



IN THE HIGH COURT OF MALAWI  
PRINCIPAL REGISTRY  
CRIMINAL DIVISION  
CRIMINAL CASE NO.117 OF 2011

THE REPUBLIC

V

NELSON KAPASULE NAMBAZO & 3 OTHERS

**Coram: Hon. Justice M.L. Kamwambe**

Miss R. Mapemba of Counsel for the Appellant

Mr. Chakwatha of Counsel for the State

N. Nyirenda, Officer interpreter

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**JUDGMENT**

**Kamwambe J**

The four accused persons namely **Nelson Kapasule Nambazo, Grecious Bindula, Charles Badson** and **Daniel Makwete** were on the 18th of April, 2011 charged in this court with the offence of murder contrary to section 209 of the Penal Code. The charge read as follows:

**STATEMENT OF OFFENCE**

Murder, contrary to section 209 of the Penal Code, Chapter 7:01 of the Laws of Malawi.

**PARTICULARS OF OFFENCE**

**Nelson Kapasule Nambazo, Charles Bedson, Grecious Bindula and Daniel Makwete** on or about the 18th day of May, 2010 at Thombozi Village, T/ A Chiwalo in the district of Phalombe in the Republic of Malawi with malice aforethought caused the death of AYESI MAHEYA.

When the four accused persons were arraigned in this court, they all pleaded NOT GUILTY. We shall refer to them as 1st, 2nd, 3rd and 4th accused persons. The State called three witnesses to testify and in trying to prove the guilty of the four accused persons beyond reasonable doubt. It must be stated at the outset that the duty of proving the accused persons guilty or burden of proof lies on the State, and the State, and the standard required is Proof Beyond Reasonable Doubt.

PW1 was Dorothy Chipeso of Thombozi Village Group Viillage Headman Nambazo, T/ A Chiwalo Phalombe. The witness told the court that she knew the four accused persons, because as she started it, they were from a nearby village, which was 21/2 km away from her village. The witness told the court that the four hacked a person to death and that the person who died was Ayesi Maheya. This witness told the court that she witnessed the incident with her own eyes, and the day was 7th May, 2010 at about 16:00hrs, as they sat at the village headman's court under a tree in the company of Dorothy Chipesa, the deceased Ayesi Maheya, Malito Kaudzu and Mary Pendame.

The witness said that they were born in village Thombozi and they considered the village court their premises and the witness told the court that she was in fact sub-village headwoman Thombozi, and Nambazo is their Group Village Headman. On the day of the incident they sat at the village court as they normally did, because

there is a big tree that provides shade, and as they were busy chatting they saw a group of persons including the four approaching whilst carrying Panga knives, hoes, metal bars and wooden sticks, and that in total there were 7 people in the group, whose leader was Boniface Thambala. There was also Duncan Nambazo, Charles Badson, Nyambi Kachamba and his younger brother Diston Kachama. The witness told the court that all the four accused persons namely Kapasule Nambazo (1st accused), Charles Badson (2nd accused), Grecious Bindula (3rd accused), and Daniel Makwete (4th accused) were present in that group. The witness told the court that they asked the group as to why they had come and they replied that they had come to clear the village court, and this was said by Boniface Thambala, who claimed that the place belonged to him, that they wanted testified that as a matter of fact that place or court in question did not belong to the accused persons and the group, but that it belonged to them (witness and her people).

As the witness and her colleagues protested and refused to burge and attempted to stop the marauding group, then the group of the accused persons begun assaulting the witness and her colleagues, and that it was Boniface Thambala, who first assaulted Mai Pendame, and then the 1st accused took a panga knife with which he hacked Ayesi Maheya (the deceased) on the forehead. Then the 4th accused also took his panga knife again and hacked the deceased at the back of her head. The deceased then fell down unconscious and the 3rd accused took a panga knife again and hacked the deceased on the temple (side of the head). When the deceased had fallen down unconscious, the 2nd accused took a hoe and with it hit the witness on the head and the witness showed the scar to the court) and when he did this and saw that the deceased was not waking up, all the accused persons begun running away and the witness and her colleagues took the

deceased to the hospital. The witness told the court that she did not exactly count the number of people who were present on the day of the incident but that she remembered that on her side, there were the four women she had mentioned. When people heard their cries, they rushed to the scene and as the people poured in the four accused persons run away together with their colleagues.

