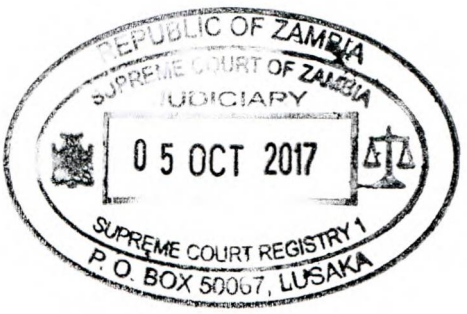
**IN THE SUPREME COURT OF ZAMBIA APPEAL NO. 33/2016**

**HOLDEN AT KABWE**

(Criminal Jurisdiction)




**BETWEEN:**

**MUTAFELA SAPANOI** **APPELLANT**

**VS**

**THE PEOPLE** **RESPONDENT**

**CORAM:** Muyovwe, Kabuka, Chinyama, JJS,
on the 1st November, 2016 and 5th October, 2017.

**For the Appellant:** Mr. M. Mutemwa SC, Messrs Mutemwa Chambers.

**For the Respondent:** Mrs L. Siyuni, Director of Public Prosecution, National Prosecutions Authority.

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**JUDGMENT**

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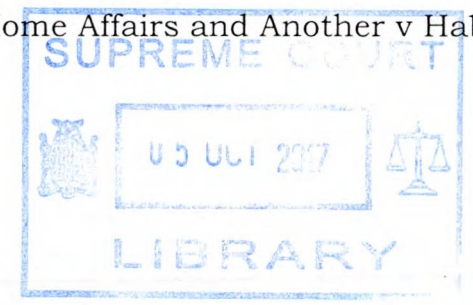
**Kabuka, JS,** delivered Judgment of the Court.

**Cases referred to:**

1. The Minister of Home Affairs and Another v Habasonda (2007) Z. R. 207.



2. Zambia Breweries Plc v Sakala (2012) Vol. 2 Z.R. 460.
3. Manongo v The People (1981) Z.R. 152.
4. Mushemi v The People (1982) Z.R. 71.
5. The Attorney General v Achiume (1983) Z.R.1.
6. Nyambe v The People (2011) Vol. 1 Z. R. 246.
7. Bwanausi v The People (1976) Z.R. 103.
8. Banda v The People SCZ Judgment No. 30/2015.
9. David Zulu v The People (1977) Z.R. 151 (SC).
10. Kunda v The People (1980) Z.R. 100.
11. Saluwena v The People (1965) Z.R.4.
12. Mutale and Phiri v The People (1995/1997) Z. R. 227.
13. Machipisha Kombe v The People SCZ Judgment No. 27/2009.
14. Ilunga Kabala and John Masefu v The People (1981) Z.R. 102.
15. Muvuma Kambanje Situna v The People (1982) Z.R. 115.
16. Muwowo v The People (1965) Z.R. 91(CA).

**Legislation and Other Works referred to:**

The Penal Code Cap.87 S.200.

Bryan Gardner's Black's Law Dictionary, Thomson Reuters, USA, 2009 pg. 243.

Joyce J. George: Judicial Opinion Handbook, 4th Edition, New York, William Stern & Co. Incorporation, 2000 pg. 13.

The Oxford Dictionary, 5th Edition at page 235.

Matthews, J.B. et al, A Treatase on the Law of Evidence at pg.584 in England and Ireland, 11th Edition, 1920, London, Sweet & Maxwell.

Phipson on Evidence 14th Edition parag 27.02 at pg. 614.

The Appellant was convicted of the offence of murder and was sentenced to death. He now appeals to this Court against both his conviction and sentence.

The facts of the case as they appear on the record of appeal, are that the appellant was originally jointly charged with another person for the offence of murder contrary to **section 200 of the Penal Code Cap. 87 of the Laws of Zambia.** The duo were alleged to have between 31st January, 2015 and 9th February, 2015 at Sindelele village, in the Sikongo District of the Western Province of Zambia, jointly and whilst acting together, murdered **Kashweka Siyanama.**

Upon trial of the matter, the judge below in her judgment found the case not proved against the appellant's co-accused and accordingly acquitted him. On the evidence led, the judge nonetheless found the case proved against the appellant to the required standard of beyond reasonable doubt and convicted him.

