

THE STATE

Versus

DENNY MUMPANDE

IN THE HIGH COURT OF ZIMBABWE
MOYO J with Assessors Mr T.E Ndlovu and Mr W. Zulu
HWANGE 5 OCTOBER 2021

Criminal Trial

Ms C. Gorerino, for the state
C Manyeza, for the accused

MOYO J: Accused faces a charge of murder it being alleged that on the 2nd of October 2020, accused struck the deceased Nolia Muchimba with an axe several times on the head and the body thereby causing her death. He denies the charge but pleads guilty to a lesser charge of culpable homicide.

The following were tendered into the court record

- state summary
- defence outline
- accused's confirmed warned and cautioned statement
- post mortem report
- and the axe that was allegedly used in the commission of the offence.

These were all duly marked.

The evidence of :-

Believe Siamupa,

Sergeant Ncube

Doctor Jekenya was admitted into the court record as it appears in the state summary.

The post mortem report details numerous gruesome injuries that the Doctor refers to as callous.

2 witnesses gave *viva voce* evidence for the state. Nomore Matavikwa and Charles Simwami. Accused gave evidence for the defence. The facts of the matter are that accused and deceased had been married and later separated. Their marriage had been fraught with problems with deceased constantly fleeing to her parents' home. On one occasion, accused is alleged to have abducted deceased and raped her, resulting in his arrest. He was later released on bail and he developed bitterness towards deceased for causing his arrest. On the fateful day he met deceased with Believe Siamupa. He asked Believe to excuse them as he wanted to speak to deceased. Believe's evidence was admitted as it appeared in the state summary. It is to the effect that she was from fetching water with deceased when accused accosted them and said he wanted to talk to the deceased and asked Believe to excuse them. Believe's evidence having been admitted into the court record is accepted as it is. She then heard deceased screaming and saw accused striking deceased with an axe. She then informed other people who came, .and accused fled as they approached. They found deceased injured and covered with blood all over.

Accused stated in his *viva voce* evidence that he found deceased in a compromising position with another man and that deceased then said the accused was barren meaning the children she had were not his. This version by accused

of finding deceased in a compromising position with another man is neither in the defence outline nor the confirmed warned and cautioned statement and yet it is crucial to accused's defence. Believe's testimony that was admitted by the defence also speaks to a different scenario, the only conclusion is that there was no man found in a compromising position with deceased. Accused is just lying on that point building his case as he goes.

Again, on the aspect of deceased insulting him and saying he is barren it is not in his confirmed warned and cautioned statement which he gave to the police when his mind was still fresh. It is also crucial to his defence of provocation and failure to mention it at that point allows this court to draw an inference that it never happened. Accused just builds his version as he goes. Clearly, from the evidence of deceased's uncle who now acted as deceased's father, the marriage was fraught with problems and deceased continually fled from accused presumably due to domestic violence.

Upon finding deceased with Believe, he asked her to excuse them so that he remained alone with the deceased. Having found that there was no man, and having found that the allegations that deceased said the children are not his is an after thought as it is not in his confirmed warned and cautioned statement, then the defence of provocation falls away. Accused was never provoked. He harboured an intention to harm deceased due to her reporting the kidnap and rape charges against him. It is also possible that he did not accept deceased's departure from their marriage. The manner in which he executed the assault on the deceased, brutal strikes on the head which caused it to separate into 3 parts per deceased's father's testimony. The Doctor details chilling injuries that are gruesome and brutal. A finger was also chopped off. From the injuries sustained, accused could only have desired death as his aim and object. The accused person is accordingly found guilty of murder with actual intent.

Finding on aggravating circumstances

The accused killed the deceased to avenge her report of kidnap and rape charges and in terms of the Constitution, where a murder is committed in connection with or as a result of rape it is committed in aggravating circumstances.

Again the deceased's finger was chopped off a mutilation which in itself would amount to an aggravating feature in terms of the Constitution. It is a finding of this court that the murder was committed in aggravating circumstances.

Sentence

The accused is convicted of murder, committed in aggravating circumstances. He is a first offender. He is a breadwinner. He however, killed the deceased in cold blood. He brutally assaulted a defenceless woman splitting her head into 3 parts and chopping her finger off, for the most selfish reasons of not wanting to face justice. He deserves to be removed from society for a long time. He deserves no mercy from this court as he committed a gruesome murder on his ex-wife. A lengthy custodial sentence would meet the justice of this case. He is aged 39 years old and this court finds that for his age a lengthy custodial sentence will still serve the interests of justice. It for these reasons that accused will be sentenced to 30 years imprisonment.

National Prosecuting Authority, state's legal practitioners
Mashindi And Associates, accused's legal practitioners