

THE STATE

Versus

TINASHE TIDZIWANI

IN THE HIGH COURT OF ZIMBABWE

MOYO J with Assessors Mr J. Sobantu and Mr P. Damba

BULAWAYO13 & 14 MAY 2021

Criminal Trial

B. Maphosa for the state

K. Ngwenya for the accused

MOYO J: The accused person faces a charge of murder. It being alleged that between the 16th – 17th August 2018, and at house number 18741 Cowdray Park, the accused person strangled to death, the deceased Regina Tidziwani. The accused denies the charge. The following were tendered into the court record and they were all duly marked.

- The state summary
- The accused's defence outline
- The affidavit of the police officer who identified deceased's body to the pathologist
- The post mortem report
- The accused's person's confirmed warned and cautioned statement
- The psychiatric report

The evidence of the following witnesses was admitted into the court record as it appears in the state summary. The evidence of:

- Thandiwe Tsikira
- Courage M. Simunyu
- Misheck Sithole
- Wellington Ncube
- Dr Roberto Lara Diaz

The evidence of Patrick Mukoniwa was expunged from the court record as he is now deceased.

Sencia Tidziwani, Glory Maronga and Raymond Tidziwani gave viva voce evidence for the state. The accused person gave evidence for the defence. The facts of this matter are largely common cause.

Sencia Tidizwani

She told the court that she knew deceased as her sister in law and accused as a son to her brother in law. On 16 August 2018, she visited deceased who had been unwell. Deceased told her that accused had been assaulting her and showed this witness 2 pieces of planks that accused allegedly used to hit deceased. Deceased also told her that accused would be assaulting her wanting some money. Accused came in and went to the spare bedroom. She called on accused who did not respond and she followed her to the bedroom, found him slicing a lemon. She questioned him on why he was assaulting his mother. The deceased also told this witness that accused had pushed a coffee table onto her and wounded her leg. Accused later started cooking after assuming the witness and deceased if they were hungry. This witness then left in the company of the deceased to the bus stop. She said she left at around past 6 or to seven in the evening. She said the following day she then learnt that deceased had died. She confirmed under cross-examination that she told accused to vacate the house as he assaulted his mother.

Those were the material aspects of this witness' evidence.

Glory Maronga, knows deceased as her mother in law and also knows accused as her husband's brother. She said that they had a good relationship. She went to check on her mother in law and discovered her lying in her bedroom dead. She saw blood stains on deceased's nose and ears. She said there was also blood on the floor and that it was clotting. She said deceased had a perforation on the left temple and she was lying down with that side of the face. Under cross-examination she confirmed that accused was in Magwegwe the night before at an uncle's place as the uncle had called telling them that, those were the material aspects of this witness' evidence.

Raymond Tidziwani – he told the court that deceased was his mother and that accused was his brother. He was called by one Benhilda to come home. He got there and was told accused was a problem at home. Accused denied that there was a problem when asked by this witness and this made this witness angry. They exchanged insults with accused and he ended up assaulting the accused. Accused was overpowered and fled. This witness slept alone in the house and he advised the mother to sleep at a neighbour's house. The following morning he went to report the matter to the police. The next day he was then informed that his mother

was not waking up. He went there and discovered that she had died. Deceased lay on the floor with a pool of blood. Asked under cross-examination if he knew when accused got to Magwegwe on the fateful night, this witness said his uncle told him that accused got to Magwegwe at around 8pm. He said accused and deceased related very well. He said he was not sure about what the problem at home was but that he thought accused was drunk. When asked what he meant to report to the police he said, he reported that his mother was not happy with accused's conduct when accused was drunk.

The state then closed its case and at that juncture, accused's counsel applied for discharge at the close of the state case. This court dismissed the application on the basis that the accused person having been the last person to be seen with the deceased alive, did have a case to answer.

Accused's evidence

Accused gave evidence in defence and he adopted his defence outline which is filed of record. He said he left for Magwegwe on 16 August 2018 via town and that at the time he left deceased was alive having escorted Sencia Tidziwani who had paid them a visit. He said the circumstances leading to him leaving for Magwegwe were that on 15 August 2018 he had a misunderstanding with the deceased and he had then pushed a coffee table in the deceased's direction which then hit deceased's knees.

