

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

**HT/64/2014**

**BETWEEN:**

**THE PEOPLE  
Vs.  
SILILO BULOTO**



**Before the Hon. Mrs. Justice A. M. Sitali in open court on the 2<sup>nd</sup> day of June, 2015**

***For the State* : *Mr. G. Zimba, State Advocate***

***For the Accused* : *Mr. M. Makinka and Mr. I. Yambwa,  
Legal Aid Counsel***

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

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**Cases referred to:**

1. Woolmington v. DPP (1935) A.C 462
2. Moonga v. The People (1969) ZR 63
3. Mwewa Muroso v. The People (2004) ZR 207
4. Benson Phiri and Sanny Mwanza v. The People
5. David Zulu v. The People(1977) ZR 151
6. Kambarage Kaunda v. The People
7. Jack Chanda and Kennedy Chanda v. The People

**Legislation referred to:**

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

Sililo Buloto, the accused, stands charged with the offence of murder contrary to section 200 of the Penal Code, Chapter 87 of the Laws of

Zambia. The particulars of the offence are that Sililo Buloto on an unknown date but between the 4<sup>th</sup> day of November, 2012 and 5<sup>th</sup> day of November, 2012 at Senanga in the Senanga District of the Western Province of the Republic of Zambia, did murder one Mushimbei Sianga.

The accused pleaded not guilty.

The prosecution called five (5) witnesses. PW1 Doreen Pelekelo Nyukulani, a sister of Mushimbei Sianga (the deceased) testified that on 4<sup>th</sup> November, 2012 around 19:00 hours, two men whom she knew as Sililo Buloto the accused in this matter and Suya Matomola went to her house and requested her to sell them some beer on credit. She refused to give them the beer and they left. They returned around 23:00 hours and she sold them some kachasu, a locally brewed beer before she retired to bed.

Around midnight the two men called out to her and Mushimbei to come out and chat with them. PW1 said she heard the deceased say she would chat with them as she was not sleepy. PW1 said sometime between 04:00 hours and 05:00 hours, the deceased asked her for a rake and broom so that she could sweep the yard before going to bed. The accused and Suya Matomola were still outside at the time.

PW1 testified that around 06:00 hours, PW2 woke her up and asked her why she had left a rake and broom outside. She went outside and saw that the door to the deceased's house was open. She entered the house and saw the deceased sleeping on her bed with her arm hanging over the side of the bed. PW1 said she left to go and buy breakfast but was called back to see the deceased. She found the

deceased foaming at the mouth. She called older people who examined Mushimbei Sianga's body and told her that Mushimbei Sianga was dead. PW1 said that she knew the accused and Suyu prior to 4<sup>th</sup> November, 2012 as they associated with her and the deceased from time to time. PW1 identified the accused as Sililo Buloto.

In cross examination, PW1 testified that only the accused and Suyu Matomomola were drinking beer in her courtyard on 4<sup>th</sup> November, 2012 from around 23:00 hours to the early hours of the next morning. She said that the deceased joined them outside around midnight and was with them until about 04:00 hours. PW1 told this Court that the accused, Suyu Matomola and the deceased chatted peacefully throughout the night and did not quarrel.

PW2, Limpo Matomola, testified that on 5<sup>th</sup> November, 2012, she woke up early and went to PW1's house. PW1 told her to get a broom from the deceased's house and sweep the yard. She picked a broom and started sweeping the courtyard. A short while later Mushimbei Sianga's three year old son came out of his mother's house crying. As she stooped to pick up the child, the accused Sililo Buloto ran out of the deceased person's house and pushed her aside and she almost fell. PW2 said she entered the deceased person's house and peeped through the cloth on the door to her bedroom. She saw that the deceased was lying on her back motionless with her eyes wide open.

PW2 testified that she called for help and some women came they made a sugar solution and tried to feed the deceased however, the sugar solution dripped off the side of her mouth. PW2 said she then ran after PW1 and told her that the deceased was not waking up.

