

THE STATE  
vs  
TALENT SIZIBA

HIGH COURT OF ZIMBABWE  
MAWADZE J.  
MASVINGO, 20, 21 May & 7 June 2024

Assessors  
1. Mrs Chademana  
2. Mr Mutomba

### **Criminal Trial**

Ms M. Mutumhe, for the state  
O Mafa, for the accused.

MAWADZE J: The 27 year old accused is facing the charge of murder as defined in Section 47(1) of the Criminal law [Codification and Reform Act] (*Chapter 9:23*) [The Criminal Law Code].

The essence of the charge is that on 29 May 2023 at Mhandamabwe Business Centre, in Chivi the accused caused the death of the then 38 year old now deceased **MARUFU KWANGWARE**.

The accused hails from Ntunjibila, Matopo's in Bulawayo. He had been employed for about 3 months in Chihombodo Village, near Makovere Primary School in Chivi as a domestic worker looking after the employer's homestead, herding cattle and doubling as a grinding mill attendant.

The now deceased was a local person employed as a domestic worker at Mandamabwe Business Centre. The accused and the now deceased were not known to each other,

The circumstances leading to the now deceased's death can be summarised as follows;

On 28 May 2023 in the evening the accused proceeded to Mabhiza bar at Mandamabwe Business Centre. According to the accused he had just been paid his monthly salary of US\$80. Mabhiza bar was manned by a bar lady called Evelyn Marisa. She is 26 years old and a single mother. Evelyn Marisa doubled as a sex worker after closing business.

The accused and Evelyn Marisa had had two sexual encounters before, purely on the basis of sex for money. Thus on 28 May 2023 the accused requested to be intimate with Evelyn Marisa in exchange for money. There is a dispute as to what fee was charged and whether any money exchanged hands. What is not in issue is that after Evelyn Marisa closed her bar she proceeded to Chikozho bar where the accused was around 01:00hrs now on 29 May 2023 to collect him. They both proceeded to Evelyn Marisa's lodgings within the Mabhiza bar complex. Again it is not in issue that the two could not engage in sexual intercourse. The reasons thereof are in issue. Evelyn Marisa says accused had no money to pay for the sex, which payment was to be made before intimacy. The accused on the other hand says a paramour or a rival suitor came violently knocking at Evelyn Marisa's door forcing Evelyn Marisa to leave the room accused was in. It is common cause accused and Evelyn Marisa spent the night in different rooms.

It is not in dispute that the following morning there was an altercation between accused and Evelyn Marisa. The accused apparently demanded money he alleged he had paid to Evelyn Marisa for sexual favours which services were not rendered. On the other hand Evelyn Marisa dismissed accused claims as false. The accused later left for his work place, few kilometres from the business centre.

It is not in dispute that later that day 29 May 2023 in the evening around 18:00hrs accused returned to Mabhiza bar where Evelyn Marisa was at work. What caused accused to return is in issue.

The state case is as follows;

The state case is that when the accused returned to Mabhiza bar on 29 May 2023 around 18:00hrs he had armed himself with a machete. The state alleges that the accused was consumed by jealous when he later saw Evelyn Marisa dancing to music with the now deceased. It is alleged that he went out of the bar, armed himself with the machete, entered the bar and charged towards the now deceased. The accused struck the now deceased twice on the head with the machete and fled from the scene.

It is not in issue that accused was later arrested that night at his home. The now deceased meanwhile was taken to a local clinic, then to Chivi District Hospital, then to Masvingo Provincial Hospital and then to Sally Mugabe hospital in Harare where he died two days later on 31 May 2023 due to the head injury.

The accused's evidence is that on 28 May 2023 when he visited Evelyn Marisa's work place he paid her US\$30 in exchange for sex. It is accused's case that when he later retired to bed that night with Evelyn Marisa some man came knocking at the door claiming to be her husband and threatening may hem. The accused said Evelyn Marisa then left the room after locking the accused inside only to have the room opened the next morning when the accused protested. The accused said since he had not had sexual intercourse with Evelyn Marisa he demanded the US\$30 back leading to an altercation that morning. The accused said Evelyn Marisa then threatened to call people from Mashava to come and shoot the accused whom she said was a nuisance. The accused then left for his work place.

It is accused's evidence that at his work place he went to cut poles for his tomato garden with a machete. While in the bush he said Evelyn Marisa telephoned him and asked him to immediately proceed to Mabhiza bar to collect his US\$30. The accused said he had no time to return home so he did put the machete in a sack and proceeded to Evelyn Marisa's workplace. Upon arrival at Mabhiza bar Evelyn Marisa started to shout at him using foul language and proceeded to telephone her male friends who immediately came in a Wish motor vehicle including the now deceased. The accused said the now deceased immediately confronted him ordering him to sit down as the now deceased was pointing a firearm (a pistol) at him demanding to be offered accused's hands in order to tie the accused. The accused said realising the impending danger he acted faster by retrieving the machete from the sack besides him and struck the now deceased on the head forcing the now deceased to drop the fire arm. The accused said he fled and advised the police at the local police base before proceeding to his residence. Accused confirmed being arrested the same night but denied resisting the arrest.