The witness told the court that in the company of her colleagues, they went to Nambazo Police Unit, who referred them to Nambazo Health Centre, where upon arrival they were told that the injuries the deceased had suffered were severe and they told them that the Health Centre could not manage to treat the deceased, so they put the deceased on a drip as we waited for an ambulance which they had called for. The witness said that seeing that the situation was dire, they asked if they could be allowed to hire a vehicle in which to ferry the deceased. They were allowed and they ferried the deceased to Phalombe District Hospital where they were stitched, and some were put on drip, and that the witness herself and the deceased were admitted/hospitalised. The witness was discharged after two days but the deceased remained in the hospital where she stayed up to 14th May, 2010. At the time the deceased was not eating anything and could not open her eyelids. On 14th May, 2010, as the Doctor on duty made a round, he informed them that they were referring the deceased to Zomba Central Hospital, and an ambulance came at around 12:00hr, and indeed took them to Zomba Central Hospital where they were again hospitalized. On 17th May, 2010 the deceased died. An ambulance came and on 18th May, 2010 they ferried the dead body of the deceased back to Nambazo village and buried the deceased on 19<sup>th</sup> May. 2010. The witness finally told the court that she had known the four accused form many years.

In cross-examination by Mr Chakhwantha learned Counsel for the defence, the witness said that she indeed had known the accused persons for many years including Boniface Nthambala. The witness admitted that she was involved in a chieftaincy but that the witness and her people were the rightful heirs. After that the witness said she went back home and continued with her normal duties of village headwoman. Then two years elapsed, and Boniface Nthambala again went to Group Village Headman Nambazo to complain about the same chieftaincy, and Group Village Headman Nambazo again ruled that the Chieftaincy belong to the witness. Not being satisfied with the outcome, again Boniface Nthambala went to T/ A Chiwalo to complain/ or appeal. The said Boniface Nthambala did not stop there, he went and appealed or complained again to Paramount Chief Mkhumba, and there the said Boniface switched witnesses, and finally Paramount Chief Nkhumba ruled that the chieftaincy belonged to Boniface Nthambala. The witness admitted that she was Sub village headwoman Thombozi and that her brother was village headman Thombozi. The witness testified and told the court that she never appealed, the decision of Paramount Chief Nkhumba. When asked whether she expected her subjects to respect her, the witness said she did expect them to respect her as well as her decision, and that she would not be happy to see that her subjects, are taking matters into their own hands. The witness, however insisted that the home of the four accused persons was far from her village, but that she was aware that there was a decision in favour of Boniface, but she insisted that the village court belong to her, and not Boniface. The witness told the court that when on the fateful day she told the group of the accused persons that the village court belongs to her, that was when the four accused persons begun assaulting her. The witness told the court that the deceased never uttered any words to the accused persons.

In cross-examination, the witness told the court that the parties to the chieftaincy wrangle were Andrew Dyapani who represented the Thombozi clan, and Boniface Nthambala, who represented the other fending clan, and that she was involved because Andrew Dyapani was her grandfather. The witness told the court that the deceased was involved because she was a grand-niece of the said Andrew Dyapani.

PW2 was Martha Kandzu of Thombizi Village T/ A Chiwalo Phalombe District. This witness told the court that she knew the four accused persons, and that she knew them because they hail from the area of Group Village Headman Nambazo where she also comes from, and that their villages are 2 ½ km apart. The witness said she saw the four accused persons killing Ayesi Maheya, the deceased on the 7th of May, 2010 at Thombozi Village at the village court belonging to village headman Thombozi. The witness told the court that there were many people when this was happening. She testified that on the material day, she was on the company of her three colleagues, they were herself, Ayesi Maheya, the deceased, Mary Pendame and Dorothy Chipesa. They were shelling maize and as they sat on the village court they saw a group of people, who carried an axe handle, panga knives, hoes and a metal bar. The witness told the court that they were surprised to see the group, and when they inquired as to what it was that they wanted, they simply said that they should not ask them anything as they all had letters from Paramount Mkhumba authorizing Boniface Nthambala to ascend to the chieftaincy. All the accused persons were present in that group and that there was also Boniface Nthambala and the two Kachamba brothers.