They returned together and took the deceased to the hospital where they were informed that she was dead.

PW2 identified the accused as Sililo Buloto and said she knew him long before 5<sup>th</sup> November, 2012.

In cross examination, PW2 testified that it was still slightly dark when she went to the deceased person's house around 05:00 hours. She reiterated that the accused pushed her aside as he ran out of the deceased person's house. PW2 stated that in that her statement to the police that she saw the accused run out of the house of the deceased and told him that if anything went missing in the house she would inform PW1. PW2 confirmed that she found the deceased person lying unconscious on a reed mat.

PW2 said she had a cordial relationship with the accused. She denied that she had had an intimate relationship with him in the past. She said she was not aware of any intimate relationship between the deceased and the accused. She further stated that she had known the accused prior to that day as he was married to Zictor but that she did not know that he knew the deceased. She also told the court that she did not see the accused hurt the deceased.

In re-examination, PW2 clarified that she had known the accused as a fish monger since 2002 when he lived in the Barotse plains.

PW3 was Detective sergeant Sydney Sakantu who testified that on 8<sup>th</sup> November, 2012 he was on duty at Senanga police station when he was assigned to attend a post-mortem examination of the body of Mushimbei Sianga, who was alleged to have been murdered at

Senanga District Hospital. The post-mortem examination was conducted by Dr. Mbozi. The doctor did not establish the cause of death. A vaginal swab was done and taken to the laboratory as it was alleged that the deceased was raped. The results showed that there was no sexual intercourse.

PW3 testified that the police called for a pathologist from Lusaka to examine the body and determine the cause of death. On 16<sup>th</sup> July, 2013, Dr. Musakhanov went to Senanga and conducted a post-mortem examination of the body at Senanga Cemetery after the body was exhumed. He established that the deceased died from asphyxia due to manual strangulation.

PW3 said that in his investigations PW2 informed him that she had seen the accused run out of the house of Mushibei Sianga shortly before she was found dead in her bedroom. He stated that he charged and arrested the accused, Sililo Buloto for murder. Under warn and caution administered in Lozi the language he appeared to understand well the accused denied the charge. PW3 identified the accused Sililo Buloto as the person he arrested and charged.

In cross examination, PW3 testified that the post-mortem examination which was conducted by Dr. Mbozi on 8<sup>th</sup> November, 2012 did not establish the cause of death. He denied that he attempted to discontinue the case against the accused following that report. PW3 testified that another post-mortem examination was conducted on the body of the deceased in July 2013 and that the cause of death was found to be asphyxia due to manual strangulation.

PW3 stated that PW1 and PW2 who first saw the body of the deceased did not tell him that they had seen any bruise marks on the neck. However, the second post-mortem examination which was done nine months later after the body of the deceased was exhumed revealed that the cause of death was manual strangulation. PW3 said PW1 told him that the accused and Suya Matomola had been drinking beer peacefully the night before in the company of the deceased and that there were no quarrels. He said in his investigations he did not receive any information that the accused had an intimate relationship with the deceased.

PW3 further said that in their statements, the accused said they left PW1's house at midnight. PW3 said he did not investigate their alibi between the accused prior to that date.

In re-examination, PW3 said that he did not verify the alibi of the accused because PW1 said the accused was in her courtyard the whole night with Suya Matomola and the deceased before the deceased was found dead in the morning. PW3 further explained that the accused lives alone and so there was no one from his home to verify his whereabouts on the night in question.

PW4 was Kenneth Mbozi a medical doctor who testified that he holds a bachelor of human biology degree, a bachelor of surgery degree and a bachelor of medicine degree obtained from the University of Zambia in 1995. He stated that he had been practising medicine for nine years. He stated that in 2012 he conducted a post-mortem examination on the body of Mushimbei Sianga who was found dead and issued a post-mortem report (P3). He said that as it was alleged that the deceased

was raped before she died, he did a vaginal swab for analysis for sperms. It showed no results to that effect.

