

IN THE SUPREME COURT OF ZAMBIA

Appeal No. 100/2006

HOLDEN AT NDOLA/KABWE

(Criminal Jurisdiction)

BETWEEN:

JULIUS SIBANDA MASOJA

Appellant

- VS -

THE PEOPLE

Coram: Lewanika, DCJ. Mumba and Chitengi, JJS
on 5th December, 2006 and 8th August, 2007

For the Appellant : Mr. E. M. Sikazwe
Acting Director - Legal Aid

For the People : Mr. C.F. R. Nchenga
Director of Public Prosecutions

JUDGMENT

Chitengi, JS, delivered the judgment of the Court

The Appellant was convicted by the High Court sitting at Ndola of *Manslaughter* contrary to **Section 199 of the Penal Code Chapter 87 of the Laws of Zambia** and sentenced to 35 years imprisonment with hard labour.

The particulars alleged that Julius Sibanda Masoja on 20th October, 2002 at Mwelemuka village in the Mpongwe District in the Copperbelt Province in the Republic of Zambia unlawfully caused the death of Petro Mwelemuka.

The evidence accepted by the Court below and on which the Appellant was convicted and sentenced to 35 years imprisonment with hard labour is that on the day in question one Sam died in the village and on suspicion that the deceased Petro Mwelemuka was the person who had killed Sam by witchcraft the Appellant continuously hit the deceased in the ribs, head and body with a bamboo stick and a heavy stone leading to the deceased's death. The post mortem examination report revealed that the deceased died of subdural haematoma and acute respiratory arrest and the chest contained blood.

The appeal is against sentence only. The ground of appeal is that the sentence of 35 years with imprisonment was on the higher side.

Mr. Sikazwe, the learned Acting Director of Legal Aid, for the Appellant submitted then while the Appellant was a first offender and was remorseful, the learned trial Judge did not exercise enough leniency. Mr. Sikazwe said that there were extenuating circumstances in this case. He found the extenuating circumstances in the belief in witchcraft.

The learned Director of Public Prosecutions, however, pointed out that in manslaughter cases extenuating circumstances do not arise.

We have considered Mr. Sikazwe's submissions in support of the ground of appeal against sentence. While we agree that the Appellant being a first offender should be shown leniency, we do not agree that in a case of manslaughter, like this one, belief in witchcraft can amount to extenuating circumstances. We know of no authority to support this proposition. We, therefore, agree with the submission by the learned, Director of Public Prosecutions that belief in witchcraft is not an extenuating circumstance. In the event, we shall deal with

this appeal only on the basis that the Applicant was a first offender.

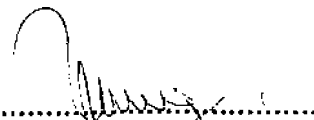
Having considered all the circumstances surrounding the commission of this offence, we are satisfied that the sentence of 35 years imprisonment with hard labour imposed on the Appellant was excessive. We consider that a sentence of 20 years with hard labour is appropriate in this case. We, accordingly quash and set aside the sentence of 35 years imprisonment with hard labour imposed by the court below and substitute it with one of 20 years imprisonment with hard labour with effect from 8th December, 2002 as ordered by the court below. The appeal therefore succeeds.



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D. M. LEWANIKA
DEPUTY CHIEF JUSTICE



.....
F.N.M. MUMBA
SUPRME COURT JUDGE



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PETER CHITENGI
SUPREME COURT JUDGE