The witness told the court that Boniface Nthambala pushed her to the ground and she was trying to get up from where she had

fallen that was when she saw the group hacking the deceased Ayesi Maheya. The witness said she saw the 1st accused hacking the deceased on the forehead, and then 4th accused hacking the deceased at the back of the head and further that the 3rd accused hacked the deceased on the left side of the head (temple) and that the 2nd accused also hacked PW1 Dorothy Chipesi. The witness further told the court that when the 1st accused wanted to hack the deceased for the 2nd time, that was when she got up, struggle with the 1st accused and managed to wrestle the panga knife from him. She said she actually over powered him, then after this the witness and her colleagues cried for help and when the accused persons saw that people had started trooping in as they responded to their calls for help, they run away. The witness also told the court that PW1 Doorothy Chipesa was hacked on the head. Then they carried Ayesi Maheya the deceased to Nambazo Police Unit who referred them to Nambazo Health Centre, and then to Phalombe, where they were referred to Holy Family Hospital, where after 7 days referred them to Zomba Central Hospital. There was no cross examination of PW2.

PW3 was No. A6315 Detective Sergeant Nyirongo who told the court that he had been with the Police Service for 15 years, but that he had worked in the Criminal Investigations Department for a period of 9 years. The witness testified that his job involved investigating serious cases like murder, rape, all cases of theft involving sums of money from Mk1,000.00 and above, and burglary etc. The witness told the court that he went to Ntakataka Police Training School and he then attended a course in criminal investigation at Ntakataka. The witness told the court that he remembered all the four accused persons, and that it was on 7<sup>th</sup> May, 2010 when he received a report from Mr Elson Matiki that his mother Ayesi Maheya was severely hit and she was cut/struck by a panga knife in the head by the four accused persons following

disagreements as to who is the rightful heir to the headmanship of Thombozi village between the two parties, which comprised of the group of the accused persons on the one side and the other group to which the deceased belonged, including PW1 and PW2. The witness told the court that the 2nd accused Gracis Bindula was the one who was the disputant from the group of the accused persons, and the deceased was the other disputant. The witness told the court that the deceased had ruled the village for some time and she later handed the chieftaincy to Elson Makwete and his sister PW1 Dorothy Chipesa.

The witness told the court that upon receipt of the report of the fatal injury, he issued a medical report form and referred the deceased person to Nambazo Health Centre for treatment, and that he later heard that the deceased had been referred to Phalombe District Hospital and later to Holy Family Hospital.

On 8th May, 2010 the witness said he went to Holy Family to see for himself the condition of the deceased person, which he described, as getting worse by the day, as the deceased could not even speak and he observed that the deceased had some wounds on the forehead and at the back of the head as well as the sides. Then on the same day 8th May, 2010 enquiries were conducted which resulted in the arrest of the four accused persons, as Nambazo could not accommodate them since it is a small police unit. The witness then opened a case of unlawful wounding with which he charged he charged the four. When he interviewed the four accused persons they indicated that they went to the scene of the crime, the said village court after Paramount Chief Mkumba had ruled that the Thombozi chieftaincy belonged to them. The witness said he arrested the four accused persons because they wounded the deceased, that they hacked her in the



head with panga knives. The witness told that the court that he got this information from Elson MATIKI, AND HIS BROTHER Zuze Mpula, from the same village of Thombozi. This witness told the court that he confirmed the incident because the accused persons told him that they went to the scene of the crime, the village court because they wanted to clear the place which is normally sits when the traditional of village court is sitting. The place was clear, and there was no grass. The four accused persons admitted having gone to the vicinity or scene of crime when he initially charged the four with the offence of unlawful wounding, they all denied the offence.