He testified that he conducted a physical examination of the body and no major findings were made apart from a bruise on the left arm. The neck, head, chest, ribs, mouth and nose were all intact. He stated that he palpated the neck to check if the windpipe was intact and he also checked the vertebrae column. He opened the mouth and found a lot of blood in the throat but he could not tell if there was any fracture there. All the vital organs, such as the heart, the lungs, the liver and the spleen were intact.

He testified that since he was unable to determine the cause of death, he collected the stomach contents and the blood for toxicological examination for poisoning. PW4 further testified that he would agree with the pathologist's findings that the cause of death was asphyxia and fracture of the thyroid bone because there was a lot of blood on the throat. He stated that he did not detect the fractured thyroid bone because there are no x-ray facilities available during post-mortem examinations at Senanga District Hospital.

PW4 went on to state that a pathologist is specialised in determining the cause of death where there is doubt. He explained that a pathologist undertakes four years training in pathology after qualifying as a general medical practitioner. PW4 was not cross examined.

PW5 was Dr. Musakhanov Tarjimurat, a consultant pathologist who testified that he has practiced as a pathologist for 30 years. He said that on 16<sup>th</sup> July, 2013 he conducted a post-mortem examination of

the remains of Mushembei Sianga who died on 5<sup>th</sup> November, 2012 after the exhumation of the body at Senanga cemetery.

PW5 testified that he found only dry skin and bones as the internal organs had completely decomposed. The bones showed head injury that is subdural hematoma at the back of the head and subcutaneous hematoma. He said there was also neck injury, the trachea bone was broken, left side chest skin hematoma and a right side head injury. He testified that the cause of death was asphyxia due to fracture of thyroid bone and head injury due to manual strangulation by the hand. PW5 said he prepared a post-mortem report (P4).

In cross examination, PW5 testified that there were bruises on the neck of the deceased shown by hematoma of dry skin. He said he easily detected the cause of death due to his vast experience. He also stated that the fracture occurred while Mushimbei Sianga she was alive.

That was the prosecution case.

At the close of the prosecution case, I found the accused with a case to answer and I put him on his defence. He elected to give evidence on oath but did not call any witnesses.

In his defence, Sililo Buloto testified that on 4<sup>th</sup> November, 2012 he was at work with his friend Suya Matomola until 19:00 hours, when there was a power failure. His boss sent him to buy relish. Suya Matomola and he passed through PW1 Doreen's yard and gave her the bench. Suya Matomola asked Doreen for wine and she gave him 2.5 litres of wine. The accused said he bought kachasu and drunk one



cup. When they finished drinking, they returned to their work place. Power was restored around 20:00 hours and his boss asked him to accompany him to get more planks. His boss gave him K50.00 and told him to give Suyu Matomola K15.00. As he did not have changed money he went back to PW1's place with Suyu Matomola. Suyu Matomola returned the 2.5 litre container to PW1 and asked her to sell him a 750ml bottle of Kachususu called "bomb" for K5.00. She gave him Kachususu for K5.00 and K45.00 change.

PW1 asked them if they would drink from her courtyard but they refused to do so as they did not want to be arrested for loitering. The accused said that this was around 22:00 hours. They went to some pole lines which are far from Doreen's house as there were no houses nearby. The accused stated that he left Suyu Matomola half the beer and went to sleep while Suyu Matomola also returned to the compound. He said that between 22:00 hours on 4<sup>th</sup> November, 2012 and the morning of 5<sup>th</sup> November, 2012 he was at home.

The next day he accompanied his father to Kakweji where he was scheduled to meet his friends. He testified that he remained at Kakweji and Suyu Matomola found him there and they started drinking again. Around 10:00 hours he heard someone say "apprehend them" and they were apprehended and detained in the cells.

