



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
HOMICIDE CASE NO. 42 OF 2012**

THE REPUBLIC

V

WILSON JEKAPU

AND

MARIA MELO

AND

RICHARD MCHIZA PULAYISI

CORAM: HON. JUSTICE M L KAMWAMBE

Mr Chitsime and M/s Likomwa of counsel for the State
Messrs Nanthulu and Domasi
Mr Phwitika...Official Interpreter
Mrs Gondwe ...Court Reporter

JUDGMENT

Kamwambe J

The four accused persons, Wilson Jekapu, and Maria Melo and Richard Mchiza Pulayisi and David Bikoko Saidi, are alleged to have caused the death of Juwana Melo with malice aforethought on the 7th day of August, 2011 at Hollandi Village T/A Ngabu, Chikwawa District in the Republic of Malawi. Wilson Jekapu who had left the village about five years ago in 2005 for Nsanje travelled to the village on this material day and met the second accused person Maria whom he asked to bring him a girl the deceased to kill. Jekapu was alleged to be in the company of another person

seemingly bearing the name of the third accused person Richard Pulayisi. Maria Melo did not believe that Jekapu would really kill the girl and so upon being paid K3,000.00 she gave the girl to Jekapu and the unknown friend. As trial commenced, the State withdrew Maria Melo from the charge under section 77 of the Criminal Procedure and Evidence Code. The Charge was accordingly amended.

Jekapu and friend took the girl across the road down some slopes where they killed the girl and left her on the road to make the death appear as if caused by motor accident. However, the story could not be believed because buttocks, shins and private parts of the girl were sliced away. Maria Melo who was first prosecution witness told the police how she was involved and she mentioned Jekapu as the man who came with a friend and went away with the deceased. She knew Jekapu well as a person who used to live in the village before. She denied that his friend was Richard Pulayisi in the dock whom she knew well, and so later on, this court discharged Pulayisi for lack of any implicating evidence. She said Jekapu was with Mabvuto Kumbukani. There was no concrete evidence that Richard Pulayisi was one and the same person as Mabvuto Kumbukani. The last accused person, Bikoko Saidi was alleged to have sent Jekapu to collect private parts of a girl to boost his fish business as he was a fisherman. He is now dead.

Jekapu and friend told Maria Melo that they had killed Joana and she is lying in the road. Maria was afraid for her life if she revealed about the incident. When she went to the road she found Joana really dead.

Gerald Nakoma was a clinician at Chikwawa District hospital who conducted the post mortem report that Joana died of strangulation. This means that she was strangulated first before she was sliced. There was no supply of blood through the neck as it was twisted and broken.

Jekapu gave an alibi that at the material time he was in Nsanje and Mozambique doing ganyu (piece work) of moulding bricks, but the alibi was shot down by his own defence witness Bikoko Saidi who refuted that he was in Nsanje fishing with him.

On 6th December, 2012 Bikoko Saidi who was in custody all this time since his arrest on 29th September, 2011 applied for bail which I granted by releasing him unconditionally pending the hearing of judgment. He was released unconditionally because there was no evidence implicating him apart from the confession evidence of Jekapu as co-accused which is inadmissible evidence against another co-accused according to section 176(2) of the Criminal Procedure and Evidence Code.

Jekapu testified that Maria knew him well and that they knew one another since they lived together. There is no doubt that Maria Melo recognised Jekapu as the one who went away with the deceased. It is absurd for Jekapu to deny that he never went to Chikwawa on the material date when he was recognised by Maria. There is no explanation why Maria should lie against him a person who had disappeared from the village. The story of Maria is one of contrition and truth for she did not really expect what happened. She had to vomit the truth to have her innocent parents released from police custody. At this time she did not care that she was also implicated by her actions. To me she is a witness of unquestionable truth who wanted to get done with the case and clear her conscience. To a lesser extent she was also involved in the death of her niece Joana.

Jekapu's testifying that she talked lies to police because he was tortured does not carry truth as it is full of inconsistencies. Firstly his co-accused men were not tortured, why not and why only him? He says that he knew about Kumbukani from the police and Maria,

how did he meet Maria to learn about Kumbukani? After all, Maria was introduced to Kumbukani by Jekapu himself who was in his accompany. Commenting on his caution statement he said everything is true except where he is implicated such as implicating Bikoko Saidi and going to Chikwawa to kill the deceased. This is common behaviour of most accused persons.

Section 209 of the Penal Code reads as follows:

“Any person who by malice aforethought causes death of another person by an unlawful act or omission shall be guilty of murder.”

This court finds that Jekapu was the one seen by Maria and to who Maria gave the deceased for killing. Jekapu was given K50,000.00 supposedly by Bikoko Saidi to share with others as Jekapu alleges for the job done so as to boost Bikoko's fishing business. On the 7th August, 2011 he was not fishing with his uncle Bikoko Saidi but that he was in Chikwawa to meet his victim and prosecute his task. Maria saw Jekapu and his colleague take Joana the victim across the road into the bushes and after about thirty minutes they came back to report to Maria to tell her where she will find the victim's body. No one else could be attributed to having caused death to the victim other than the accused and his unknown and mysterious accomplice. There is just very strong circumstantial evidence.

This is a case of greed and evil belief and superstition that private parts bring riches. There was a clear and direct motive to make money. Even if motive is immaterial, behind it is the requisite state of mind as required by section 212 of the Penal Code. To travel all the way from Nsanje to Chikwawa and ask for a particular girl demonstrates that he had planned his mission and intentioned it to proceed as planned. The mission to kill and harvest private parts was well premeditated. The consequence of all this was the death of the victim Joana who was certified by the clinician to have died.

On the 11th May, 2016 I granted bail to Jekapu during a camp court exercise on the belief that this file was missing, but before the bail formalities were finalised, the file resurfaced and I put the bail formalities on hold until I made my judgment.

I now find Wilson Jekapu guilty of murder contrary to section 209 of the Penal Code.

I shall hear submissions on sentence on a date to be fixed in September at Chikwawa. Submissions to be filed within three weeks from the date hereof.

Pronounced in Open Court this 31st day of August, 2016 at the High Court sitting at Chikwawa.


M L Kamwambe
JUDGE