

STATE  
versus  
VENNAH TAGUTA  
and  
RASTER LAST TAGUTA

HIGH COURT OF ZIMBABWE  
MUZENDA J  
MUTARE, 28 and 30 September 2021 and 7 October 2021

**Criminal Trial (Murder)**

ASSESORS: 1. Dr Sana  
2. Mr Magorokosho

*M Musarurwa*, for the State  
*Ms N. Nhimbe*, for the 1<sup>st</sup> accused  
*T Musara*, for the 2<sup>nd</sup> accused

MUZENDA J: Both accused are charged with the crime of Murder as defined in s 47(1)(a) or (b) of the Criminal Law (Codification and Reform) Act, [*Chapter 9:23*], it being alleged that on 20 December 2019 and at Nyamadzawo Village, Chief Marange, Mutare first and second accused persons, all and each or one or both of them acting in common purpose and in association with each other unlawfully caused the death of Vennah Matara by assaulting her several times with fists, booted feet, shear of a plough, pot lid and a wooden log on the head intending to kill her or realising that there was a real risk or possibility that their conduct might cause death and continued to engage in that conduct despite the risk or possibility resulting in injuries from which the said Vennah Matara died.

The first accused pleaded Not Guilty to murder but tendered a plea of Guilty to Culpable Homicide. Second accused pleaded Not Guilty to the charge of Murder.

In her defence outline first accused states that prior to 19 December 2019, her father went before the chief wherein they advised the chief that now deceased and first accused's mother in law Chipiwa Mutsambiwa initiated her into witchcraft when she was still young and forced her (first accused) to engage into witchcraft against her will. Upon learning about the said allegations, first accused's mother in law asked her on 19 December 2019 to go with her to now deceased's homestead at around 2000 hours to solve the issue, whereupon arrival the

mother in law asked first accused to call out the deceased. Deceased heeded the call but first accused and her mother in law did not respond. Both then entered into deceased's kitchen hut and first accused's mother in law started assaulting deceased with a log. Deceased called her nephew, Oncemore Mangena, whom she was sleeping with in the same hut to help her out. Chipiwa Mutsambiwa handed the log to the first accused and ordered her to also assault deceased. After first accused's arrest, first accused was coerced to implicate the second accused. First accused denies setting out with the aim to kill the deceased person but was under the influence of her mother in law as well as the evil spirits that were manifesting through her. First accused does not know why they attacked deceased that night as she was under the influence, the mother in law told her that the evil spirit initially wanted her to kill her own mother that night. She prayed for acquittal on the charge of murder.

In his defence outline second accused states that the now deceased was his step mother and on 19 December 2019 he had an altercation with deceased, on that day he had an axe and denies intending to strike the deceased with it. On 20 December 2018 second accused states that at around 7:30pm he retired to bed with his wife and was only awakened by Richmore Taguta who informed him of the deceased's demise. He denies agreeing with first accused or anyone to kill the now deceased. First accused is the one who confessed to the mourners that she is the one who committed the offence with one Chipiwa Mutsambiwa, she was only influenced or coerced to implicate second accused. He prayed for his acquittal.

The background facts are spelt in annexure 'A' the state outline. Accused persons and deceased resided at Nyamadzawo Village, Chief Marange, Mutare. On 20 December 2019 accused persons brutally assaulted deceased several times using fists, feet, plough shear, pot lid and a log on the head and all over the body. Deceased sustained serious head injuries that led to her death. The pathologist concluded that death was due to head injury.

Oral evidence adduced by the state came from Idah Buzuzi, Oncemore Mangena and the police detail Assistant Inspector Allen Mugari. Idah Buzuzi told the court that deceased was her mother in law and has known her for a period in excess of 20 years. First accused is her niece, daughter to her husband's brother, second accused is her brother in law, younger brother to her husband. Around 0500 hours on 19 December 2019 she witnessed second accused holding an axe threatening to strike the deceased. She disarmed the second accused, deceased went to report to the village head. Around 2100 hours on 20 December 2019 she attended the scene and saw deceased groaning in pain, she had a deep cut on her forehead and had blood all over her face, she passed on a few minutes later after the witness' arrival.

