PW2, for safekeeping are the same items which were stolen during the aggravated robbery.

I find it hard to believe A1's story that the items belong to him and it would be an unusual coincidence that A1 took items for safekeeping to his cousins' house which were exactly similar to the items which were stolen.

PW1 was a credible witness who was not shaken at all and his evidence regarding the description of things that were stolen was not challenged. He was not accused of concocting a false list of items which were stolen. It was only put to PW1 that he could not prove that the items found with PW2 were the same items which were stolen from the deceased.

Despite A1 saying that he bought all the items second hand, nowhere in his evidence did he suggest that he offered to take the police to the places where he allegedly bought these items. A1 testified that he was given the building materials by a person for whom he did piece work in Mtendere but whose name he didn't know and could only remember him facially. The fact that A1 did piece work means that his temporary employer could be located. However, A1 did not offer to take the police to that mans place nor to the place where he did the piece work. Further, none of the police officers who testified were cross examined to this effect.

Towards the end of his evidence in chief A1 said he had forgotten to mention that he actually had receipts for the items he'd taken to PW2's house. It is notable that neither the police witnesses nor PW2 were asked anything about the alleged receipts when they were being cross examined. This is clearly an afterthought.

The shortcomings with regard to offering to take the police to the alleged source of the items, the failure to address the issue of alleged receipts for the items and the fact that they were taken to PW2's home by A1 the morning after the murder are an odd coincidence, too odd for comfort and too odd to be true. The oddity transcends to absurdity when A1 suggests that he owned exactly the same kind of items that were stolen from his boss.

I reject A1's testimony with the contempt it deserves and I find as a fact that the items A1 took to PW2's house are the items that were stolen from the deceased on the night he was murdered.

The items in issue were found in A1's possession (PW2 was just keeping them for him) shortly after they were stolen. The doctrine of recent possession might have been invoked in this matter of which the only defence is to show how recently stolen goods came into ones possession. The accused has not even attempted to raise that defence but just simply stated that the items he took to PW2's home were his.

In the case of **George Nswana v The People**¹ the Supreme Court held as follows;

"The inference of guilt based on recent possession, particularly where no explanation is offered which might reasonably be true, rests on the absence of any reasonable likelihood that the goods might have changed hands in the meantime and the consequent high degree of probability that the person in recent possession himself obtained them and committed the offence. Where suspicious features surround the case that indicates that the applicant cannot reasonably claim to have been in innocent possession, the question remains whether the applicant, not being in innocent possession, was the thief or a guilty receiver or retainer."

In the earlier case of **George Chileshe v The People**² the Supreme Court placed the following duty on trial courts:

"It is the duty of a trial court, in cases where recent possession of stolen property may lead to the conviction of the accused, to consider whether such recent

¹ *George Nswana v The People* (1988 - 1989) Z.R. 174 (S.C.)

² *George Chileshe v The People* (1977) Z.R. 176 (S.C.)

possession may be the result of the receiving of stolen property as opposed to guilt of the major crime during the commission of which the stolen property was obtained."

Having found as a fact that that the items A1 took to PW2's house were the items that were stolen from the deceased on the night he was murdered I have discounted the possibility that A1 may have received the items from a third party. He has himself raised no such defence and that squarely places him at the scene of crime and as a participant in the aggravated robbery at Chang Zhang Construction Company which resulted in the murder of the deceased Chang Zhao.

I now move to Accused No. 2 and find that there is completely nothing that links him to the offence other than the allegation by the police witnesses that A1 confessed that he together with A2 robbed the deceased and that it was in fact A2 who hit the deceased with an iron bar. The confession statement was not produced in court.

In his evidence in chief, A1 denied the offence and did not implicate A2 at all. Despite vigorous cross examination, A2 remained steadfast and resolute in denying that he participated in this offence. He was not identified by any eyewitness and he was not found with any of the stolen items and PW2 who was given custody of the stolen items made no mention of A2.

On the strength of the evidence at hand, the prosecution has not proved its case against A2 beyond reasonable doubt and he is acquitted forthwith.

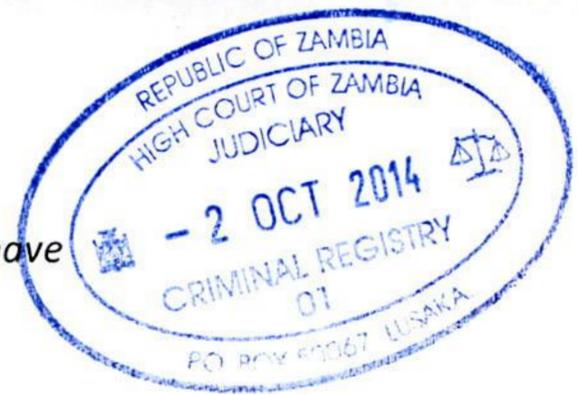
As I indicated earlier possession of the stolen goods places A1 at the scene of the crime and the only inference to be drawn from the evidence at hand is that A1 was a willing participant in the aggravated robbery that resulted in the death of Chang Zhao.

Whether it was A1 or some other person or people he might have been with who delivered the fatal blows to the deceased is irrelevant because all participants in the commission of an offence do so with a common purpose and are equally culpable. This is supported by section **22 of the Penal Code**³ which reads as follows;

22. *When two or more persons form a common intention to prosecute an unlawful purpose in conjunction with one another, and in the prosecution of such purpose an offence is committed of such a nature that its commission was a probable consequence of the*

³ Section 22 of the Penal Code, Chapter 87, Laws of Zambia

prosecution of such purpose, each of them is deemed to have committed the offence.



I am satisfied that the prosecution has proved its case against A1 beyond reasonable doubt on both counts and consequently I find him guilty of aggravated robbery contrary to section 294 (1) of the Penal Code, Chapter 87 of the laws of Zambia and I also find him guilty of murder contrary to section 200 of the Penal Code chapter 87 of the laws of Zambia.

Having found him guilty of murder, I have considered the provisions of section 201 on extenuating circumstances and find that none exist in this matter. This was a cold blooded murder that occurred during the commission of a felony.

I accordingly direct that A1 be hanged by the neck until he is dead and pronounced so by certificates issued by a medical practitioner. May the Good lord have mercy on his soul.

The accused is duly reminded of his right of appeal.

Honorable Mubanga M. Kondolo, SC
High Court Judge