

THE STATE  
versus  
SHEPHERD ZUZE  
And  
FRANK ZUZE

HIGH COURT OF ZIMBABWE  
MUZENDA J  
MUTARE, 13 June 2023

Assessors: 1. Mr Mudzinge  
2. Dr Sana

### **Criminal Trial: Reasons for Judgment**

*M. Musarurwa*, for the State.  
*D. Tandiri*, for the 1<sup>st</sup> Accused.  
*Ms F. Maroko*, for the 2<sup>nd</sup> Accused.

MUZENDA J: After the defence closed their cases we gave an *extempo* judgment and acquitted both accused. The state immediately rose and requested a copy of the written reasons for judgment. These are they.

Both accused were arraigned before this court facing allegations of murder as defined in s. 47 (1)(a) or (b) of the Criminal Law Code. It was alleged that on 17 January 2019, at Zuze Village, Headman, Chikomba, Chief Mutasa, accused unlawfully caused the death of Blessing Nzara by handcuffing him from the back tying his legs using a rope and strangling him by the neck and faked a suicide.

Both accused pleaded not guilty. Accused 1 in his defence stated that he is the village head. On 17 April 2019 around 2000 hours a crowd approached him at his homestead with the now deceased. Now deceased's hands were tied. The crowd informed accused one that now deceased had confessed stealing from various complainants and various livestock had been recovered. He was further told that since it was now at night, the now deceased had promised the crowd to recover more items he had stolen on the following day. First accused directed that the police be informed and a report filed. The crowd agreed and second accused a member of

the police constabulary, and a brother to first accused was informed and went to first accused's homestead. The crowd further agreed that deceased be kept at first accused's place for the night, first accused agreed and placed deceased in the kitchen. Second accused handcuffed deceased, second accused also used a rope to tie deceased's legs. Deceased was left in the kitchen. First accused locked the kitchen door and went to sleep.

Around 0300 hours on 18 April 2019, first accused visited the latrine to relieve himself. He went to check upon deceased to see whether he wanted to change sides and discovered that now deceased had committed suicide. First accused informed his wife and dashed to inform second accused who was at his homestead. Accused 2 woke up and accompanied first accused to the scene. Second accused called out now deceased's name but got no response. Both accused then informed fellow villagers and informed the police.

Accused 2 in his defence virtually confirms all other details as per first accused's defence summary up to the stage when police were informed. The two accused also produced their confirmed extra-curial statements.

Annexure A, the state summary reflects that on the 17<sup>th</sup> of April 2019 both accused cuffed deceased from his back, tied his legs using a rope and strangled the now deceased by the neck and faked up a suicide, the now deceased died on the spot. The postmortem examination by the doctor concluded that the cause of death was due to (a) *mechanical asphyxia* (b) *neck constriction* and (c) *hanging by rope*. All fourteen witnesses' evidence for the state as it is captured in Annexure A, was by consent admitted in terms of s.314 of the Criminal Procedure and Evidence Act [Chapter 9:07] and ultimately became uncontroverted. The crucial aspects of handcuffing of deceased and tying of deceased's legs with a rope to secure him are not in dispute. Witnesses who visited the scene all pointed out in the summary of evidence that a rope was tying deceased's neck with the other end tied to a burglar bar. Deceased's legs were touching the ground, his chest leaning against the wall. His legs were not tied but his hands were still cuffed from behind.

There was also an empty basket near the torso of now deceased. A police detail Innocent Goto who examined the remains of the now deceased noted a basket besides deceased's body and was broken in the middle. There was blood from the deceased's mouth and the blood stains started from the bottom edge of the window. Now deceased's tongue was out and had bitten it with his teeth. He further observed that the rope was too tight to the deceased's neck and from the burglar bar to which it was tied.

No one among all the state witnesses saw any of the 2 accused strangling the now deceased. Both accused right from the day they were apprehended for allegedly strangling deceased consistently stated that now deceased committed suicide. Even during cross-examination by the prosecution they remained forthright on that aspect. The state feels that there is foul play and suspects both accused. In a case of this nature suspicion is not enough. The onus is on the state to prove beyond reasonable doubt that both accused in connivance strangled the deceased and faked suicide. The state dismally failed to do so. The pathologist among the causes of death concluded that death was due to hanging by rope. It is equally possible that deceased managed to untie his legs and killed himself due to the embarrassment of stealing from his close relatives. None of the witnesses disputed the version of the first accused that when he went to check the condition of deceased in the kitchen he was disturbed by a lot of issues at the scene. Upon further checking on deceased he detected and concluded that deceased had committed suicide and immediately went to inform second accused.

We have carefully analysed this case and ultimately came to a conclusion that it will not be safe to convict the two accused. The benefit of doubt must and ought to be accorded to the two accused.

*Accordingly, both accused are found not guilty and acquitted.*

*National Prosecuting Authority for the state.  
Tandiri Law Chambers, for the 1<sup>st</sup> Accused.  
Mugadza Chinzamba & Partners, for the 2<sup>nd</sup> accused.*