

THE STATE

Versus

LAITON MULEYA

IN THE HIGH COURT OF ZIMBABWE
MOYO J with Assessors Mr T.E Ndlovu and Mr W. Zulu
HWANGE 7 OCTOBER 2021

Criminal Trial

Mrs Gorerino, for the State
Ms V Change, for the accused

MOYO J: The accused faces a charge of murder, it being alleged that on the 17th of September 2015, he struck the deceased Louisa Muti several times on the head with an axe thereby causing her death. Accused denies the charge and instead pleads guilty to a lesser charge of culpable homicide.

The following were tendered into the court record:-

- State summary
- defence outline
- accused's warned and cautioned statement
- post mortem report
- axe that was allegedly used.

They were all duly marked.

The evidence of Sheta Muti, Constable Mashonganyika and Doctor Betancourt was admitted into the court record as it appears in the state summary.

Primrose Takawira and Tani Tshuma gave *viva voce* evidence for the state. Accused gave evidence for the defence. The facts are largely common cause. According to Primrose, accused came into their bedroom hut around 10 pm after herself and deceased had retired to bed at around 2000 hours. This was after the family including accused had eaten their supper and retired to bed. The accused and deceased were not in talking terms for 3 days. She saw accused striking deceased when deceased was under the bed presumably hiding. Accused came into the bedroom hut and started assaulting deceased with an axe. Deceased screamed. The witness was initially stopped from fleeing and later fled and left deceased under the bed and accused having walked out. She ran to the grandmother's homestead. She heard deceased groaning and she heard footsteps approaching. She hid until other people came to the homestead whereafter she observed deceased lying down after she had stopped groaning. Tani Tshuma told the court that she came after having been called by deceased's mother. She went to the scene and found deceased groaning. There was an axe put on the fence of the homestead. Later deceased died. Deceased had several wounds and was soaked in blood. In the morning she saw footsteps along the path with blood stains that led to the bedroom hut where deceased had been allegedly assaulted. The blood stains were aside the foot prints. She found blood stains in the bedroom hut and also under the bed.

Accused said on the fateful day he saw deceased and Chibuswa in a compromising position by the river around 5 pm. He said that Chibuswa had no shirt. He said they were not in talking terms with deceased because she did not like him warning her about her illicit affairs. Accused said he went back home and sat outside and later decided to go into his bedroom hut to lie down. He later decided to go and confront deceased who had retired to bed at around 1000 hours. He said when he confronted her she was rude causing him to slap her. She then

tried to grab her testicles but failed and that is when accused saw an axe in the bedroom hut, picked it and struck deceased without thinking. The axe was his but was in that bedroom hut. He remembers striking deceased twice but the other times he was engulfed in anger so he cannot remember. Deceased grabbed the axe from him and fled. He then left.

Accused pleads the defence of provocation. What this court has to analyse is whether the defence of provocation is available to the accused person from these facts. To establish this the court must make factual findings of what in its view transpired.

Primrose's evidence is to the effect that at around 1700 hours she was with the deceased. This puts to question whether accused saw deceased with Chibuswa around that time by the river. Even if the court accepts that version by accused, his conduct of getting home and for 4 hours did not accost deceased, until when deceased retired to bed, would mean one of 2 things, either there is no such occurrence or, if it was accused had 4 hours to deal with it.

That accused's conduct of waiting for deceased to retire to bed and then go to deceased's bedroom hut could only mean that he went there to attack the deceased in her sleep and not to discuss anything because if it was about discussing, he would not have waited for the deceased to retire to bed. It defies logic that for 4 hours he sat and did nothing until when deceased retired to bed. The only reasonable conclusion is that he waited for deceased to retire to bed so that he would strike her in her sleep. That deceased, who was then fast asleep sprang and tried to grab accused's testicles is improbable because she had retired to bed. Accused must have sat for 4 hours and planned his next move culminating in him attacking deceased in her sleep.

Accused had ample time to process whatever, he was suspicious of. In fact if accused had really found deceased in a compromising position with Chibuswa and had wanted to discuss it, it would have been the first thing that he did. Waiting for 4 hours could only have given him time to cool off. In fact it is the view taken by this court that he sat and hatched a plan to wait for deceased to retire to bed and then strike her in her sleep. This court also finds that deceased having been struck in the manner described in the post mortem report, could not have grabbed the axe from accused and walked about 90 m to her mother's homestead. It can only be the accused who ferried her together with the axe and dumped her there. The deceased from the injuries sustained must have been at the point of dying and could therefore not have grabbed the axe from accused and walked the alleged distance. We thus find that the defence of provocation is not available to the accused person.

The defence of provocation not being available to accused, we find that from the manner he struck deceased in her sleep he could have only arrived at one thing and that is death. Accused is accordingly found guilty of murder with actual intent.

Sentence

Accused is convicted of murder. He is a 1st offender. He had domestic issues which are no justification for violence.

He brutally assaulted the deceased in the most callous of ways. There is no meaningful mitigation in this case. The accused deserves a lengthy period of imprisonment. It is for these reasons that accused will be sentenced to 30 years imprisonment.

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