

STATE
versus
HUMPHREY MAZANI

HIGH COURT OF ZIMBABWE
MUNANGATI-MANONGWA J
HARARE, 30 September, 22, 23, 24 and 25 November 2021
and 26 April 2022

Assessors: Mr Mpofo
Mr Jemwa

Criminal Trial

P Gumbo, for the State
G M Chivandire, for the defence

MUNANGATI-MANONGWA J: The accused is charged with murder as defined in s 47 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. The allegations are that, on 12 May 2020, at number 2149, Chigwende, Ushewokunze, Harare, the accused, Humphrey Mazani unlawfully stabbed Augustine Makoko with an Okapi knife on the neck intending to kill him thereby inflicting injuries from which he died. The accused pleaded not guilty to the charge and the court entered a “Not Guilty” plea.

In his defence, the accused states that the deceased fetched him from his home and took him to a house which was their smoking base in order to discuss issues. He alleges that, upon arrival, the deceased announced to the persons present in the house that he had brought the accused. He further states that an argument ensued between him and the deceased. The deceased stood up and started fighting him and during the course of the fight, deceased pulled a knife and tried to stab him. The accused states that he twisted the knife around resulting in the deceased being stabbed in the neck. He then panicked and ran away. In essence, the accused was pleading self-defence.

The state opened its case by calling the evidence of one Charles Washaya. This witness stated that on the day in question the deceased and his friend had arrived at his house in the evening and the deceased went out. He came back after some time in the company of the accused person

around 8 pm. The accused challenged the deceased to tell him who among the people present in the house had told him about a certain issue. The witness was not privy to the issue or the nature of the argument. There were about eight people in the room which was lit by a candle. It is the witness' evidence that the accused tried to attack the deceased who then moved seats and sat next to him. The witness advised the deceased not to answer back but deceased continued in argument. Due to the noise which awoke his wife who was sleeping in the next room, the witness asked everyone to go outside and deceased remained. Someone asked why deceased had remained behind and the deceased later went outside. The witness closed his door. Within a short period of time someone knocked on his door and asked him to bring a light as deceased had been stabbed. He went outside and saw deceased lying down and he could see that he was dead. The accused was still around.

The witness stated that the accused went away and shortly came back with his brother. Accused called the deceased's name and tried to resuscitate him by pouring water on him to no avail. He did not see how the deceased was stabbed but was adamant the stabbing did not happen inside the house. The witness' evidence was straight forward and he struck the court as an honest witness, even admitting that apart from selling cigarettes he sells Marijuana.

The state produced a post mortem report which is marked Exhibit 1. It further produced the accused's extra-curial statement which had been confirmed by a Magistrate and same was accepted as Exhibit 2. The state applied for the evidence of the following witnesses to be accepted in terms of s 314 of the Criminal Procedure and Evidence Act [*Chapter 9:07*] that is, Maria Madzivanyika, Rebecca Chitima, Israel Chikumbu, Tonderai Dohwe, Marshall Hwande a police officer and Edmond Madziyire. The application was not opposed and the court granted it.

The next witness called was Tinashe Silence Bosho. This witness told the court that he had spent the day with the deceased person near ZBC premises doing some touting and loading vehicles. One Silence approached the two and told deceased that the accused was looking for him. The witness and the deceased tried phoning the accused to no avail. After knocking off, the two proceeded to Washaya's home the smoking base. When they arrived at the base house, one Washaya told the witness and the deceased that the accused was looking for him and it was better that the deceased goes home. The deceased left to look for the accused and later came back. Shortly the accused arrived. The witness stated that soon commotion set in after the accused attacked the

deceased with an open hand inside the house. The house owner, one Washaya asked everyone to go out. Whilst outside the witness observed the accused lurching at the deceased and the deceased fell on the side of the wall. The witness held the deceased's t-shirt to prevent deceased from falling. He felt a fluid flow from the deceased which turned out to be blood. He knocked at Washaya's door and asked him to bring a light. When the light was brought the witness noticed the deceased in a pool of blood and the deceased's eyes were already dilated. Deceased told the witness that he had been hurt and he was dying. It was this witness' evidence that he did not see the deceased retaliating and he emphasized that the accused was the last person to be in contact with deceased. No-one else attacked the deceased.

This witness's evidence was straight forward and consistent. He stuck to his version all through out and withstood the rigorous cross examination. The court believes this witness' evidence and rules the witness to be a credible witness.

The last witness fielded by the state is Tafadzwa Mbizi. This witness stated that during the course of the day before deceased's murder he had been at the base house which belongs to Washaya. That the accused and his relatives Takudzwa and Simba had arrived at the base and looked for the deceased in a menacing manner. He rushed to deceased's home where he warned deceased's sister to advise the deceased not to come to the base as he was being hunted by the accused and his relatives. During the evening the deceased had arrived with his friend and he duly warned him that he was being pursued by the accused. He stated that deceased decided to go and look for the accused. The two came back together albeit at different intervals with the accused arriving last. It was his evidence that upon the arrival of the accused some occupants of the house ran away. He stated that the accused confronted the deceased and an argument ensued.

