

THE STATE

Versus

JAISON DZINGIRA

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J with Assessors Mr E. Shumba & Mr A. B. Mpofu
GWERU CIRCUIT COURT 2 FEBRUARY 2023

Criminal Trial

M. Shumba for the state
Ms L. Nyamukucha for the accused

MAKONESE J: Accused appears in this court facing a charge of murder in contravention of section 47 (1) of the Criminal Law Codification and Reform Act (Chapter 9:23). The state alleges that during the period between the 24th and the 27th March 2020 at Plot 38 Central Estates, Mvuma, the accused unlawfully and intentionally killed Trust Munnhuwei (deceased) by striking him twice on the head with an axe, intending to cause his death or realizing that his conduct could cause the death of the deceased.

The accused denied the allegations. A full trial was conducted. This now is the judgment of this court. The state tendered an outline of the state case summerising the events surrounding the commission of the offence. The accused and the deceased were workmates at Plot 38 Central Estates, Mvuma. They were cattle herders. The accused and deceased milked about 6 litres of cattle milk at their plot. The deceased sold the milk for ZW\$45 in Mvuma. The proceeds from the sale of the milk were supposed to be shared equally between accused and the deceased. The accused's share was ZW\$22,50. Deceased converted the entire proceeds of the sale of the milk and failed to remit accused's share. This angered the accused who picked an axe and struck the deceased twice on the head. Deceased fell to the ground and died on the spot. Accused searched deceased's clothing and took one Nokia cellphone. An amount of ZW\$500 eco-cash money was in credit on deceased's phone. Accused concealed the body of the deceased in a pit and covered it with two 50kg empty bags. On the 26th March 2020 the accused went to a night club where he spent ZW\$500 from the deceased's Econet account. He spent the money on liquor and drank with his friends until the early hours of the morning. On the 2nd day of April 2020, the body of the deceased was

discovered in a shallow pit. The body was in a high state of decomposition. A report was filed with the police leading to the arrest of the accused.

On the 6th of April 2020 the body of the deceased was conveyed to United Bulawayo Hospital where a post mortem examination was carried out by Dr Juana Rodriguez Gregori. The pathologist concluded that the cause of death was;

- (a) Encephalic contusion
- (b) Skull bone fracture
- (c) Head trauma

The post mortem report was tendered into the record by consent. A confirmed warned and cautioned statement recorded from the accused on the 2nd of April 2020 at Mvuma was tendered into evidence and now forms part of the record. An axe with a wooden handle weighing 2.411kg was produced as an exhibit. The axe was used in the attack.

In a lengthy statement accused admits killing the deceased. Accused confirms that after murdering the deceased he dragged the body and dumped it into a pit at the plot. Accused used empty 50kg bags to cover the remains of the deceased. At the commencement of the trial accused produced a defence outline denying the offence. The accused narrates that he had an altercation with the deceased over the sharing of the proceeds of the sale of some milk. Accused avers that deceased tried to assault him with an axe. He contends that he disarmed the deceased before striking him once in self defence. In his defence outline accused contends that after striking the deceased he did not know what happened to deceased. Accused stated that deceased simply disappeared into the night. As regards the deceased's cellphone, accused says that he was in possession of the phone since he wanted to use the salary which had been sent via the eco-cash platform, into deceased's account.

The State case

The state led *viva voce* evidence from one witness **PATRICK MUSONI**. This witness testified that deceased was his workmate and friend. He knew the accused as someone who worked at a neighbouring plot with his friend, the deceased. The witness narrated that on the day the deceased went missing he had spent some-time with the deceased. The deceased had agreed to meet the witness at a night club later that night. The witness was surprised when he did not see the deceased that night. Instead, the witness says

he saw the accused who came to the bar in possession of the deceased's cellphone. Accused said he had left the deceased at home. Accused bought some liquor using deceased's eco-cash account. Later that night the witness and the accused left the bar and went to their respective homes to sleep. The following morning the witness asked the accused about the whereabouts of the deceased. Accused informed the witness that deceased had gone for gold panning at a mine at Kwekwe turn-off. That same day deceased's aunt came asking where the deceased was. The witness indicated that deceased had gone for gold panning. On the 2nd of April 2020 the witness was advised that the body of the deceased had been discovered in a pit. The witness was subjected to cross-examination. His version of events was unchallenged. We find the evidence of this witness credible and reliable.

