

HOLDEN AT NDOLA

(Criminal Jurisdiction)

B E T W E E N:

ISAAC ZIMBA

Appellant

vs

THE PEOPLE

Respondent

Coram: Chaila, Chirwa and Muzyamba JJJ.s On 8th Dec.1993

For the Appellant : In Person

For the Respondent: Mr. K. Lwali, Asst. Senior State
Advocate

J U D G M E N T

Chirwa J.S delivered the judgment of the court.

The appellant was convicted on one count of murder contrary to section 200 of the Penal Code. The particulars were that the appellant on 2nd day of April 1992 at Chama in the Chama District of the Eastern Province of the Republic of Zambia murdered one Labson Kaluba and upon his conviction he was sentenced to life imprisonment after the learned trial Judge found that there were some extenuating circumstances. There is no eye witness to the event that led to the death of the deceased. However, there is evidence from PW5 that the appellant collected the deceased from a school where there had been some drama performance. This was around midnight. The body of the deceased has not been recovered and the only evidence connecting the appellant to the murder is his own confession. This confession was not objected to and thus it was admitted in evidence in which the appellant said that the deceased who was 11 years old was found committing adultery with his elder sister who is the wife to the appellant. He further says in his statement that upon the discovery he made up his mind to kill the deceased.

On this fateful day he waited for the deceased at the village the whole day but did not see the deceased. Later on he followed the deceased at the school and collected him to go home. In his statement the appellant further says that as they were going home he confronted the deceased over this illicit affair. He alleges that when the deceased was confronted he got furious and wanted to beat the appellant. The appellant alleges that he was hit on his private parts and on the spur of the moment he grabbed the deceased on the throat and the deceased died. He then threw the body of the deceased into a river and hence the disappearance of the body of the deceased. Upon his apprehension by the chief's retainer, he did confess to one of the chief's retainers that he killed the deceased because of this adulterous affair with his sister.

In his grounds of appeal to this court, he alleges that he did not have a fair trial in the court below and that the evidence before the court below was all hearsay. We have considered the evidence on record and we agree as the learned trial judge observed that there was no any other evidence apart from the accused's confession and in considering this confession we bear in mind the age of the deceased. He was a small boy aged 11 years and doing Grade 3 and we must note that it is inconceivable that a boy aged 11 years could manage to persuade his elder sister to have sexual intercourse with her. We view that this aspect of the appellant's confession was an afterthought and a deliberate lie. We are satisfied that for unknown reasons the appellant did murder the deceased and we cannot fault the conviction on the murder charge.

Coming to sentence as we have already said the appellant was sentenced to life imprisonment the court having found some extenuating circumstances and these extenuating circumstances were accepted by the State in the court below, we however feel the sentence of life

imprisonment to be on the harsh side. In this regard therefore we set aside the sentence of life imprisonment and in its place we impose a sentence of 20 years imprisonment. The sentence will take effect from the date of the appellant's arrest. To this extent, therefore, the appeal succeeds in terms of sentence only.

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M.S. Chaila
SUPREME COURT JUDGE

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D.K. Chirwa
SUPREME COURT JUDGE

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W.M. Muzyamba
SUPREME COURT JUDGE