

STATE
Versus
SHOORAI GWENZI

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 9 and 23 March 2021

ASSESSORS: 1. Dr Sana
2. Mr Mudzinge

Criminal Trial

Murder.

Ms *T. L. Katsiru*, for the State
Ms N. *Nhimbe*, for the accused

MUZENDA J: On 9 March 2021 the accused was arraigned for murder as defined in s 47 (i) (a) or (b) of the Criminal Law (Codification and Reform) Act, [*Chapter 9:23*]. The state alleged that on 19 January 2020 at Mayedzengwa Village, Chief Marange, Mutare, the accused, together with Dzidzai Nyangovere, who is still at large, caused the death of Liberty Dadirai Chimonyo, by stabbing him several times with an Okapi Knife on the neck, back, chest and left arm with the intention to kill him or realising that there was a real risk or possibility that his conduct might cause death and continued to engage in that conduct despite the risk or possibility, resulting in injuries from which Liberty Dadirai Chimonyo died.

Background facts

On 19 January 2020 the accused and his outstanding co-perpetrator Dzidzai Nyangovere lured deceased to go and meet them at Odzi River where they intended to sell a diamond stone. The deceased decided to be accompanied by Chripen Foroma.

When deceased arrived at the scene, he parked his car at a distance from the river and also left Chripen Foroma behind. He locked the car. Deceased met accused and his colleague near the river. After a few minutes Chripen Foroma heard deceased screaming for help. He

rushed towards the place where the screaming was emanating from. On his way he met accused and his colleague, they told him that deceased was being robbed. Chrispen Foroma requested for the two's assistance but both of them refused to go back to the scene with him.

When Chrispen Foroma left accused and his colleague, he met Caleb Chinowaita. The two of them spotted the now deceased, he was in pain, groaning. Deceased was bleeding and his body was littered with the stab wounds. Chrispen and Caleb proceeded to lift deceased up and placed him in the car. They ferried him to Nyanyadzi Clinic where the deceased was pronounced dead. The evidence of Chrispen and Caleb flows so well on this and it was not challenged in any manner and the accused's own version smartly intertwines with this chronology. We accept all of it as the truth.

Postmortem report Exh 1: was compiled and showed the following:

"Deceased was stabbed twenty six times on head, neck, chest, abdomen. Noted to have a deep cut on right neck swerving the right jugular vein to carotid artery. Noted to have a cut left chest, stab wounds to heart, fracture right humerus. Death was due massive haemorrhage."

The accused was arrested later and on 7 February 2020 gave a statement to the police which was subsequently confirmed on 13 February 2020 at Mutare, marked as Exh 2 herein. In principle he gives a detailed account of how they planned to go and rob the deceased, how they lured him to Odzi River, how they stabbed deceased and robbed him. When the accused appeared before us, he pleaded guilty to the charge though that plea was entered as not guilty. When he gave evidence in court he repeated the contents of his extra-curial statement though he albeit tried to shift blame to his co-accused. However most of the facts are common cause and need no repetition.

The Law

Section 196A of the Criminal Law (Codification and Reform) Act, [Chapter 9:23] provided that if two or more people are accused of committing a crime in association and the state adduces evidence to show that each of them had the requisite intention to commit the crime, then they may be convicted as co-perpetrators. The same section further stipulates that for it to be said that the accused had the requisite intention to act together, the accused has to be present at the scene of the crime, or that he associated together in the conduct that is preparation to the conduct which resulted in the crime for which he is charged or that he engaged in any criminal behaviour as a team prior to the conduct which resulted in the crime he is being charged.

Section 256 (i) of the Criminal Procedure and Evidence Act [Chapter 9:07] deals with confession of the commission of the offence and any statement which is proved to have been

freely and voluntarily made by the accused and such statement's admissibility in court. Where an accused without him being unduly influenced thereto opt to make a confession such evidence is admissible against him, moreso if it is confirmed by the magistrate.

Application of the Law to the facts.

By his own narration of events both to the police and before the court all the requirements clearly spelt out in s 196 A (2) of the Penal Code *supra*, are fully met. Accused planned to go and rob deceased, he was armed with a lethal weapon, he participated in the stabbing of the now deceased, he personally admits searching deceased's trousers and stole deceased's property. He lied to Chrispen Foroma that deceased was being robbed in order to get an opportunity to break into deceased's car. He did not assist deceased when it was apparent that deceased was badly and hopelessly injured. He did not attempt to restrain his co-perpetrator from further injuring deceased. We do not hesitate to reject the accused's contention that he was compelled to stab the deceased. We also reject that he stabbed deceased on the stomach twice, he did more than what he wants this court to believe he is equally to blame for the loss of life of the deceased.

To the accused's credit, he went on to confess in detail how they planned the crime, executed it and shared the proceeds. His confession is accepted in court and to show that contrary to what he is now saying in court, the two of them acted in collusion right from the start to finish.

We are thus satisfied that given the nature of the brutal injuries detected by the pathologist the number of stabs, (twenty-six in all) the position of stabs the neck, the chest, the abdomen and back, the cause of death was haemorrhage, the accused had the requisite *mens rea* to cause the death of the deceased in contravention of s 47 (i) (a) of the Criminal Law (Codification and Reform) Act, *supra* and he is found guilty of murder with actual intent.

Sentence

In assessing the appropriate sentence I will factor all that has been submitted by the defence counsel in mitigation and balance those aspects against the aggravatory features advanced by the state.

You are below the age of 18 years, the dentist estimates your age between 16 ½ to 17 ½ years. You are still single and a first offender but you have started your commission of offence from the extreme end. We also look at the fact that your co-perpetrator was older than you and may be you committed the offence out of greed and due to peer pressure.

Deceased was 42 years at the time of his death, he had a family, productively useful to the society. An innocent life was lost. The offence was committed in aggravating circumstances, during robbery. You are fortunate because of your age, otherwise you are a proper candidate of the gallows or life. Your cooperation with the police and your admission of the offence in court should also be weighed in your favour. Your upbringing is equally a sad story that might have contributed to your wayward behaviour. Nevertheless given the gruesome and merciless manner deceased was murdered unavoidably a custodial sentence is called for. Your conduct on the day in question was socially and morally reprehensible and the courts should show a disdain towards that type of behaviour.

You are sentenced as follows.

18 years imprisonment.

National Prosecuting Authority, legal practitioners for the state.
Mutungura and Associates, Accused's legal practitioner.