After 7 days the witness received a report that the deceased who had been taken to Zomba Central Hospital had passed away, and since the four accused persons were still in custody, a case of murder was opened against them, and he charge them with the same. He later took the four accused to Zomba Mental Hospital for mental examination. Later, the witness went to Zomba Central Hospital where he wanted to get Death Reports on 15th May, 2010. The report was not collected on that day, but was collected some days later by relatives of the deceased. The witness tendered Exhibit P1, a medical report. The witness told the court that when he charged the four accused persons with the offence of murder they all denied the offence. The witness also tendered Exhibit P2, Caution Statement of 1st accused person, Exhibit P3 Evidence of Arrest of the 1st accused, Exhibit P4 Caution Statement of 2nd accused, Exhibit P5 Evidence of Arrest of 2nd accused, Exhibit P6 caution Statement of 3rd accused, Exhibit P7 Evidence of Arrest of the 3rd accused person, Exhibit P8 Caution Statement of 4<sup>th</sup> accused, Exhibit P9 Evidence of Arrest of 4th accused person. A photograph of deceased was identifies as IDP1. In cross-examination by Mr Chakhwanta, the witness told the court the incident and when they arrested the suspects he saw that they were in plasters alleging that they had been assaulted.

The witness told the court that it was customary to clear the village court whenever a new chief was to be installed, and that according to his information, it was the deceased's relatives who were supposed to clear the area. This information was relayed to him by relatives of the deceased like Zuze Mpula. The witness said Nambazo police has two cells, but that he took caution statements from the accused persons at Phalombe. The accused persons never spent a night at Nambazo, and he put them in different cells at Phalombe.

In cross-examination, the witness told the court that he was told by the 2nd and 3rd accused that they reported the matter to Nambazo Police Unit, but that he never confirmed this at the Police, but that he knew of this fact after Constable Kampila came to Phalombe Police to submit a statement. The witness told the court that the 2nd and 3rd accused had plasters on their hands, but that he had forgotten how many plasters they had. This was on 8th May, 2010.

The State then closed their case, and it was now the turn of the defence. After consultations with his clients Counsel Chakhwanta, Senior Legal Aid Advocate informed the court that the accused person had elected not to testify. We wish to quickly comment that the fact that the accused persons decided to elect not to testify does not in any way mean that they are guilty or that it was an admission of guilt. Not at all. The Malawi Constitution in section **42(2)** (f) (iii) provides:

*"S42(2) Every person arrested for, or accused of, the alleged commission of an offence shall, in addition to the rights which he or she has as a detained person, have the right.@"*

*(f) as an accused person to a fair trial, which shall include the right - (iii) to be presumed innocent and to remain silent during plea proceedings or trial and not to testify during trial.*

This is actually a right that is entrenched in our Constitution. It still remains the duty of the prosecution to discharge its burden of proof beyond reasonable doubt. It is for the prosecution to prove the guilt of the accused persons and this burden, except in a few situations never leaves the prosecution throughout trial. The standard of proof required for the prosecution to discharge this burden is what is commonly referred to as 'Proof Beyond Reasonable Doubt. The court will therefore acquit an accused if satisfied that the evidence given by either the prosecution or the defence creates a reasonable doubt as to his guilt in respect of the offence charged. Actually section 187 (1) of the Criminal Procedure and Evidence provides for the required standard .of proof. Speaking of proof beyond reasonable doubt, the High Court in the case of **Rep v Banda** 1968 - 70 ALR mal 96 quoted with approval the dictum of Denning J, as he then was in **Miller v Ministry of Pensions** [1947] 2 All ER 372.

*"that degree is well settled. It need not reach certainly, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If the evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence ' of course it is possible but not in the least probable,' then the case is proved beyond reasonable doubt, but nothing short of that will suffice ."*

In the case of **Rep v Laycock**<sup>1</sup> the Court said that if the evidence is such that the court feels sure of the guilt of the accused persons then the case is prove beyond reasonable doubt. In **Chisiyana v R**<sup>2</sup> the court said the duty to prove the guilty of the offence beyond reasonable doubt lies in the prosecution.

Every person is taken to have intended the natural consequence of his or her act see **Simoni v Regina**<sup>3</sup>. That is, if a person picks up a huge stone and hurls it at another person, it hits that other person and the person dies, or is seriously injured, the law would deem that the person intended the natural consequence of his action.

The offence of murder is provided for under section 209 of the Penal Code:

*"S209. Any person who of malice aforethought causes the death of another by an unlawful act or omission shall be guilty of murder."*

Malice aforethought is define in section 212

*"Malice aforethought shall be deemed to be established by evidence proving any of the following circumstances."*

- (a) An intention to cause the death of or to do grievous harm to any person whether such person is the person actually killed or not.