Facts of the case were that, the deceased was a relative of the appellant from his father's side. The two had differed over

land issues in the past and this dispute was settled by the traditional court of the Barotse Royal Establishment (BRE). That position notwithstanding, evidence given by prosecution witnesses, as well as the appellant himself, at the trial of the criminal matter disclosed that, the decision of the BRE did not restore harmony between the appellant and the deceased.

In his evidence given in the court below on the events leading to the death, PW1, also a relative of the deceased, testified that, in the morning of 31st January, 2015 the deceased passed through the village and home of PW1. The deceased was on his way to check on his rice field, and appeared to be in good health. He was carrying a firearm in one hand while in the other, he had his walking stick. The deceased did not pass through PW1's village on his way back.

Early the following morning PW1 was surprised when the deceased children came to his village to inform him that their father had not returned home from the rice field. A search party was immediately mounted by relatives and other villagers. It continued for the next seven days, but yielded nothing.

the Police the same day, who advised the relatives to bury the remains, while they pursued their own investigations into the matter.

The appellant and his co-accused were subsequently, arrested in connection with the deceased's death and charged with the offence of murder. On conclusion of the trial, the learned trial judge relied entirely on the evidence of the appellant's threats to the relatives of the deceased and the alleged bragging, that he is the one who had killed the deceased, cut up his body before setting it on fire. In accepting this evidence, the learned judge considered that, the witnesses being relatives of the deceased, were suspect witnesses who needed to be corroborated. To satisfy that requirement, the court took into account the appellant's behaviour at the material time, noting that, as village headman he is the one who should have spear headed the search for the deceased when he went missing, but he instead distanced himself from the whole process. The trial court did not accept the appellant's explanation that the reason he failed to render any assistance was that he feared the reaction of the deceased's

relatives, granted that the history of his relationship with the deceased, was a strained one.

The court reasoned that, as head of the village, the appellant could still have pursued the search, independently, particularly that he too was related to the deceased. Accordingly, the court concluded that, the appellant's fear of being implicated in the death was on account of his guilty knowledge, as he knew at the time, that the deceased was already dead. The court found that the prosecution evidence to the effect that, it is the appellant who had killed the deceased as given by PW1 and PW2, who were both relatives of the deceased, was corroborated by the appellant's 'aloof' behaviour.

The court went on to find, that the burning of the body had established malice aforethought on the part of appellant. After considering that there was nothing in the evidence before her suggesting that the appellant had any lawful cause for killing the deceased, the court proceeded to find that the case against the appellant was proved to the required standard of beyond

reasonable doubt. A verdict of guilty was accordingly entered, the appellant was convicted and condemned to a death sentence.

The appellant has now launched this appeal against his conviction and sentence, on two grounds, as follows:

1. **the learned judge in the court below erred in fact and in law when she failed to evaluate fully, properly and fairly, the appellant's evidence and submissions prior to drawing the inference of guilt;**
2. **the learned judge in the court below erred in fact and in law when, based on circumstantial evidence, she held that the failure by the appellant to join the search party warranted drawing the only inference; that the appellant committed the offence of murder.**

At the hearing of the appeal, learned Counsel for the appellant informed the court that he was relying entirely on the written submissions he had earlier, on 12th July, 2016 filed on record.