Oncemore Mangena is the grandson of deceased. He was asleep in the same kitchen with deceased. He heard the kitchen door being opened and saw shadows of 2 people entering the kitchen. He could not clearly identify those two people for there was poor lighting. Upon entry of the two into the kitchen, he covered his head with a blanket, later he heard deceased shouting Charibho's name thinking it was deceased's son. He then uncovered his head and observed two people assaulting deceased, one was sitting on the belly of the deceased and the other one was holding deceased's neck. Deceased requested Oncemore to fight the attackers. In response the witness picked a burning log and hit the thigh of the person sitting on top of deceased. The person shouted to the witness, Oncemore immediately recognised first accused's voice. First accused threw back the log at the witness and Oncemore and Munashe left the room and went to Yvonne Taguta's homestead. He informed her of the assaults to the deceased. The witness returned to the kitchen and found deceased lying facing down in a pool of blood adjacent to the fire place, she was unconscious.

Allen Mugari attended the scene of the crime. He saw deceased's body and observed a deep cut on the forehead, a cut on the left side of the head, a cut at the back of the head and a further cut on the left thumb. He also saw a blood stained plough shear, wooden log, also blood stained aluminium pot and a broken cast iron lid near deceased's body. He recorded both accused's warned and cautioned statements and took part in the arrest of the accused. The police detail also told the court that the exhibits recovered from the scene were pointed out by first accused. First accused also implicated her mother in law Chipiwa Mutsambiwa leading to her arrest. However police discovered that Chipiwa had spent the night at her brother's place some 5 kilometres away from deceased's place and hence Chipiwa had a watertight *alibi*. Police details concluded that she was being falsely implicated and the police absolved her. Allen Mugari further told the court that the conduct of second accused raised suspicion. He could not sit away from first accused during questioning and would be seen whispering to first accused. On one occasion police had separated him from first accused but the police discovered that second accused had gone back where first accused was. Second accused behaved restless at the scene as well as at the police station.

The state closed its case and the first accused testified. She adopted what is summarised in her defence outline. She exonerated second accused and implicated her mother in law. She gave a horrid account of how she was initiated into witchcraft and indicated that she had since been rejected by her husband. During cross examination by the state first accused changed

course and admitted that she planned with second accused to attack the now deceased because both accused believed that deceased was a witch.

She repeated the contents of her confirmed warned and cautioned statement which gives a vivid description of what accused 2 did and the role of first accused. First accused places herself right at the scene of the crime. She admitted entering deceased's kitchen, attacked her sitting on her abdomen, she also acknowledges being hit with a glowing wooden log and getting burnt, she also admits being bitten by deceased and also biting deceased on the thumb. First accused totally changed the colour of the matter and eventually admitted colluding with second accused attacking the deceased. Second accused could not have meaningful questions to the first accused but was shocked by the turn of events.

When the state case was closed, second accused had intimated to apply for the discharge of second accused at the close of the state case. The court directed that second accused will make the application after first accused's case had been closed and second accused's turn comes. After the first accused's case had been closed, second accused did not pursue the application and opted to give his side of the story. He adopted his defence outline and totally distanced himself from the matter. He stuck to his story that he was sleeping with his wife at his homestead. Under cross-examination by the state he conceded that he had threatened to axe deceased on 19 December 2019 on suspicion of deceased being a witch. He strongly believed that deceased was behind the illness of his child. He added that first accused committed the offence with Chipiwa Mutsambiwa and was not in good books with first accused because of first accused's weird behaviour and confessions she made that she was nestling a snake, having sexual intercourse with a hyena and visiting dead people's realm. Second accused denied assaulting deceased.

What is important is to critically look at the liability of each of the two accused persons.

Exhibit 2 is the confirmed warned and cautioned statement of the first accused. It is vital to quote it in its original English version:

*"I admit to the charge of killing Vennah Matara being levelled against me. What happened on the day in question before sunset is I agreed with my uncle Raster Last Taguta to meet at Vennah's homestead who happens to be my grandmother so that we can kill her because she initiated me into witchcraft when I was still young and forced me to engage in witchcraft against my will. At around 2000 hours I proceeded to Vennah's homestead and waited for Raster by the door way to arrive since he had not yet arrived. I waited for a few minutes before his arrival, Raster advised me to call my grandmother. We called her and she responded by asking who was calling her but we did not respond. My grandmother then advised us to enter into her kitchen hut but she seemed like someone who was half awake.*

*We entered in my grandmother's kitchen hut and Raster was at the front whilst I was behind him. I mounted on top of my grandmother who was sleeping whilst Raster was assaulting her all over the body with clenched fists and booted feet. My grandmother called her nephew Oncemore Mangenaa whom she was sleeping with in the same hut and instructed him to take a log and assault the people who were attacking her. Oncemore took a burning log from the fire place and threw it at me. I managed to evade the log but I fell down on my right side and I got burnt on my right thigh. I proceeded to shout at Oncemore asking him on what I had done to him and why he had struck me but he did not respond instead he ran away with his uncle Munashe Taguta.*