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<sup>1</sup> Rep v Laycock Criminal Case No. 6 of 1990 (unreported)

<sup>2</sup> **Chisiyana v R (1923-61) ALR 503 (FSC)**

<sup>3</sup> (1961-63) ALR Mal 198

I am mindful that the accused persons never testified.

Now it is pertinent at this stage to consider the evidence and see if from it there are any defences to be considered. The first is from the caution statements. Two of the suspects state that they were attacked first by the ladies and gentlemen but never hit back.

The facts are very clear from the testimony of PW1 who said that the accused persons arrived at the village court used by the village headman carrying pangas, knives and axes demanding to clear the court (bwalo) for the new village headman to take over. The women refused the accused to clear the court. This annoyed the accused persons who assaulted the ladies. The deceased did not say anything or assault anyone. Thereafter, Nambazo, 1st accused person, hacked the deceased on the forehead and Makwete, 4th accused person, hacked her on the back of the head. The deceased fell down and fainted. Bindula, 2nd accused person took a hoe and hacked PW1 on the head and she showed the court the scars.

PW2 also testified that she knew all four accused persons because they hailed from the same village. She saw the accused persons killing Ayesi Maheya. At the village court at the material time she was in the company of the deceased, Mary Pendame and Dorothy Chipesa (PW1) shelling maize. She saw a group of people carrying an axe handle, panga knives, hoes and metal bars. That all the accused persons were present in that group. There was also Boniface Nthambala and the two Kachamba brothers. She saw the group hacking the deceased. She saw the 1st accused hack the deceased on the forehead and then the 4th accused hacked the deceased at the back of the head, and further that the 3rd accused (Charles Badson) hacked the deceased at the left side of

the head (temple). The 2nd accused (Bindula) hacked PW1, Dorothy Chipesi.

It is clear that QII four accused persons carried weapons to the village court which means that they were prepared to face any resistance. And this, they did. They assaulted the deceased and others. These people were in a joint venture to prosecute an unlawful act. They took the law in their own hands. The accused persons will be taken to have intended the natural consequences of their unlawful acts. They acted in concert to carry out an unlawful act by causing grievous harm. It does not matter who unleashed the fatal blow on the deceased as he did so on behalf of others in a joint enterprise. They all took part in the violent attack against the ladies. The 2nd accused hacked PW1. This means that they were really acting in concert. Section 22 of the Penal Code will apply in the circumstances.

The next issue to consider is whether they had the necessary mens rea to the offence of murder. The answer is yes in accordance with section 212(a) of the Penal Code. By use of dangerous weapons they are deemed to have intended to cause death or grievous harm which led to the death of the deceased.

Two of the accused have tried to bring the defence of provocation by suggesting to the court that they were assaulted first by the ladies. Section 213 of the Penal Code provides as follows:

1. *"When a person who unlawfully kills another under circumstances which, but for this section, would constitute murder, does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined, and before*

*there is time for his passion to cool, he is guilty of manslaughter only.*

2. *This section shall not apply unless the court is satisfied that the act which causes death bears a reasonable relationship to the provocation."*

And section 214 of the Act provides that:

*"The term "provocation" means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done or offered to an ordinary person, or in the presence of an ordinary person to another person who is under his immediate care, or to whom he stands in a conjugal, parental, filial, or fraternal relation, or in the relation of master and servant, to deprive him of the power of self-control and to induce him to assault the person by whom the act or insult is done or offered.*

*When such an act or insult is done or offered by one person to another, or in the presence of another to a person who is under the immediate care of that other, or to whom the latter stands in any such relation as aforesaid, the former is said to give the latter provocation for assault.*

In **R v Whitefield**<sup>4</sup>, the Court of Appeal stated that the meaning of provocation was still that given to it by Devlin J. in **R v Duttys**<sup>5</sup>,

As cited by Lord Goddard C.J. when giving judgment of the Court of Criminal Appeal:

*"Provocation is some act, or series of acts, done [or words spoken][by the dead man to the accused] which would cause in any reasonable person, and actually causes in the accused, a sudden and temporary loss of self-control, rendering the accused subject to passion as to make him or her for the moment not master of his mind."*

For the defence of provocation to apply and succeed, the loss of self-control must be associated with the act which causes death. (**R v Ibrahams and Gregory**).

In assessing what is reasonable in each circumstance, the jury has to take into account the characteristics of the accused as might affect the gravity of the provocation.