The evidence of the undermentioned state witnesses as it appears in the outline of the state case was admitted into the record by way of formal submissions in terms of s314 of the Criminal Procedure and Evidence Act (Chapter 9:07) namely;

- (a) Bygirl Mukanganana
- (b) Averinos Zimbuku
- (c) Janet Masaga
- (d) Josiah Chando
- (e) Munashe Matashu
- (f) Munyaradzi Dzmunesta
- (g) Isaac Jim
- (h) Washington Maziwisa
- (i) Saul Bikwi
- (j) Welcome Dube
- (k) Dr Juana Rodrigues Gregori

The state closed its case without leading further evidence.

Defence case

The accused gave evidence under oath. He adopted his defence outline and adhered to it. Accused averred that he had a misunderstanding with the deceased over the share of the proceeds of milk. Accused contends that deceased attacked him with an axe before he managed to dispossess him of the axe. Accused stated that he struck the deceased once on

the right side of the forehead. He denied that he struck the deceased twice as averred in the warned and cautioned statement. Accused gave the impression that he did not know what happened to the deceased after the assault. The evidence, however points in a different direction. The accused's confirmed warned and cautioned statement is admissible as evidence in terms of section 273 of the Criminal Procedure and Evidence Act (Chapter 9:07). There is evidence aliunde to show that apart from the accused's own confession, he actually committed the offence. In this regard evidence was led to show that upon the discovery of the body there were sacks covering the body. The deceased's body was found in a pit.

Accused's evidence was clearly a tissue of lies designed to mislead the court. The accused was seen on the night deceased went missing in possession of deceased's cellphone. The accused lied that the deceased had gone to a mine for gold panning activities. When confronted about a foul smell emanating from the plot accused said that this smell originated from a small black dog that had died. The accused concealed the dead body in the hope that the matter would somehow disappear.

We found the accused to be a relentless liar. His evidence could not be believed.

Analysis of the law

It is a settled principle of our law that in criminal law, the state bears the onus to prove its case beyond reasonable doubt. Where reasonable doubt exists the benefit of the doubt ought to be given to the accused. I agree with *Mr Shumba* appearing for the state that on the authority of *S v Mhlanga* 1987 (1) ZLR 76 (S) false evidence by the accused may provide corroboration for the commission of the offence. The accused told so many lies that are material to the offence. The accused lied about the whereabouts of the accused. He lied about the manner he came into possession of deceased's cellphone. The contents of the detailed outline of the state case provides sufficient and credible information proving the guilt of the accused.

In closing, this court commends defence counsel *Ms Nyamukucha*, for the accused for conceding that there were no meaningful submissions to be made on behalf of the accused. There is indeed overwhelming evidence to show beyond reasonable doubt that accused committed this offence.

In the result and accordingly, the accused is found guilty of murder as defined in section 47 (1) of the Criminal Law Codification and Reform Act (Chapter9:23).

Sentence

Whilst youthfulness is a factor to be taken in mitigation, it must be noted that the peculiar circumstances of each case and the conduct of the youthful offender, before, during and after the commission of the offence must be closely examined to determine the extent to which youthfulness must be taken into account in assessing sentence. In this case, the deceased who was aged 19 years at the time of the commission of the offence killed the deceased, his workmate over the sharing of proceeds of the sale of 6 litres of milk. The accused struck the deceased twice on the head leading to his death. After killing the deceased accused dragged the deceased's body into a pit and covered it with sacks. When confronted by workmates and friends on the whereabouts of the deceased, accused lied that the deceased had gone to a mine on gold panning activities. The manner in which this offence was committed shows that accused was inherently wicked. Throughout the trial the accused showed no flicker of remorse nor contrition. He lied to the bitter end.

The sentence this court shall impose must take into consideration the mitigatory features of the case. The accused is a youthful first offender. The accused spent 2 years and 10 months in custody before his trial. Accused has already served a portion of his sentence. Accused does not have to be condemned and broken by the sentence this court shall impose. The sentence must be fair to the offender and must meet societal expectations.

In the result, the following is deemed to be an appropriate sentence.

“Accused is sentenced to 20 years imprisonment.”

National Prosecuting Authority, state's legal practitioners
Pundu & Company Legal Practitioners, accused's legal practitioners