The state led evidence from Evelyn Marisa, her assistant one Rejoice Dhliwayo, the arresting detail Sgt Cloud Marutavana and the investigating officer. Assistant Inspector Hopewell Shingirirai Mupodyi. The accused gave evidence and did not call any witness.

The evidence of other state witnesses, Tapiwa Kaso one of the beer patrons in Evelyn Marisa's Mabhiza bar, Pertunia Tshuma a nurse at the local clinic and Dr Solomon Muzenda who examined the now deceased's remains and prepared the post mortem report was all admitted in terms of Section 314 of the Criminal Procedure and Evidence Act [*Chapter 9:07*].

A total of 3 Exhibits were produced being Exhibit 1 the post mortem report, Exhibit 2 the certificate of weight of the machete and Exhibit 3 accused's confirmed warned and cautioned statement.

The evidence of Tapiwa Kaso a patron in Mabhiza bar at the time accused struck the now deceased with a machete is said to be the same as that of Evelyn Marisa and Rejoice Dhliwayo.

Pertunia Tshuma who attended to the now deceased soon after the fatal attack said she observed a deep cut stretching from the forehead to the back of the head. The now deceased was unconscious and bleeding profusely from the deep cut. She immediately transferred the now deceased to Chivi District hospital due to the severity of the injury.

The cause of the now deceased's death is not in issue. He was struck on the head with a machete. As per Exhibit 1 the post mortem report Dr Solomon Muzenda observed the following injuries;

- i) Deep cut on left side of the head with exposed brain matter.
- ii) Flattening of gyri and narrowing of sulci of brain consistent with brain swelling.
- iii) Bleeding inside the skull
- iv) Fracture of the skull vault.
- v) Super facial incised wound on the back.

The cause of death is the injury on the head caused by a sharp force.

The accused inflicted this injury with a machete. His denial of whether Exhibit 2 the machete is the one used or not is inconsequential. Needless to say there is no reason for the police to bring a wrong machete to court as an Exhibit. It would not help anything or strengthen their case. As per Exhibit 2 the machete weighs 428g, the blade is 40cm and total length is 55cm.

The main issue this court was to resolve is whether the accused in fatally injuring the now deceased he had been provoked by the now deceased as he said in his defence outline and or acted in self-defence as he seems to say later in his evidence.

It may not matter whether accused was owed money by Evelyn Marisa in exchange of sexual favours or not. The now deceased was not part of this deal at all. We may however resolve this factual dispute if only to assess the credibility of Evelyn Marisa and accused as witnesses.

**Evelyn Marisa [Evelyn]**

Evelyn was a straight forward and candid witness. She did not blink or shy away that she indulged in prostitution in exchange for money after knocking off duty as a bar lady in Mabhiza bar at Mhandamabwe business centre. She was forthright that accused was just one of her paying clients whom she had been intimate with twice before and after being paid. She said she had no love relationship with the accused. She did not even know his real names but simply called him “*Mundevere*” as accused’s first language is Sindebele. Typical of a prostitute she did not know where accused works or stays.

In our view her testimony is believable when she said after initially agreeing to have sexual intercourse with the accused that night for US\$15 she reneged on the promise when she realised accused only had US\$1.00 and few value less bond notes. It cannot be surprising that without being paid she allowed accused to use her room albeit alone as she used another room since it was too late for accused to travel at night. She could not offer her sexual favours for free. She explained that in order to safeguard her stock she had to lock the accused as the room accused was leads to the bar.

In our view the accused was either too drunk to recall how he had spent his money or is simply being untruthful. Evelyn was a prostitute, a self-confessed one and it is unlikely that any man could come banging at her door claiming to be her husband. Her door was locked and would have simply ignored any other man more so after she had to follow accused at Chikozho bar to take him and if she had been paid by the accused. In fact her dispute with accused over non-payment of money was corroborated by her colleague. Rejoice Dhliwayo who over heard the argument that night and later next morning.

The accused’s version of events as to why he later returned to Evelyn’s work place that evening is improbable. If Evelyn had benefited from the US\$30 and had previously refused to refund the accused what caused her to later telephone the accused offering a refund? The accused

had left. The accused is not consistent both in his confirmed warned and cautioned statement Exhibit 2 and evidence.