Limpo Matomola (PW2) the deceased's cousin came and pointed at him and Suyu Matomola as the people who killed Mushimbei Sianga. The accused said that he denied killing Mushimbei Sianga. He went on to say that while he was in the cells he remembered that Limpo Matomola falsely accused him of killing Mushimbei Sianga because he

had broken off his relationship with her. He said she had been his girlfriend for two years but he stopped seeing her after he was beaten with a stick by her boyfriend or husband. He said it appeared that Limpo Matomola was not happy when he broke up with her.

The accused denied that he had been drinking kachasu in the company of Suya Matomola and the deceased on 4<sup>th</sup> November 2012 from around 23 hours to 03:00 hours in the morning at PW1's courtyard as alleged by PW1. He said that he did not know Doreen Pelekelo (PW1) and that he only went to her place with Suya Matomola who asked him to accompany him to her place. He said he did not even know the deceased and he was surprised that he was accused of killing her.

He said Limpo (PW2) made up the story that she saw him ran out of the deceased person's house and pushed her aside around 05:00 hours on 5<sup>th</sup> November, 2012 because he was at his home at that time and he told the police so.

In cross examination, the accused stated that Limpo Matomola identified him and Suya Matomola as the men who killed the deceased at Senanga police station around 09:00 hours. He said she identified them because she said she saw them drinking with the deceased the previous night. The accused said he dated Limpo Matomola for two months in 2012 and not two years before he was apprehended. He said she got married after he was detained on 5<sup>th</sup> November, 2012.

He said when they initially went to PW1's place they found three young men with the deceased and that he only knew their faces but not their names as they live in Mongu. When he and Suya returned to

PW1's house there were no people there. He said he bought a 750 ml bottle of kachasu and drunk half of it and went to sleep. He said he was not drunk after drinking half of the 750 ml of kachasu. It took them 10 minutes to walk from PW1's place to the pole lines.

The accused stated that he did not spend the night in PW1's courtyard because his home is less than one hour away from her place. He stated that he found his father awake when he got home around 22:00 hours. He denied that he strangled the deceased.

That was the defence case.

The defence filed written submissions in which it was submitted that in order to prove a charge of murder against the accused person the prosecution must establish that the accused caused the death of the deceased by an unlawful act and with malice aforethought. The case of The People v. Njobvu (1) was cited in support. It was submitted that the prosecution sought to prove these ingredients through circumstantial evidence which was to the effect that PW2 saw him running out of the house of the deceased around 05:00 hours.

It was contended that the circumstantial evidence was unreliable because the accused denied that it was he who was seen by PW1 and PW2 and that the alibi he set up in his defence was not investigated by PW3 the arresting officer who said the evidence of PW1 and PW2 regarding the accused's whereabouts at the material time was enough. It was submitted that the failure to investigate the alibi was a dereliction of duty which prejudiced the accused. The case of Peter Yotam Haamenda v. The People (1977) ZR 184 was cited in support.

It was further submitted that it was for the prosecution to negative the alibi as held in Katebe v. The People (1975) ZR 13 and in Nzala v. The People (1976) ZR 221.

Defence counsel went on to submit that if the court is not persuaded by the alibi, it is still submitted that an inference of guilty cannot be drawn and that the prosecution must prove their case beyond reasonable doubt. The case of The People v. Chibambala (1973) ZR 118 was cited.

It was further submitted that the circumstantial evidence was unreliable due to the possibility of a mistaken identity by PW2 which had not been ruled out. It was contended that PW2 said in cross examination that it was dark when she saw the accused and that she said he bumped into her and so she could not have had a good opportunity for a proper and reliable observation. The case of Muvuma Kambanga Situme v. The People (1982) ZR 111 was cited in which it was held that if the opportunity for a positive and reliable identification is poor then the possibility of an honest mistake has not been ruled out unless there is some other connecting link between the accused and the offence which render mistaken identification too much of a coincidence.

The case of Mwansa Mushala v. The People was cited where it was held that even when a witness purports to recognise a person he knows the trial judge should remind himself that mistakes in recognition to close relatives and friends are sometimes made and of the need to exclude the possibility of an honest mistake.

It was submitted that PW2 did not tell the police of any special reasons that made her remember the accused and did not describe him to the police.

