

IN THE SUPREME COURT OF ZAMBIA

SCZ Appeal Nos. 103&104 of 1993

HOLDEN AT LUSAKA

(Criminal Jurisdiction)

DICK MWANSA

1st Appellant

JACKSON SINKOTA

2nd Appellant

Vs

THE PEOPLE

Respondent

Coram: Sakala, Chaila and Muzyamba, JJJ.S.

5th October, 1993

For the appellants, Mr. N.M. Mwanza, Director of Legal Aid.

For the State, Mr. S. Sewanyana, Assistant Senior State Advocate.

J U D G M E N T

Sakala J.S., delivered the judgment of the court.

The appellant now before us was convicted of murder together with another person, whom we are informed has since his conviction, passed away.

The particulars of the offence were that, the appellant and his deceased co-appellant jointly murdered Wellington Polombi between 3rd and 5th June, 1989 at Mansa. The fact that the deceased is now dead was not in dispute. The issue for determination was as to who were the perpetrators of the deceased's death.

Very briefly, the case for the prosecution was that, at one time, the deceased lived together with the appellant and his deceased co-appellant. Sometime later, the deceased disappeared, the deceased appellant was apprehended. In the course of investigations he led the police where a blood stained axe, cloth and the parts of a human being were recovered. Since the co-appellant is now deceased, his appeal abates.

The evidence against the appellant now before us was that, first he was found with an axe which according to the evidence was blood stained. His explanation was that, firstly, he had borrowed the axe from someone and secondly that he had borrowed it from the deceased appellant. According to the learned trial judge, this was a contradiction in an attempt to exonerate the deceased appellant. According to the learned trial judge, the appellant's explanation as to how he came to be in possession of a blood stained axe was an after thought. As regards the blood stained shirt the learned trial judge rejected the appellant's explanation that the shirt was taken to him by the deceased appellant at night for safe keeping. The learned trial judge found that it was too much of a coincidence that the deceased's liver should be found within the premises of the first appellant. The learned trial judge further found that there was unchallenged evidence on record to which no explanation was given that the appellant was found in possession of the national registration card belonging to Polombi, the deceased. The learned trial judge concluded that all these boiled down to the fact that the appellant jointly acted together with his co-accused in killing Wellington Polombi.

The learned Assistant Senior State Advocate has supported the conviction. He submitted that on the evidence, the appellant stayed with the deceased and was the last person to see him alive. He has also referred to the evidence of possession of the various items and that the explanation given was unreasonable. When his attention was drawn to the evidence of PW2 about the finding of the National Registration Card, the learned State Advocate also drew the attention of the court to the evidence of the police officer to the effect that the National Registration Card of Wellington Polombi was found with this appellant. On perusal of that police officer's evidence, we are satisfied that he never went to the

house of the appellant before us. Both the appellant and the exhibits were merely handed to him. Assuming the evidence of the finding of the National Registration^{Card} as given by the police officer was correct, then the learned trial judge did not resolve the discrepancy between the evidence of the 2nd witness as to who was found in possession of the National Registration Card. This was a serious misdirection.

We have very carefully considered the evidence on record and the judgment of the learned trial judge. We have also considered the submissions by both learned counsel. We have no hesitation in holding that the learned trial judge's finding that the National Registration Card belonging to the deceased was found on this appellant was a misdirection. We are also satisfied that the explanation given by this appellant as to how he came in possession of the items with blood stains might reasonably be true. For these reasons, we find it unsafe to uphold this conviction, the appeal is allowed. The conviction is quashed, the sentence is set aside, the appellant stands acquitted.

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E.L. Sakala,
SUPREME COURT JUDGE.

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M.S. Chaila,
SUPREME COURT JUDGE.

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W.M. Muzyamba,
SUPREME COURT JUDGE.