

THE PEOPLE v KALENGA AND MUFUMU (1968) ZR 181 (HC)

HIGH COURT

EVANS J

21st DECEMBER 1968

Flynote

[1] **Evidence - Silence of accused in criminal case - Inference of guilt.**

Headnote

The accused's silence in the face of strong evidence against him strengthens the inference that he is guilty.

Case cited:

Broadhurst v R [1964] AC 441; [1964] 1 All ER 111.

Zulu, D P P, for the people

Chaane, for the first accused.

Farrell, for the second accused.

Judgment

Evans J: Lewis Mufumu (hereinafter called "the accused") is charged under section 177 of the Penal Code with murdering Edward William Brennan Jones (hereinafter called "the deceased") on or about 1st October, 1968, in the Lusaka District. The accused's former co - accused, Jerome Kalenga, was acquitted at the end of the State's case.

The *onus* rests throughout upon the State to prove, upon the evidence and beyond reasonable doubt, that the accused caused the deceased's death by an unlawful act and of malice aforethought, which is deemed to be established by proof of any of the circumstances specified in section 180 of the Penal Code.

[The learned justice then reviewed the evidence adduced at the trial and made findings of fact.]

On the above - stated facts, the learned Director of Public Prosecutions submitted that the State had proved the accused guilty beyond reasonable doubt. As was his right, the accused elected to remain silent and to call no witnesses when called upon for his defence in this court. He relies upon his said statement at the preliminary inquiry and counsel's submissions.

[The learned justice then continued his review of the evidence.]

Upon the whole of the evidence, the inescapable and only reasonable inference which can be drawn from all the proved facts is that it was the accused who unlawfully and fatally shot the deceased, and I so find. [1] His silence in this court strengthens this inference of guilt (*Archbold, Criminal Pleading Evidence and Practice*, 36th ed., paragraph 1308 (b) and *Broadhurst v R* [1]).

There is nothing to rebut the presumption that a man who shoots another with a lethal weapon intends to kill him or at least to do him grievous harm. I find that the accused had such intent and therefore caused the deceased's death with malice aforethought. The State has proved this charge of murder against the accused beyond reasonable doubt, and I convict him as charged.

Accused convicted as charged.