

THE PEOPLE v PETROL ZAMWELA

High Court

Justice c.s Mushabati

17th December, 2002

Flynote

Criminal Procedure – Acquittal – Whether the Subordinate Court is empowered to acquit after conducting an inquiry.

Headnote

The accused appeared before the Subordinate Court of the First Class for the Kalomo District on a charge of murder contrary to section 200 of the Penal Code, Cap. 87 of the Laws of Zambia. The matter was before the Magistrate for a Preliminary Inquiry as the case is triable by the High Court. The prosecutor applied for the withdrawal of the case. The learned magistrate in allowing the application invoked the provisions of Section 88 (b) of the Criminal Procedure Code, Chapter 88 of the Laws of Zambia and acquitted the accused. The matter was reviewed through the monthly returns.

Held:

Section 280 of the Criminal Procedure Code empowers a Subordinate Court to discharge an accused person if at the close of the inquiry the evidence is insufficient to commit the accused for trial. There is no provision for an acquittal before a Subordinate Court.

Legislation Referred to:

1. Criminal Procedure Code Cap. 88 ss. 88, 230 and 337.
2. Penal Code Cap. 87 s. 200.

No appearance for the accused

No appearance for the State

Judgment

Before Honourable Mr. Justice C.S. Mushabati in Chambers on the 17th day of December 2002.

The accused in this case appeared before the Subordinate Court of the First Class for

the Kalomo District on a charge of murder contrary to section 200 of the Penal Code. I called for this case for review after becoming aware of it through the monthly returns.

The matter was before the magistrate for a Preliminary Inquiry as the case is triable by the High Court. On 23rd February, 2002, the public prosecutor, after presenting the medical certificate proving the accused had died, applied for the withdrawal of the case. The learned magistrate in allowing the application invoked the provisions of Section 88 (b) of the Criminal Procedure Code Cap. 88. This Section reads:

“In any trial before a subordinate court, any public prosecutor may, with the consent of the court or on the instructions of the Director of Public Prosecutions, at any time before judgment is pronounced, withdraw from the prosecution of any person; and upon such withdrawal – If it is made after the accused person is called upon to make his defence, he shall be acquitted.”

The matter was not for trial before the magistrate as he had no jurisdiction to try a murder case. Secondly, the accused had not in fact adduced any evidence. I cannot find any provision of the law under which the acquittal was made. Section 230 of the Criminal Procedure Code Cap. 88 is clear. For ease of reference this section reads as follows:

“If, at the close of the case for the prosecution or after hearing any evidence in defence, the court considers that the evidence against the accused person is not sufficient to put him on his trial, the court shall forthwith order him to be discharged as to the particular charge under inquiry; but such discharge shall not be a bar to any subsequent charge in respect of the same facts:

Provided always that nothing contained in this section shall prevent the court from either forthwith, or after such adjournment of the inquiry as may seem expedient in the interest of justice, proceeding to investigate any other charge upon the accused person May have been summoned or otherwise brought before it, or which, in the course of the charge so dismissed as aforesaid, it may appear that the accused person has committed.”

This section merely empowers the court to discharge an accused person if at the close of the inquiry the evidence is not sufficient to commit him for trial. There is no provision for an acquittal before the Subordinate Court.

The learned magistrate therefore acted out of his jurisdiction by acquitting the accused. The acquittal was a nullity as it was without the backing of any law. I am therefore, invoking the powers vested in me by Sections 337 and 338 (1) of the Criminal Procedure Code. The Order of acquittal is substituted by one of discharge under Section 230 of the Criminal Procedure Code, Cap. 88. I order accordingly.

MADE IN CHAMBERS AT LIVINGSTONE THIS 17TH DAY OF DECEMBER, 2002

Decision of the Subordinate Court reviewed

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