*At that moment Roster took that burning log and struck my grandmother with it on the head. After that he dropped the wooden log on the ground and took a plough's shear which was on the fire place and hit my grandmother on the forehead and all sides of the head thrice. I then took that log and hit my grandmother on the head and she then bit my hand and I bit her left finger in retaliation. I then went back to my homestead leaving Raster at the scene with my grandmother who was no longer able to talk and groaning with pain."*

I will pause here to comment that the first accused's confirmed statement resonates well with Mangena's evidence and partly so with the injuries observed by the pathologist. First accused admits agreeing with second accused to go to now deceased's place at night to kill her. She was not compelled to go and wait for second accused at deceased's homestead. She voluntarily walked to the scene waited for second accused to arrive. She called out deceased's name. She willingly entered deceased's kitchen hut and sat on deceased's belly whilst second accused was assaulting deceased. She admits using the log to hit deceased on the head. She only left the scene when she saw that deceased was helpless. We are unable to accept first accused's submission on the alleged defence of compulsion. We see no basis of such a defence given the facts explicitly outlined in her extra-curial statement. Both the *mens rea* and *actus reas* of the first accused emerge from none other than first accused herself. Her evidence is credible in as far as what she did on the day in question. She planned with second accused to go and kill the now deceased set out at night and entered her hut and killed her and then left.

Second accused is implicated by first accused. Second accused impugns the evidence of first accused as being inconsistent, contradictory and unbelievable and urged the court to reject it. Accused two's counsel also added that first accused's evidence implicating second accused cries for corroboration. It is not in dispute that first accused was an accomplice and is the only witness who stated in her cautioned statement that she was with second accused. What is further clear is that first accused was in the company of someone on the day in question and Oncemore Mangena confirmed seeing two unidentified people entering deceased's kitchen hut, one is first accused and the other one is in dispute. Two people assaulted deceased to death,

one of those people is not established by direct evidence distinct from first accused. Chipiwa Mutsambiwa was implicated by first accused but after police probed the whereabouts of Chipiwa on that night they released her. What remains for this court to decide is who was with first accused?

When first accused was arrested by the police she gave a fairly detailed statement explaining what role second accused played on the night in question. When her defence outline was tendered in court she absolved the second accused. It is not in dispute that during cross-examination by the state she reverted to the information contained in the confirmed statement she made to the police. Both accused regarded deceased a witch who had initiated first accused into a witch and as a witch causing second accused's child to get ill. Second accused had tried to axe deceased a day before 20 December 2019 but was disturbed by the arrival of Idah who disarmed him. It is not clear why second accused could not proceed to the fields if that was his original plan. Second accused did not meaningfully cross-examine first accused in light of admissible evidence in form of exh 2, the confirmed warned and cautioned statement. Second accused in his closing submissions contend that he could not have a chance to cross examine first accused on the evidence implicating him because the bench did not have questions to first accused. Second accused could have moved the court to be afforded an opportunity to re-question first accused provided that such evidence was not before the record before. To the contrary exh 2 was always before the court and it was not challenged by either of the accused and the court takes it as common cause. The confirmed warned and cautioned statement by first accused was recorded on 21 December 2019, a day after the demise of the deceased. Events were still fresh and the conduct of second accused towards first accused prompted police to have an interest into why second accused was behaving weirdly. In our view the second accused influenced first accused to exonerate him and implicate Chipiwa Mutsambiwa. However under cross examination she was overwhelmed and told the truth which had already been placed before the court. We see no contradictions at all especially when we look at the extra-curial statement. First accused explained the defence outline, second accused had told her to exonerate him. second accused did not call his wife to come and buttress his *alibi*, in any case the wife's evidence is that she was fast asleep and could not tell whether second accused left the bedroom hut or not. Second accused failed to give a reason why first accused could lie against him. His reasons that it was him who did not like first accused cannot be accepted, he should have told us why second accused did not like first accused. In her extra-curial statement as well as cross examination, first accused explained what weapons were used by second

accused and where the blows landed and no meaningful questions were put to first accused to challenge this evidence. It is possible that first accused could have been with someone other than second accused but having mentioned Chipiwa Mutsambiwa and police had found no link with the crime, that someone else who was with first accused is second accused. He was mentioned on the date of arrest by first accused and he was mentioned under the cross examination of first accused and both sets of evidence do not contradict. It is not every time that a single witness gives credible evidence which is beyond reproach. There are different degrees of credibility. One witness may give unblemished evidence, another may give evidence which although trustworthy has some unsatisfactory features, but given the circumstances of this matter and its build up a witch history despite the fact that there are assumed short comings or defects or contradictions in first accused's testimony we are satisfied that truth has been told.