In his statement the accused alleges a love relationship with Evelyn. He later concedes Evelyn was just a prostitute whom he had casual sex for a fee. In his statement accused never said Evelyn telephoned him later to come to Mabhiza bar for whatever reason. That evening in that statement accused is clear that it was his own decision to return to Evelyn's work place. In his evidence the accused gave the impression that he carried a machete to the bar because he had no time to leave it at home as he was called while in the bush. This lie is laid bare when in his statement he said when he decided to return to Evelyn's work place he armed himself with the machete as Evelyn had previously threatened him. The machete was therefore a weapon to be used for his protection.

Evelyn was clear on how accused struck the now deceased with a machete. She said when accused came back around 7pm accused was visibly angry. Her attempts to joke with the accused were spurned. Accused asked to be left alone. As a prostitute she decided to dance with other patrons in the bar. She danced suggestively with the now deceased. After the song stopped playing she said accused stood up and left the bar. Accused returned wielding a machete shouting in Sindebele. The now deceased was seated facing the other side. He was unarmed. The accused struck him with severe force on the head. Evelyn and all patrons fled. This evidence was not meaningfully challenged.

**Rejoice Dhliwayo [Rejoice]**

The evidence of Evelyn is materially corroborated by Rejoice. She said when accused came to the bar Evelyn tried to be civil with accused but accused was not interested.

Rejoice said Evelyn danced with the now deceased in a cosy manner holding each other as accused was seated in the bar. Rejoice then saw accused leaving the bar after the song stopped playing. She said accused came armed with a machete shouting in . The now deceased was facing the other side trying to light a cigarette when accused struck him on the head approaching from the back. She said accused delivered about two blows with severe force causing the now deceased to fall. All people in the bar fled. Rejoice said the now deceased was struck while seated lighting a cigarette and was unarmed.

We find no reason for Rejoice to mislead the court on how accused fatally attacked the now deceased. The accused and the now deceased were just patrons in the bar.

**Sgt Cloud Marutawana [Sgt Marutawana]**

The evidence of Sgt Marutawana may be useful on how he arrested the accused. After being telephoned and advised that accused had fatally attacked the now deceased he attended the scene. He found the now deceased lying unconscious in a pool of blood with blood oozing from a deep cut on the head. The accused had fled. After ferrying the now deceased to the local clinic and left him being taken to Chivi District hospital he teamed up with other details to follow up the accused around 23:00hrs. Upon arrival they identified themselves but accused who was violent armed himself with a knife and a machete. They had to fire a gun in order to force accused to surrender. They recovered a blood stained machete Exhibit 2. The accused said he had fought with the now deceased over a girlfriend. No issue of a firearm was raised by the accused and police found none at the scene in the bar.

**Assistant Inspector Hopewell Shingirirai Mupodyi [Assistant Inspector Mupodyi]**

He is the Investigating officer. He said initially accused was charged with attempted murder. Contrary to accused's evidence the accused's statement written in Sindebele was recorded by an officer proficient in Sindebele. He dismissed accused's evidence in court that the now deceased, a mere domestic worker in rural Mandamabwe had a fire arm.

**Assessment of Evidence and Findings.**

In terms of Section 239 the defence of provocation as per the Criminal Law Code [*Chapter 9:23*] at most is a partial defence to a murder charge. The defence of self-defence as per Section 253 of the Criminal Law Code [*Chapter 9:23*] is a complete defence to a charge of murder if the requirements therein are a proved.

In *casu*, this not clear which defence the accused is raising or it is both. The accused's evidence lack consistency in this regard.

Assuming the accused seeks to rely on either of the defences or both, there is no factual basis upon which any of the two defences are available to the accused. To begin with the accused's

evidence of the now deceased being a hired gang by Evelyn is clearly false. The now deceased did not provoke the accused in any manner. He had no issue or dispute with the accused. The accused should not confuse his inexplicable jealous for a sex worker with provocation.

The manner in which the accused attacked the now deceased cannot be said to have been in self-defence. The now deceased was unarmed. The accused was not under any unlawful attack. One cannot even start to interrogate the other requirements of self-defence.

It is our finding that the accused at most was consumed by unreasonable jealous over Evelyn, a lady who was available to the highest bidder. It is even debatable if the now deceased was a rival suitor. In an act of blind rage the accused decided to strike the now deceased on the head using a machete. Severe force was used. The skull was broken. The brain was exposed. The now deceased was rendered unconscious. He later died. The accused's intention cannot be debatable. He wanted to kill the now deceased and proceeded to do so. He therefore had actual intent to cause death.

**VERDICT:** Guilty of Contravening Section 47 (1) (a) of the Criminal Law [Codification and Reform Act] (*Chapter 9:23*): Murder with actual intent.

MAWADZE J.....

*National Prosecuting Authority, counsel for the state*  
*Mutendi; Mudisi & Shumba pro deo counsel for the accused.*