The witness, Washaya and another person tried to intervene and calm the parties to no avail. The witness stated that at that juncture the accused brought out an okapi knife and stabbed the deceased on the throat. The deceased took three steps and fell on the verandah. He alleges that Washaya brought his cellphone which was the source of light in the house, shone it on the deceased and noticed that the deceased had died. He stated that the knife used belonged to one Wasu and the accused had taken the knife from Wasu three days prior this incident.

This witness's evidence was consistent with the other witness's evidence up to the point of the deceased's arrival from the accused's home. There is material difference in evidence when it

comes to what particularly happened when the deceased and the accused started arguing in Washaya's house. The witness's evidence became mixed up when he denied ever hearing Washaya asking everyone to go out of his house. Equally this witness stated that the deceased was stabbed whilst in the house which is different from what Washaya and Tinashe Silence Boso said. The court thus partially accepts this witness's evidence particularly on the events prior to the stabbing of the deceased. As the witnesses admits to having been taking drugs throughout the day this could thus have affected his ability to observe the events of that day.

The defence called one witness the accused himself. The accused gave evidence to the effect that the deceased was his friend for 5 years and they worked together the accused being a driver and the deceased being a tout. He stated that on the day in question the deceased visited him at his house and asked that they go to the smoking base at Washaya's homestead to discuss money issues. He stated that upon the parties' arrival at the base the deceased became confrontational and indicated that the two had to fight because the deceased was not prepared to hand over money that he had worked for with someone else. He stated that the deceased clapped him and he retaliated with a fist jab. He stated that Washaya tried to intervene to no avail. He stated that the deceased stood up produced a knife intending to stab the accused. The accused grabbed his hand and twisted it, the intention being to dispossess the knife from the deceased. The accused told the court that in the process he pushed the deceased and deceased lost balance resulting in him being cut by the knife. It was his evidence that he ran outside to get water from a well to pour on the accused and he was blocked from doing so by the people present who wanted to attack him. He therefore rushed home to arrange transport to ferry deceased but he found the car he intended to use no longer there.

The accused gave the impression that he was close to the deceased to the extent that he would sleep at the deceased's place and equally the deceased would leave his clothes at accused's place. During cross examination the accused maintained that the deceased is the one who was aggressive and that no one tried to intervene. The accused denied that he had gone to Washaya's place to dispel a rumor that he was involved in robbery cases and he maintained that the dispute pertained to monies gotten from touting. The accused denied that the deceased was stabbed rather insisting that the deceased only got grazed by the knife. The accused gave short answers and missed an opportunity to expand on his answers during cross-examination. In the court's view, he was not forthcoming. He showed no emotion, as one would expect from an accused who claims

that deceased was his friend whose death he caused accidentally. Further, no one supported the allegation that deceased and accused were friends. The court did not find the accused credible neither was his explanation that he was deflating a blow credible as a witness saw him lurching at deceased rather than deceased attacked him.

In its submission the state highlighted that this was a premeditated murder as the accused had been pursuing the deceased with his relatives. It urged the court to find the accused guilty of murder with actual intent. Submissions were made that all the state witnesses had corroborated each other and none of the witnesses had given evidence pertaining to a struggle between the deceased and the accused. Mr *Gumbo* for the state submitted that the issue of there being a fight between the two only come out in the defence case and none of the people present at the base house ever testified to that.

The defence counsel for the accused submitted that the evidence of the state witnesses was at variance with each other and this is because the witnesses had taken drugs hence they came up with different versions. Further due to poor lighting in the room the witnesses may not have seen what actually transpired. Shee submitted that the accused person gave evidence truthfully and is remorseful as he had no intention of killing the deceased. She submitted that as the accused had no intention to kill and no premeditation it was proper for the accused to be found guilty of culpable homicide.

From the evidence led in court, it is clear that the accused was the aggressive party. It is a fact that the accused and his brother had looked for the deceased in a menacing manner during the day. Three state witnesses Washaya, Tinashe Boso and Tafadzwa Mbizi testified to that. Washaya and Mbizi even warned the deceased of the looming danger, the latter having informed the deceased's sister prior, that the deceased was being pursued and should not come to the base. It is also not in dispute that the deceased had proceeded to the accused's house to go and clarify why the deceased was looking for him despite having been warned that the accused meant no good. The accused even confirmed that the deceased went to his home and together they proceeded to the base house. There is overwhelming evidence that upon arrival at the base the accused became aggressive raising an altercation with the deceased wherein Washaya used as the smoking base tried to intervene. The court also accepts the evidence of Tinashe Boso that the accused assaulted the deceased with an open hand and commotion started leading to the house owner ejecting

everyone from the house. All the witnesses who were in the room testified that the deceased did not retaliate during the physical attack. This occurred in a room about three metres long where occupants sat across each other with light provided by candle such that the argument by defence counsel that witnesses may not have observed events well due to poor light does not hold water. Washaya had actually called deceased to sit next to him by way of diffusing the situation hence it cannot be said the witnesses did not observe well, given that this was a small room.

