

IN THE SUPREME COURT OF ZAMBIA
HOLDEN AT NDOLA

SCZ APPEAL NO. 105/2000

(CRIMINAL APPELLATE JURISDICTION)

B E T W E E N:

MATTHEW BIYE YOHANI

APPELLANT

VS

THE PEOPLE

RESPONDENT

Coram: Sakala, Ag. DCJ, Chibesakund, JS and Mambilima Ag. JS
on 5th December 2000

For the Appellant: Mrs J C Kaumba, Ag. Principal, Legal Aid

For the Respondent: Mr R O Okofar, Principle State Advocate

JUDGEMENT

Sakala, Ag. DCJ, delivered judgment of the court.

The Appellant pleaded guilty to two counts of manslaughter. The particulars of the offence were that on 26th July 1997, he unlawfully caused the deaths of John Sambeza on count (1) and Elina Sakalunda on count (2). He was sentenced to 20 years imprisonment with hard labour on each count to run concurrently. This appeal is against the sentences only.

The brief facts of the case were that the appellant, who had been drinking on the material date, had a quarrel with his brother and his brother's wife, who suspected him to have stolen a bag of charcoal. Shortly after the quarrel, the two were found dead near their house, where an attempt to set the house on fire had been made. Two logs of firewood suspected to have

been used to inflict the injuries on the deceased, were recovered near the house. On 28th July, 1997 the appellant was arrested and charged with two counts of murder. Under warn and caution he admitted killing his two deceased grandparents with the logs of firewood when they accused him of stealing their bag of charcoal. In sentencing the appellant to 20 years imprisonment with hard labour on each count the learned trial judge took note of the fact that this was a bad case of manslaughter.

On behalf of the appellant, Mrs Kaumba argued that the sentences were wrong in principle and excessive. She drew our attention to the learned trial Judge's remarks before sentencing the appellant where the learned trial Judge complained or lamented that this offence was between murder and manslaughter. The learned Principal State Advocate argued that this approach was wrong in principle. In mitigation, Mrs Kaumba urged us to take into account the youthful age of the appellant and that at the age of 24 years, a sentence of 20 years imprisonment will adversely affect the appellant; that the Appellant was very remorseful at the death of his grandparents and the stigma of their death will haunt him for the rest of his life. Mrs Kaumba urged us to interfere with the sentences and to reduce them accordingly.

We have considered the arguments by the learned Principal State Advocate. We have also considered the facts of the case. We are satisfied that the sentences imposed by the learned trial Judge failed to reflect the credit for pleading guilty. They also failed to take into account the

youthfulness of the appellant. They further failed to take into consideration the arguments and mitigation advanced on behalf of the Appellant.

We have said before in this court that it is wrong to take one view of the facts of a case for purposes of conviction and to take another view of the same facts for purposes of sentencing. The learned trial Court agreed with the learned counsel that it was a case that bordered on murder. But the court went on to say: "If there was an offence between murder and manslaughter in my view, this case would have fallen in that offence. One brutal killing of two elderly and defenceless people cannot be condoned. I have been at pain to determine the appropriate sentence to be metted (sic) in this case, which can deter not only the convict but other people." The reasoning of the learned trial Judge suggests that the Appellant must have been sentenced for a non-existent offence between murder and manslaughter. The approach by the trial court was wrong in principle. Sentences of 20 years on the facts of this case come to us with a sense of shock. We therefore set aside both sentences of 20 years imprisonment with hard labour on each count. In their place we impose a sentence of 15 years imprisonment with hard labour on each count to run concurrently.

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E L Sakala
ACTING DEPUTY CHIEF JUSTICE



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L P Chibesakunda
SUPREME COURT JUDGE

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I Mambilima
AG. SUPREME COURT JUDGE