It was submitted that PW1 and PW2 were suspect witnesses as they are related to the deceased and were not on good terms with the accused and thus their testimony needed to be corroborated. The case of Kambarange Mpundu Kaunda v. The People (1992) ZR was cited in support. It was further submitted that even if PW1 were to be believed, her testimony shows that the accused and the deceased chatted in harmony throughout the night and that there was no acrimony between them.

Defence counsel went on to submit that the reliability of the circumstantial evidence offered by the State was further weakened by the discrepancies between the evidence of PW4 and that of PW5. He contended that whereas PW5 testified that the cause of death was asphyxia due to manual strangulation suggesting that force was applied by the assailant, which force according to counsel should have left bruises on the neck, PW5 said he did not see bruises as the body had decomposed. On the other hand PW4 who conducted the first post-mortem examination did not see any bruises on the throat and he did not establish the cause of death.

It was submitted that although PW5 was better qualified to determine the cause of death, PW4 as a general medical practitioner made factual and ocular observations that cannot entirely be ruled out. It was contended that neither PW1 nor PW2 who first saw the body of the deceased noticed any bruises on the neck. The case of Chawaz

Fawaz and Prosper Chalelwa v. The People (1995) ZR was cited where it was stated that:

*“From a common sense point of view, a layman would expect that to strangle a person with sufficient force to cut off the flow of air through the wind pipe would be bound to cause bruising or some other injury.”*

It was submitted that PW5 did not explain how strangulation could have occurred without injury of any kind whatsoever.

Counsel further submitted that in Barrow and Young v. The People (1966) ZR 43 it was held that:

*“Where one prosecution witness gives evidence in favour of the defence and one against, then in the absence of any good reason for rejecting the evidence of the one and accepting the evidence of other, the court should resolve the doubt in favour of the accused.”*

Lastly it was submitted that the inference of guilty is not the only reasonable possible inference as other inferences can be drawn. The case of David Zulu v. The People (1977) ZR 151 and Naweji v. The People (unreported) were cited in support. Further, the case of Dorothy Mutale and Richard Phiri v. The People (1997) S.J. 51 was cited where the Supreme Court held that:

*“Where two or more inferences are possible, it has always been a cardinal principle of the criminal law that the Court will adopt the one which is more favourable an accused if there is nothing in the case to exclude such inference.”*

It was submitted in conclusion that the prosecution has failed to prove its case against the accused beyond reasonable doubt and that he should be acquitted.

I have considered the evidence before me and the written submissions by learned defence counsel. Section 200 of the Penal Code under which the accused is charged provides that:

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

What constitutes malice aforethought is defined by section 204 of the Penal Code, Cap. 87. In the present case to establish malice aforethought, the prosecution must prove that the accused either had an actual intention to kill or to cause grievous harm to the deceased, or that he knew that what he was doing would be likely to cause the death or grievous harm to someone as stipulated in section 204 (a) of the Penal Code, Cap 87.

From the provisions of section 200 of the Penal Code, Cap. 87 which are set out above, for the prosecution to succeed and secure the conviction of the accused on a charge of murder under section 200 of the Penal Code, Cap. 87, I must be satisfied beyond reasonable doubt that it was the accused person who caused the death of the deceased; that it was with malice aforethought that he caused the death of the deceased; and that it was as a result of an unlawful act or omission of the accused that the deceased died.

The burden to prove the guilt of the accused beyond reasonable doubt lies on the prosecution: see Woolmington v. DPP (1), Moonga v. The People (2) and Mwewa Muroso v. The People (3). There is no attendant burden on the accused to prove his innocence. Any doubt raised in my mind by the evidence adduced by the prosecution or the defence as to whether the accused caused the death of the deceased by an unlawful act, and with malice aforethought, will be resolved in favour of the accused.