On ground one of the appeal, Counsel observed that, one of the key aspects or functions of a judgment, where the facts are not agreed, is the process of making findings of fact from the evidence led. He referred to the **Judicial Opinion Handbook, 4th Edition, New York, William Stern & Co. Incorporation, 2000,**

where the learned author **Joyce J. George, at page 13,** states that:

> **"finding of fact" may be defined as those facts which are deduced from the evidence and which are found by the judge to be essential to the judgment rendered in the case. Thus, findings of facts must support the judgment."**

Counsel argued to the effect that, 'purported' findings of fact which merely recite the evidence presented in sequential form; or when they recite the evidence presented without interpreting the effect; or the value the evidence may have in a particular case, are insufficient. The submission was that, failure by any trial court to make findings of fact, as was the case in the present appeal, is fatal. The case of **Minister of Home Affairs v Lee Habasonda**[1] was cited as authority for the submission, as guides trial courts on judgment writing, stressing that:

> **"....every judgment must reveal a review of the evidence, where applicable, a summary of the arguments and submissions, if made, findings of facts, the reasoning of the court on the facts, the application of the law and authorities, if any, to the facts. Finally, a judgment must show the conclusion. A judgment which only contains verbatim reproduction and recitals is no judgment."**

Counsel also relied on the case of **Zambia Breweries Plc v Sinkala**[2], which is to the same effect. He further cited the case of **Manongo v The People**[3] to support the proposition that, in order for a trial court to establish a case against an accused, the evidence led must show that the offence in the matter before it was committed and also that it was actually committed by the accused or by a number of persons, including the accused.

In respect of the appeal now before us, Counsel submitted that, there was an unbalanced evaluation of the evidence by the trial court, where only the flaws of one side but not of the other were considered. That it was a misdirection for the trial court to proceed in the manner complained of, which would entitle this Court to interfere. The cases of **Mushemi v The People**[4] and **The Attorney-General v Achiume**[5] were relied upon, as authority for the submissions. Counsel in this respect referred to the evidence of PW1 and PW2. He noted that, the testimony of both these witnesses which they maintained under cross-examination, was that, after the deceased had disappeared and the search for his body had commenced, the appellant was said

to have uttered words to the effect that, they were all fools for searching for someone he had shot dead. The appellant went on to tell them how he thereafter cut up the body, took it to a solitary place where he set it ablaze and that this is where they would find the remains. In his own defence, the appellant gave evidence in rebuttal, in which he 'vehemently' protested his innocence.

State Counsel Mr. Mutemwa argued that, faced with that scenario of conflicting evidence on the issue, the learned trial Judge below, did not make any findings of fact, or indeed make a credibility judgment regarding the appellant's testimony, as his evidence was neither weighed nor evaluated but was simply glossed over.

Counsel went on to argue that, when confronted with two conflicting versions of the same event the learned trial Judge went to great lengths to analyse the evidence of PW1 and PW2 in total disregard of the appellant's evidence, to which according to Counsel, 'she virtually turned a blind eye'. The submission was that, this appeal presents a classic illustration of unbalanced

evaluation of evidence and therefore a serious misdirection which entitles this Court to interfere.

On ground two of the appeal contending that, the learned trial Judge erred in fact and law when she held that the failure of the appellant to join the search party which went to look for the deceased, amounted to circumstantial evidence warranting drawing the inference that, it is the appellant who committed the murder. Mr. Mutemwa first referred us to the meaning of **'circumstantial evidence'** defined in Bryan Gardner's Black's Law Dictionary, as:

> **"Evidence based on inference and not on personal knowledge or observation."**

Counsel went on to refer us to the decision of this Court in the case of **Nyambe v The People**[6] where we adopted the meaning of circumstantial evidence from the Oxford Dictionary, 5th Edition at page 235 as states that:

> **"Circumstantial evidence (indirect evidence) is evidence from which the judge or jury may infer the existence of a fact in issue, but which does not prove the existence of the fact directly. The law has described circumstantial evidence as evidence that is relevant (and therefore admissible) but that has little probative value."**

A number of decisions on the subject were cited by Counsel including that of **Bwanausi v The People**[7] which are all to the effect that, where the evidence against an accused is purely circumstantial and his guilt is entirely a matter of inference, such inference may be drawn, if it is the only reasonable one, that can be drawn from the evidence. And, that, where two or more inferences are possible, it has always been a cardinal principle of criminal law, for the court to adopt the one which is more favourable to the accused, if there is nothing in the case to exclude it. Counsel also referred us to our more recent decision in the case of **Banda v The People**[8] stressing the same principle and also two observations made by this Court in **David Zulu v The People**[9] the leading case on the subject in this jurisdiction, regarding circumstantial evidence, where we said that:-