It is also common cause that when the deceased left the room he was not injured and the injuries were sustained outside the room after Washaya had chased out everyone. Thus the stabbing happened outside. Whilst there is no concrete evidence of accused producing a knife inside the house, it is common cause that the deceased was stabbed by a knife just outside the house. The evidence of Tinashe Boso becomes very pertinent as he is the one who saw the deceased being attacked by the accused outside. He stated that, whilst outside the accused rushed and attacked the deceased and the deceased fell to the right side of the wall of the house. It is him who got hold of the deceased's shirt and felt blood running down the deceased's neck. It is him who knocked on Washaya's door and informed him that deceased was injured whereafter Washaya realized that deceased had passed on. The witness was honest enough to admit that whilst he saw the accused directing a blow to the deceased he did not see the weapon. The accused does not deny that a knife was used to inflict the fatal blow he seeks to say he intended to deflate a blow resulting in the deceased being injured.

The doctor conducting the post mortem reports clearly that he observed a stab wound in the right anterior region of the neck with 2cm longitude. The cause of death is referred to as "hypothalamic shock, laceration of right carotid artery, stab wound in the neck." Of note is the fact that death resulted instantly. This even caused panic to the accused as he rushed to get water to pour on the accused and also tried to lift the deceased to no avail. Whilst there has been allegations that he urinated on the deceased only one witness Tafadzwa Mbizi testified to that, what the rest of the witnesses testified to, was the attempt to pour water on the deceased to resuscitate him. The court rejects the accused's assertion that it was the deceased who intended to use the knife on him and that it was in the course of protecting himself that he twisted the deceased's hand resulting in the deceased stabbing himself. There is no evidence to support that version of events and the nature of the injury is not a grazing but a stab wound. Further, all the witnesses testified that the deceased

was not aggressive that night and did not attack the accused, rather it is the accused that attacked the deceased whilst in the house and delivered the fatal blow outside the house.

In *S v Brenton Dengwani Guri* MTM 52-21, MWAYERA J dealt with a case with almost similar circumstances in which he made reference to the matter of *S v Moyo* HMA 16/17, *S v Mugwanda* SC 19/2002 in which it was alluded that:

“It is settled that when one sets out with an aim or desire to kill another and they proceed to do so murder with actual intention ascribes. On the other hand if one engages certain conduct may cause death but despite the realization and possibility of the risk proceeded with the conduct then legal intention to murder can easily be ascribed.”

The accused intended to cause harm to the deceased as evidenced by how he and his relatives had hunted accused down during the day up till the encounter at the base. The stabbing of the deceased was the final act of the premeditation to harm the deceased. The court thus find the accused guilty of murder.

SENTENCE

In passing sentence the court took into consideration the mitigatory and aggravatory facts as presented by the defence counsel and the state respectively.

Whilst the accused is a first offender who has a young family which needs financial and parental support, the offence that the accused person is convicted of is serious. A life was unnecessarily lost. The accused was determined to cause harm to the deceased as evidenced by him hunting him down. His actions frightened a number of persons who warned the deceased to keep safe and go to his home rather than to the usual meeting place. The accused armed himself with an Okapi knife and directed the blow to a vulnerable part of the body. He intended to cause the deceased's death. As was in the matter of *S v Brenton Dengwani Guri* as was cited above, the accused formulated the intention to kill and proceeded to kill. The aggravating circumstance was that the murder was premeditated and when an opportunity arose, the accused proceeded to do so and the circumstances called for life imprisonment. Similarly, in this particular matter, the same happened as the accused premeditated the murder and that alone shows no respect for the sanctity of one's life.

Whilst the accused pleads for a short prison sentence so as to look after his young family and ailing parents, he fails to consider that deceased also had a family which has lost a loved one and perhaps a breadwinner. It is unfortunate that our legal system does not provide for victim

impact statements. This was a premeditated heinous act perpetuated upon an individual who intended to resolve any dispute peacefully. That accused refused to be restrained when he had an altercation with deceased shows that he had his mind set on killing the accused.

It is for the courts to ensure that vulnerable members of society are protected from the likeminded persons by incarcerating such individuals for a lengthy period of time with the hope that they get rehabilitated and learn to place value on life.

The accused is sentenced to 20 years imprisonment.

National Prosecuting Authority, applicant's legal practitioners
Maseko Law Chambers, respondent's legal practitioners