The court is alive to the cautionary approach to single witnesses but such an exercise should not be allowed to displace the exercise of common sense. The court will reject those factors from first accused which were unsatisfactory and accept those which in our view were trustworthy, that is those features which were corroborated by the evidence of second accused on the aspect of witchcraft that deceased was a witch.

The court is alive to the cautionary rule on evidence of accomplices. The court must satisfy itself that it can safely rely on the accomplice of when he says it was the accused who committed the crime. In other words the court then has to warn itself of the danger of false incrimination which is inherent in the evidence of an accomplice and it must be satisfied that such danger has been safely eliminated in the case under consideration. (*S v Mubaiwa* 1980 ZLR 477)

There are obviously varying types of accomplices. The accomplice whose evidence is most dangerous to rely on is the one who committed the crime jointly with the accused. It is he who can most easily shift the blame from his own shoulders to those of the accused. *In casu* first accused is jointly charged with second accused, she was seen with a second person in her company on the day in question attacking deceased on the allegations of witchcraft. Both accused are known to each other and strongly believed that they were both victims of deceased's witchcraft. Further one cannot ignore the conduct of second accused on 19 December 2019. The cumulative effect of all these factors solidify into one inescapable conclusion that the second person who accompanied first accused to go and attack deceased is second accused.

It was second accused who sat down with first accused to go and kill the now deceased. It is second accused who assaulted deceased all over the body including the use of the weapons which were used to crash deceased's skull. We are satisfied that the state has also met all the requirements of s 196 A of the Criminal law (Codification and Reform) Act [*Chapter 9:23*], second accused was present at the scene, he assaulted the deceased on the delicate parts of the body while the victim was still alive and delivered mortal wounds on the head of the deceased. We are satisfied that both accused fatally assaulted deceased in such a manner as to attract criminal liability. First and second accused agreed to go and kill deceased and in a common purpose the act of one participating in causing the death of the deceased is imputed as a matter of law, to the other participant. A causal link connection between the acts of each party to the common purpose and the death of the deceased need not be proved to sustain a conviction of murder in respect of each of the participants. However in this case the state had managed to prove beyond reasonable doubt the participation of each accused and the intention can be established from the preplanning stage, the manner of the assault, the position where the blows were aimed and the effect of such wounds on the victim of the assault. Deceased was struck on the head and died instantly on that date, second accused had the requisite *mens rea* and *actus reus* to kill the deceased.

Both accused are found Guilty of Murder with actual intent.

### SENTENCE

In assessing an appropriate sentence the court will take into account what has been submitted by all counsel on behalf of the accused as well as the state. Both accused strongly believed in witchcraft and s 101 of the Criminal Code provides that a genuine belief in witchcraft that a victim was a witch or wizard may be taken as mitigatory. First accused believes that she was initiated into witchcraft at a tender age which had subjected her to unnatural encounters with the underworld. She has since been rejected by the husband, she blames both the mother in law and deceased. She was 18 years when the offence was committed, she could have been pressured by peers to commit the heinous crime. She killed her own grandmother and attributes this unfortunate incident to second accused who was older to her and an uncle. She is a first offender.

Second accused is married and has been in custody since his arrest in 2019. He is a first offender and equally believed that deceased caused the illness of his child. Second accused is older than first accused and he ought to have shown an exemplary behaviour to first accused,

instead he led her astray and masterminded the attack on deceased. It is possible that deceased could have initiated first accused into witchcraft but second accused should have sought the help of both traditional leaders and healers to have deceased penalised according to customs and values of the community than to terminate her God given life. She was 67 years old at the time of her death and died a painful death, she groaned in pain and neither of the accused offered assistance to her.

There is need to differentiate the sentences of the two accused given what I have highlighted herein. Accordingly accused are sentenced as follows:

Accused 1: 10 years

Accused 2: 20 years

*National Prosecuting Authority*, accused's legal practitioners

*Mutungura & Partners*, 1<sup>st</sup> accused's legal practitioners

*Gonese & Ndlovu*, 2<sup>nd</sup> accused's legal practitioners