> **"It is competent for a court to convict on such evidence, as it is to convict on any other types of admissible evidence. However, there is one weakness peculiar to circumstantial evidence.....by its very nature, circumstantial evidence is not direct proof of a matter in issue but rather proof of facts not in issue, and from which an inference of the fact in issue may be drawn..... A trial judge should guard against drawing wrong inferences from circumstantial evidence.....In order to feel safe to convict, the**

**judge must 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 an inference of guilty."**

After extensively recounting the facts of several other decisions of this Court, learned Counsel for the appellant submitted that, in order to secure a conviction, the circumstantial evidence must be so cogent and compelling, that no rational hypothesis, other than murder can be inferred from the facts. He then referred to the words of the trial Judge below, when she found that the only inference to be drawn from the appellant's failure to assist in searching for the deceased when he was discovered to have gone missing, despite being the headman, was that he was the one who killed the deceased.

Counsel referred to the notes of proceedings in the court below and quoted verbatim the answers given by the appellant in cross-examination on the issue, when he revealed that he did not join the search party for the deceased for fear of approaching the people involved. The appellant explained that, the deceased and himself had previously differed over land issues and the matter

was adjudicated upon by the Barotse Royal Establishment which found in his favour. As a result, it was not in dispute, that the relationship between the appellant and the deceased was strained. Counsel pointed out that, it is against that background that the appellant feared to be involved in the search, to avoid being falsely implicated in the disappearance of the deceased.

In ground 2, Counsel went on to argue that, the appellant clearly offered both a plausible and reasonably true explanation as to why he was unable to join the search party. Counsel cited as authority for the submissions the case of **Kunda v. The People**[10]. We there held that, in cases where guilt is found by inference, there cannot be a conviction if an explanation given by the accused either at an earlier stage, such as to the police, or during the trial, might be reasonably true. The case of **Saluwena v The People**[11] was further referred to where the court of Appeal, the predecessor to this Court, held that, if the accused case is 'reasonably possible' although not probable, doubt exists and the prosecution cannot be said to have discharged its burden of proof.

Counsel concluded his submission maintaining his position that, the circumstantial evidence in this case cannot be said to have rendered the alleged commission of the crime by the appellant certain, so as to leave no room for doubt. That whilst it is acknowledged that the behaviour of the appellant may be considered to have been suspicious, there was still that lingering doubt. On the authority of the case of **Mutale and Phiri v The People**[12] learned State Counsel urged us to resolve this lingering doubt in favour of the appellant, as in view of the doubt, the conviction is rendered unsafe and unsatisfactory.

In response to the appellant's heads of argument and submissions, the learned Director of Public Prosecutions (DPP)'s arguments on ground one were that, the trial Judge was actually on firm ground and did evaluate the appellant's evidence fully, properly and fairly. That in evaluating the evidence before her, the trial Judge warned herself of the suspect witnesses, and the need to have their testimonies corroborated, when she stated at page J14 that:-

*"In a case involving a suspect witness, to exclude the danger of false*

*incrimination, the court must insist on corroboration. Evidence in corroboration must be independent testimony which affects the accused by connecting or tending to connect him to the crime. It may be evidence which implicates the accused or connects in some material particular that the accused committed the crime."*

The DPP noted, how the trial court went on to observe that, the evidence of PW1 and PW2 as relatives of the deceased, was suspect and needed to be corroborated so as to eliminate the danger of false implication. In this regard, the trial court considered that the appellant had not assisted in the search for the deceased despite being the village headman. She rejected his explanation that he had feared being implicated in the matter because of his sour relationship with the deceased. The trial Judge found, the appellant's 'aloof' conduct corroborated these witnesses' testimonies when they said the appellant had told the search party the whereabouts of the deceased's remains. The learned DPP relied on the case of **Machipisha Kombe v The People**[13] where we held that:-