Deceased then left the sitting room and sat outside. A neighbor visited deceased and thereafter deceased left the house. In the evening accused's brother, Raymond Tidziwani (the 3rd state witness) came and questioned him about assaulting the deceased. Raymond then assaulted accused who then retaliated but was overpowered. Accused then fled. He slept in a blair toilet outside the house after he knocked several times and no one opened for him. On the morning of the 16th of August, he saw his brother Raymond leave the house, he then entered the house and there was no one inside the house. He then cleaned it. After sometime deceased came in the company of Raymond. Later he left the house. He came back to find a neighbour Petronella Ncube and Sencia Tidziwani in deceased's company. Sencia then confronted accused and reprimanded him about his conduct of having assaulted deceased the previous day. Later, around 1800 hours Sencia left the house in deceased's company, accused also left the house as Sencia had ordered him to leave the house. He then boarded a kombi to town and later to Magwegwe. He first passed through Mbuso's mother's house and narrated his predicament. Thereafter he proceeded to his uncle's house in the same neighbourhood. Under cross-examination, accused said it was the first time

he had an altercation with the deceased. Asked if that was the only reason that caused people to tell him to leave the house, he said that they also said he was finishing the food in the house. Asked that he did not like being chased away from home he responded in the affirmative and said that is why he went to his uncle. Questioned as to when deceased returned from escorting Sencia he said he was no longer at home. Questioned as to why he did not bid farewell to his mother, he answered by saying his mother already knew that he had been ordered to leave. Questioned by the court as to what was the reason he meant to his uncle he answered by saying he wanted to go and inform his uncle that he had been chased away from home and he expected his uncle to mediate on his behalf so that he would be forgiven then stay at home.

As we have already stated, the facts of this matter are not in dispute. The accused's version as to what transpired during the presence of Raymond is corroborated by Raymond. The accused's version as to what happened after Sencia and his mother left for the bus stop has not been rebutted by the state in any way. In fact Raymond confirms that the uncle called to say accused slept there the night before and that he got there around 8pm from the previous night.

We thus do not have any direct evidence from these facts linking accused to the commission of the offence. The next question is whether, circumstantially there are proven facts from which to draw an inference that the only conclusion that can be arrived at is that accused strangled the deceased. The only proven fact that we have is that accused had an altercation with the deceased on 15 August 2018 wherein he pushed the coffee table onto the deceased's knees. After that fact we do not have any other proven fact. The other pieces of evidence are that;

- Accused and deceased lived well together
- That the problem was that accused troubled deceased when drunk
- That Sencia left accused cooking when deceased escorted her to the bus stop
- That deceased was never seen by anyone returning to her house hence it is not known as to when she returned
- That accused's evidence that he immediately left has not been rebutted
- That accused did get to his uncle's house around 8pm in Magwegwe
- That accused's story was consistent when assessing his confirmed warned and cautioned statement (when the events were still fresh) and his defence outline.
- That deceased was found dead with a perforation on her left temple and blood in her nose and ears

- That the post mortem report confirms injuries on deceased's head and face
- That deceased died from asphyxia and strangulation

With circumstantial evidence, the court is only allowed to draw an inference from the proven facts if that is the only reasonable inference that can be drawn. The moment there are other possibilities the court is not allowed to use circumstantial evidence. In this matter, nobody knows when deceased returned to the house, nobody knows where the marks of violence came from, nobody knows how and who strangled the deceased. The door to deceased's house was unlocked when Glory Maronga discovered her body that morning, it then becomes difficult to rule out any other attack and to make a conclusive finding that it could only have been the accused. There is indeed a nagging feeling that accused could know something about deceased's demise but unfortunately that is not enough in terms of our law. It is for these reasons that this court finds that despite the suspicions surrounding accused's conduct at the relevant period, this court does not have evidence that qualifies to prove beyond a reasonable doubt the guilt of the accused person in this matter.

Accordingly, the accused person is found not guilty of murder and is acquitted.

National Prosecuting Authority, state's legal practitioners
T. J Mabhikwa & Partners, accused's legal practitioners