The undisputed facts of the case are that Mushimbei Sianga the deceased was found dead on her bed in the morning of 5<sup>th</sup> November, 2012. The first post-mortem examination which was conducted on the body of the deceased by PW4 a general medical practitioner on 8<sup>th</sup> November, 2012 did not establish the cause of death. The second post-mortem examination of the body which was conducted by PW5 a consultant pathologist after the exhumation of the body on 16<sup>th</sup> July 2013 revealed that the cause of death was asphyxia due to fracture of the thyroid bone due to manual strangulation.

A careful consideration of the prosecution evidence reveals that the prosecution case against the accused centres mainly on the testimony of PW2. She said that on the morning of 5<sup>th</sup> November, 2012 around 05:00 hours she arrived at the home of the deceased and whilst she was sweeping the courtyard the accused ran out of the house of the deceased and pushed her aside so that she nearly fell. PW2 said she went into the house of the deceased and saw the deceased lying motionless on the bed with her eyes wide open. An examination of her body revealed that she was dead.



The defence contended that PW2's identification of the accused was made in poor light, as according to defence counsel, her testimony was that it was still dark when she saw the accused so that the possibility of an honest mistake being made in the identification of the accused has not been ruled out. However, the evidence on record as given by PW2 in cross examination is that it was slightly dark when she got to the house of PW1 which was only 5 to 7 metres away from the house of the deceased. PW2's testimony was further that she had known the accused as far back as 2002 as a fishmonger when he lived in the Barotse plains. In the case of Benson Phiri and Sanny Mwanza v. The People (4) the Supreme Court held that:

*"The testimony of a single witness who knew the accused prior to the incident at issue is adequate to support conviction."*

In this case PW2 said she got to PW1's house between 05:00 and 06:00 hours. This evidence is confirmed by the evidence of PW1 who said she heard the voice of PW2 waking her up around 06:00 hours. As PW2 had known the accused for a period of at least ten years prior to the material date, her testimony as a single witness is sufficient to support a conviction of the accused.

Regarding the issue of the failure by the police to investigate the alibi raised by the accused which was alluded to by defence counsel in his submissions, it is my considered view that the alibi set up by the accused was sufficiently negated by the evidence of PW1 who said the accused was in her courtyard throughout the night of 4<sup>th</sup> November, 2012 into the morning of 5<sup>th</sup> November, 2012 drinking with Suya Matomola in the company of the deceased. PW1 also said she had known the accused for sometime as the accused used to associate

with both her and the deceased from time to time. PW1's evidence was not discredited.

Defence counsel further contended that there were discrepancies in the medical evidence adduced by the prosecution. According to defence counsel, whereas PW5 stated that the cause of the deceased's death was asphyxia due to manual strangulation suggesting that force was applied by the assailant, PW5 did not see any bruises on the body of the deceased. Counsel contended that on the other hand PW4 said he did not see bruises on the throat and failed to establish the cause of death. However, the evidence adduced by PW5 the consultant pathologist which is on record is that he found that the deceased had suffered a fractured thyroid bone and he also observed that there were bruises of the neck shown by hematoma of the dry skin, which essentially showed that the deceased had bled beneath the skin of her neck. What PW5 said he did not see was any swelling of the neck as the body had no flesh at the time it was exhumed.

Further, PW4 clearly said that he agreed with PW5's finding that the cause of death was asphyxia due to fracture of the thyroid bone due to manual strangulation because he (PW4) found a lot of blood on the throat of the deceased. He also explained that the reason he did not establish the cause of death was that there are no x-ray facilities available at Senanga District Hospital during post-mortem examinations which could have assisted him to detect the fractured thyroid bone.

There are therefore no discrepancies in the medical evidence adduced by the medical experts PW4 and PW5. The suggestion by defence counsel that the deceased could have died as a result of an epileptic

seizure is not supported by the medical evidence on record and no questions to that effect were put to the two medical experts.