**"Corroboration must not be equated with independent proof. It is not evidence which needs to be conclusive in itself. Corroboration is independent evidence which tends to confirm that the witness is telling the truth when he or she says that the**

> **offence was committed and that it was the accused who committed it."**

Further arguments were anchored on the decision of this Court in **IIunga Kabala and John Masefu v The People**[14] where we held that:

> **"....odd coincidences, if unexplained may be supporting evidence. An explanation which cannot reasonably be true in this connection is no explanation."**

The submission was that, it cannot be explained in any other way, other than an odd coincidence, that the appellant told the search party that he had killed the deceased, chopped up his body and burnt it at Sindelele; the search party proceeded to the place and found the remains of the deceased, accordingly. It was re-iterated that, this was not *mere coincidence.* That according to decided cases referred to, it was *an odd coincidence* capable of providing corroboration to the evidence of the suspect witnesses, PW1 and PW2. In the premises, that the trial Judge as the trier of facts had the right to decide, as she did, based on the evidence before her; and could not have done so, without a thorough evaluation of the evidence.

On the argument that the Judge did not make findings of fact and that she glossed over the appellant's evidence, the submission in response was that what is probably missing in the trial Judge's judgment is the use of the actual words **'findings of fact'.** Otherwise, the learned DPP was unwavering in her position, that facts had been established to which the Judge clearly referred and which, amongst others, include the following:

- *that the appellant was the village Headman and;*
- *that there was a feud between the appellant and the deceased.*
- *that PW1 and PW2 were related to the deceased, which was the reason she found them to be suspect witnesses.*
- *the appellant was also related to the deceased and on the 8th of February, 2015, the appellant fired a gun shot.*
- *that the deceased's remains were found in a disused house at Sindelele.*

In concluding her submissions on ground 1 the learned DPP pointed out that, not agreeing with the appellant's version of events should not be taken to be a misdirection on the part of the trial Judge. That the judgment on its face does show that, adequate consideration was given to all relevant material placed

before the court and, was in accordance with our holding in the case of **Muvuma Kambanja Situna v The People**[15].

On ground 2, the argument by the State was that, a trial Judge like any other Judge, is entitled to exercise their discretion as they analyse issues. Hence, the holding of the trial Judge that the appellant's failure to join the search party for the deceased constituted corroborative circumstantial evidence was within her discretion, as she assessed the issues.

We were in that regard, urged to picture the following sequence of events in the matter. First, that as an elderly member of the community goes missing and happens to be someone with whom the appellant had differences. The village gets involved in searching for him and for the entire period of seven (7) days, their search proves futile. Then, the appellant who is the village headman and who also happens to be his relative, in rage, utters remarks that he is the one who killed the missing person, and that he burnt up his body in a named place. When the search party proceeds to the place he asserts, they find the missing person's body burnt up with only the head

remaining. It was argued that, the remarks which were confessionary in nature, were made voluntarily to people *not* in authority, as it is in fact the appellant who was in authority, as village headman. The case of **Muwowo v The People**[16] was relied on where a voluntary confession was defined as:

> **"..one made in the exercise of a free choice to speak or to be silent; it cannot be the product of violence, intimidation, persistent importunity or sustained or undue insistence or pressure or any other method by the authorities that overbears the will of the accused to remain silent."**

The submission in this regard was that, the appellant voluntarily divulged his acts to the villagers without inducement of any sort and the trial Judge cannot be faulted for taking such evidence into consideration and drawing from it an inference of the appellant's guilt. That, the Judge in the court below was entitled to rely on the circumstantial evidence which was before her to arrive at the facts that were in issue; and to draw her conclusion from those facts, that it was the appellant who murdered the deceased.

Citing the case of *David Zulu v The People,* the learned DPP ended by submitting that, it was safe for the trial Judge to

convict on the circumstantial evidence before her, as it had taken the case out of the realm of conjecture. That the evidence led had attained such a degree of cogency which could permit only an inference of guilt. We were implored to uphold the conviction and dismiss the appeal.