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<sup>4</sup> 63 Cr. App.R.39 at 42

<sup>5</sup> (1949) ALLER 932

The Court of Appeal in **R v Smith**<sup>6</sup> held that where such characteristics are taken into account, they are relevant not only to the gravity of provocation, but also to the issue of self-control, i.e. the test is not related to the powers of self-control of the ordinary person, but of a person sharing the mental characteristics of the defendant. It is for the jury to take account of all the evidence relating to the accused, and then to ask themselves whether his or her reactions to the provoking conduct was reasonable. If it was, then the defence is made out.

The court in the case of **R v Smith** supra went on to explain in simple language the principles of the doctrine of provocation. Thus Lord Hoffman who delivered the principal speech stated the following principles:

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<sup>6</sup> [1999] 1 Cr. App. R. 256



*" ....first it requires that the accused should have killed while he had lost his self-control and that something should have caused him lose his self-control .... Secondly, the fact that something caused him lose his self-control is not enough. The law expects people to exercise control over their emotions. A tendency to violent rages or childish tantrums is a defect in character rather than an excuse. The jury just thinks that the circumstances were such as to make the loss of self-control sufficiently excusable to reduce the gravity of the offence from murder to manslaughter. This is entirely a question for the jury. In deciding what should count as a sufficient excuse, they have to apply what they consider to be appropriate standards of behaviour; on the one hand making allowance for human nature and the power of emotions but, on the other, not allowing someone to rely upon his own violent disposition. In applying these standards of behaviour, the jury represents the community and decides what degree of self-control everyone is entitled to expect his fellow citizens will exercise in society today...."*

The test of provocation is whether the act of provocation was sufficient to deprive a reasonable man of self-control. (**R v Chao**<sup>7</sup>). And in assessing the accused person's reaction the question that is asked is as to what an ordinary person of the accused person's community might have done.

The Malawi Supreme Court of Appeal in the case of **Nankodwa v Republic**<sup>8</sup> emphasizes the point that the test of provocation is as to whether in the circumstances in which the accused found himself, an ordinary person of the accused person's community might be provoked. The court went further to state that the act of provocation must bear a reasonable relationship to the accused person's act of reaction to it.

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<sup>7</sup> 1 ALR (MAL) 189

<sup>8</sup> 4 ALR (MAL) 388

In **Mbaila v Republic**<sup>9</sup> the Malawi Supreme Court of Appeal stated that in deciding in a provocation case whether the act causing death bore a reasonable relationship to the provocation, within the meaning of section 213 of the Penal Code, the Court should consider the whole of the provocation given and the whole of the accused person's reaction to it, including the weapon, if any, used, the way it came to hand, the way it was used, and every other relevant factor, and must finally decide whether an ordinary man of the accused person's community might have done what the accused did.

It is clear nevertheless, that in order to provide a defence to a charge of murder the provocation suffered by an accused person must be of sufficient gravity to cause an ordinary man of the accused person's community to lose control of himself<sup>10</sup>. Thus in the case of **Sitolo v Republic supra** where the appellant had struck his wife with an axe on the head because she had pushed their child, the Malawi Supreme Court of Appeal dismissed his appeal which was based on the argument that he was provoked and stated that the measure of provocation required to constitute a defence is a measure sufficient to cause an ordinary normal man, and not a drunken man, to lose control of himself. And since the provocation offered by the deceased to the appellant was not such as to cause an ordinary man of the appellant's community to lose control of himself, the appeal was dismissed.

I cannot conclude without considering self-defence. All we know is that the accused persons were seen at police in plasters. What was beneath the plasters, we do not know. But the use of plasters may mean small injuries or no injury at all if they were faking

injury so as to draw sympathy of the police. The unsuspecting women were unarmed and one wonders how they could attack the accused persons to warrant use of lethal weapons against the women. In the absence of any explanation I rule out any act of self-defence.

In view of the above, I find the four accused persons guilty of murder and convict them accordingly.

**Pronounced in Open Court this 7th day of June, 2017 at Chichiri, Blantyre.**

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<sup>9</sup> 4 alr (mal) 446

<sup>10</sup> Sitolo v Republic 4 ALR (MAL) 506



M.L. Kamwambe

**JUDGE**