As no one saw the accused strangle the deceased the evidence that the prosecution have relied upon to prove the charge of murder against the accused person is circumstantial evidence. The case of David Zulu v. The People (5) which was cited by defence counsel is instructive as regards how the judge is to treat the circumstantial evidence at his or her disposal. It was stated in that case that:

*“It is incumbent upon a trial judge that he should guard against drawing wrong inferences from circumstantial evidence at his disposal before he can feel safe to convict. The Judge in our view must in order to feel safe to convict, be satisfied that the circumstantial evidence has taken the case out of the realm of conjecture so that it attains such a degree of cogency which can permit only of an inference of guilty.”*

In this case PW2 said she saw the accused who she knew well run out of the house of the deceased. When she went into the house she found the deceased lying motionless on the bed. An examination of her body revealed that she was dead which fact was confirmed by the medical personnel at the hospital where the deceased was rushed to.

I accept the evidence of PW2 that she saw the accused run out of the house of the deceased early in the morning on 5<sup>th</sup> November, 2012. As PW2 had known the accused for about ten years before the incident occurred, I am satisfied that she did not make a mistake in the identification of the accused, which identification was made around 06:00 hours in the morning when there was sufficient light. In her

statement to the police PW2 said she told the accused as he ran away that if anything went missing in the house she would inform PW1. As it turned out, something did go wrong in the house as the deceased was found dead in the said house.

I am satisfied in line with the holding in David Zulu v. The People (5) that the circumstantial evidence has 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 person's guilt.

Based on the prosecution evidence I find as a fact that it was the accused person Sililo Buloto who strangled the deceased to death on 5<sup>th</sup> November, 2012. In terms of section 204 (a) of the Penal Code, Cap 87, malice aforethought has been established by the unlawful act of manually strangling the deceased with sufficient force so as to cut off the air supply to her body through the windpipe and thereby causing her to suffocate and suffer a fracture of her thyroid bone from which she died.

At this stage, I wish to address the issue of possible false implication of the accused by PW1 and PW2 which must be ruled out before a conviction can stand. In doing so, I have considered the Supreme Court's guidance in the case of Kambarage Kaunda v. The People (6) where the court observed that:

*“Prosecution witnesses who are friends or relatives of the prosecutrix may have a possible interest of their own to serve and should be treated as suspect witnesses. The court should, therefore, warn itself against the danger of false implication of the accused and go further to ensure that danger has been excluded.”*

In this case I am mindful of the danger of false implication of the accused by PW1 who was a sister of the deceased. I note that there is nothing in the evidence on record to suggest that PW1 had a possible motive to falsely implicate the accused in the commission of an offence he did not commit. PW1 clearly told this court that the accused and Suya Matomola and the deceased were chatting amicably throughout the night and did not quarrel in anyway. As regards PW2 who was a cousin of the deceased, the accused said that she could have falsely implicated him in the commission of the offence because she was unhappy that he broke off his relationship with her. However, when it was put to PW2 in cross examination that she had an affair with the accused she categorically denied the allegation and her testimony was not discredited. From the evidence on record I am satisfied that the danger of false implication of the accused by PW1 and PW2 has been ruled out.

From the evidence before me I am satisfied that the prosecution have proved beyond reasonable doubt the charge of murder against the accused, Sililo Buloto. I, therefore, find him guilty of the offence of murder contrary to section 200 of the Penal Code, chapter 87 of the Laws of Zambia, and I convict him accordingly.

The prosecution evidence has revealed that the accused spent the night of 4<sup>th</sup> November, 2012 in PW2's courtyard in the company of Suya Matomola and the deceased and that he was drinking kachasu from around 23:00 hours till about 04:00 hours the next morning. This evidence of drinking does provide extenuating circumstances to avoid the imposition of the death sentence.

In the case of Jack Chanda and Kennedy Chanda v. The People (7), the Supreme Court held that:

*"...failed defence of provocation, evidence of witchcraft accusation and evidence of drinking can amount to extenuating circumstances."*

This factor will be taken into account when sentencing the convict.

Delivered in open court this 2<sup>nd</sup> day of June, 2015.



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**A. M. SITALI**  
**JUDGE**