We have considered the arguments and submissions from Counsel on both sides, the host of decided cases and other authorities to which we were referred. We have also taken time to peruse the detail of the evidence on record as earlier highlighted and the judgment appealed against.

We will now proceed to consider the two grounds of appeal.

The issue in ground one of the appeal is that there was failure on the part of the trial Judge to evaluate fully, properly and fairly, the appellant's evidence and submissions prior to drawing the inference of guilt, from it. In ground two of the appeal, the grievance is that the trial Judge should not have come to the conclusion that the appellant's failure to join the search party meant he is the one who murdered the deceased.

In our view, the issues raised in both grounds of appeal are hinged on findings of fact; and the issue in the second ground rests on our finding on the first ground of appeal.

The appellant's contention in ground one of the appeal was that, in arriving at the finding of guilty, the court below only considered prosecution evidence as given by PW1 and PW2. These witnesses alleged that, the appellant on his own free will disclosed to them that he was the one who killed the deceased. The appellant further contended that, in accepting this evidence, the trial Judge did not take into account his own evidence in defence, denying that allegation.

The question here, as we see it, is whether the trial Judge was entitled to accept evidence of the prosecution witnesses PW1 and PW2, that the appellant voluntarily confessed killing the deceased and gave them details of where and how he had disposed of the body thereafter. If so, whether as relatives of the deceased the said witnesses were corroborated?

Our perusal of the record shows that PW1 and PW2 did indeed testify that the appellant told them that he had killed the deceased. PW2 in this regard, testified that, the accused said:

> "I want to tell you that you are fools, the one you are searching for I have shot him dead and cut him into pieces and I took him to a solitary place and set him ablaze if you happen to go there, for sure you will find him dead."

The appellant's response to that evidence was a total denial.

After considering the whole of this evidence before her, the trial Judge rejected the appellant's explanation for his 'odd' behaviour of not participating in the search of the deceased, soon after he went missing, or at all. Her observations on the appellant's said unbecoming conduct were that:

> "A1 had explained his standoffish behaviour over the search by stating that he was scared of being implicated in the matter because of his sour relations with PW1 and PW2. I find difficulty in accepting this explanation for the simple reason that his sour relations with PW1 and PW2 could not have stopped him from conducting an independent search on his own or in concert with other people he got along with.
>
> ...the further aggravating factor is that A1 was related to the deceased, it was expected of him to rise above any apprehensions or differences he may have had to the search of the deceased. A1's fears of being implicated indicates in my view that he had knowledge that

the deceased had met his fate long before the remains were found by the search party."

In our view, that evidence shows, what is being assailed is undoubtedly, a finding of fact. Having highlighted the evidence on which the trial Judge premised her finding of the appellant's guilt, we are satisfied that in reaching the said finding, the trial Judge was alive to the history of acrimony between the parties. She also took into account the appellant's explanation for his failure as the village head to take charge of the search for his missing subject, who also happened to be his relative.

We are further satisfied, that the findings of the trial Judge are indeed supported by the evidence that was before her and which she accepted as credible. The trial court had the advantage of observing the demeanour of all the witnesses including that of the appellant when giving their testimonies and when assessing their credibility. She was on that basis entitled and better placed to make findings of fact rejecting the appellant's explanation for his failure to participate in the search for the deceased and to accept the evidence of PW1 and PW2 to the effect that, the appellant had confessed killing the deceased, on which the guilty

finding was premised. This finding is indeed supported by the evidence on record.

It is for the reasons given, that we do not find there was any unbalanced evaluation of the evidence by the trial Judge.

The evidence relied on having been given by suspect witnesses, there was need for corroboration. The trial court erroneously stated that she relied on the appellant's non participation in the search to draw the inference that he is the one who killed the deceased. At the most that conduct could only be a basis of his guilty knowledge, that the missing person was already dead at the time the village had embarked on searching for him. It is in that vein that the conduct could constitute corroboration of the evidence of PW1 and PW2 when they testified that, the appellant had revealed to them that he had killed the deceased. We also accept as correctly submitted by the learned DPP, that it was an odd coincidence that the remains of the deceased were discovered by other persons, not being PW1 or PW2 following upon a search of the area earlier disclosed to them by the appellant.

