

IN THE SUPREME COURT OF ZAMBIA

SCZ APPEAL No.53 OF 1995

HOLDEN AT LUSAKA

(Criminal Jurisdiction)

B E T W E E N:

ISAAC ZULU

APPELLANT

Vs

THE PEOPLE

RESPONDENT

Coram: Chaila, Chirwa and Muzyamba, JJS

21st May 1996

For the Appellant: S.W. Chirambo, Senior Legal Aid Counsel

For the State: M. Mangwor, Principal State Advocate

J U D G M E N T

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

The appellant was convicted of murder contrary to Section 200 of the Penal Code Cap 146 of the Laws of Zambia and sentenced to death.

The particulars of the offence were that the appellant at Lusaka in the Lusaka Province of the Republic of Zambia did on 5th March 1994 murder Ibran Nyama.

Briefly the facts of the case were that on the fateful night PW.1 Timothy Mwale and the deceased approached the appellant around 20 hours for a box of matches to light a koloboyi. The appellant chased them. A short while after they got into their house the appellant followed them, kicked open the door and set upon the deceased. He kicked the deceased all over the body and the deceased bled from the nose and mouth. The appellant then left. After the appellant had left the deceased went out of the room. PW.1 followed and persuaded him to go back into the house and they both slept. While PW.1 was fast asleep the deceased woke up and sneaked out of the house. Later the deceased's body was found in Misisi Compound near the house of PW.5, Bridon Imedi. The post mortem report showed that the deceased died of shock due to brain haemorrhage due to deep head injuries.

In his defence on oath the appellant admitted hitting the deceased once on the chest.

The learned Principal State Advocate, Mr. Mangwiro has indicated to us that he does not support the conviction for murder. He however argued that the evidence on record did disclose a lesser charge of manslaughter and urged us to substitute a conviction for manslaughter and Mr. Chirambo, learned Counsel for the appellant filed heads of argument in which he argued that the evidence on record proved manslaughter and not murder.

We have considered the evidence on record and we entirely agree with Mr. Mangwiro for the course he has taken in not supporting the conviction for murder because the evidence did not disclose malice aforethought on the part of the appellant to kill the deceased. We also agree with him and Mr. Chirambo that the evidence does however amply support the lesser offence of manslaughter. Accordingly we allow the appeal and quash the conviction for murder and set aside the death sentence and we substitute a conviction for manslaughter Contrary to Section 199 of the Penal Code, Cap 146 of the Laws of Zambia and sentence the appellant to 5 years imprisonment with hard labour effective from the date of his arrest.

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M.S. CHAILA

SUPREME COURT JUDGE

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D.K. CHIRWA

SUPREME COURT JUDGE

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M.M. MELYAMBA

SUPREME COURT JUDGE