We are further satisfied, that the finding of guilt is supported by the evidence on record which the trial court was entitled to accept and the record shows in so doing, consideration was given to the appellant's evidence in defence but the same was rejected. Accordingly, ground one of the appeal urging us to interfere with the findings of fact on grounds of improper, unfair and unbalanced evaluation of the evidence cannot be sustained and hereby fails.

The issue in ground two, being one directed at the finding of the trial Judge, that based on circumstantial evidence, failure by the appellant to join the search party warranted drawing the inference, that the appellant committed the offence of murder, as the only reasonable inference, in our view has already been dealt with when considering ground one. Suffice to re-iterate the settled legal position that, we can only interfere with findings of fact on well established grounds being: (i) that the finding is not supported by the evidence; (ii) that it was made from an unbalanced evaluation of the evidence which took into account only evidence of one party; (iii) that the finding was premised

from a misapprehension of the facts; or (iv) is one which no competent tribunal acting reasonably could make.

Even assuming, as claimed by the appellant himself, that on account of his past acrimonious relationship with the deceased, he feared that by participating in the search, he would be misunderstood by the other relatives and villagers. As village head, the appellant by virtue of that position still had an obligation to pursue the matter of his missing 'subject' by any other means available. There was nothing for instance, precluding him from reporting to the police, the fact that one of the persons in his village was missing; or as observed by the trial Judge, to institute his own independent investigations into the matter.

In his position of leadership, his conduct of detaching himself completely from the happenings in his village, as he did, when all was undoubtedly, not well, was inconsistent with the demands of such position. The appellant's behaviour may have been considered reasonable for an ordinary villager, but certainly not for a village headman, who was a leader in a position of

responsibility for all his subjects. Such behaviour cannot be said to be reasonable as he had a duty to protect all the villagers under him.

It is for this reason that, we again, find no basis for faulting the trial Judge when on the whole of the evidence before her; including that from PW1 and PW2, which she had accepted, that the appellant had boasted, he was behind the deceased death; she made the inference of guilty knowledge as the only reasonable explanation for the appellant's failure to participate in the search. Reasonable explanation, must be considered from the particular facts of the case. In light of the circumstances of this case, we do not accept the submissions by State Counsel, urging us to find the appellant had given a *reasonable* explanation for his 'aloof' conduct, towards the search which raises a reasonable doubt, in his favour.

As we have already noted, the trial Judge found the appellant made a public confession that he is the one who killed the deceased. In this regard, the learned authors of **Phipson on**

**Evidence, 14th Edition at page 674, paragraph 27-02,** in defining the meaning of 'confession' have the following to say:

> **"Like other admissions, a confession is admissible under an exception to the rule against hearsay and is therefore admissible as evidence of the truth of its contents. Such evidence, if unambiguous is itself sufficient to support a conviction."** (Underlining for emphasis supplied).

Further, as **Matthews, J.B** *et al* in **A Treatise on the Law of Evidence, at page 584** observes:

> **"Indeed, all reflecting men are now generally agreed that deliberate and voluntary confessions of guilt, if clearly proved, are among the most effectual proofs in the law;"**

We are accordingly satisfied, as correctly submitted by the State, that the voluntary confession by the appellant to PW1 and PW2, that he was the one that had killed the deceased and his directions on where and how he had disposed of the body, from where the same was subsequently recovered, constituted an odd coincidence. The deceased's body having been found at the place pointed out by the appellant in his said confession, renders support to the evidence of PW1 and PW2 and provides their evidence with the required corroboration.

Ground two of the appeal equally fails.

Both grounds of appeal having failed, we hereby uphold the trial judge and dismiss this appeal.

Appeal dismissed.

E.C. MUYOVWE
**SUPREME COURT JUDGE**

J.K. KABUKA
**SUPREME COURT JUDGE**

J. CHINYAMA
**SUPREME COURT JUDGE**