

THE STATE

Versus

DANIS DAVID KONSON

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO19, 20 & 22 NOVEMBER 2013 & 2 DECEMBER 2013 &
14, 15 & 16 JANUARY & 3 FEBRUARY 2014

Ms A. Munyeriwa assisted by G. Ndlovu state counsel
R. Ndlovu defence counsel

CRIMINAL TRIAL

KAMOCHA J: The 62 year old accused pleaded not guilty to the charge of murder. It being alleged that on 10 September 2012 and at Mateteni Business Centre in Lupane he did wrongfully, unlawfully and intentionally kill and murder Siphathisiwe Ncube a female adult in her life time there being by shooting her three times with a C.Z. pistol.

The state outline and defence outline were read and produced as exhibit one and two respectively and I do not propose to read them again now. Exhibit 3 was an affidavit by Dr Mwedzi who, after examining the deceased body at St Lukes Hospital certified her dead. The fourth exhibit was an affidavit by Constable Binha who identified the deceased's body to Dr. Jekenya who examined the remains of the deceased and compiled a post mortem report exhibit 5. His findings were as follows. Under the title Marks of Violence he recorded this:-

- (a) There was a 2-3mm gunshot entry wound with peripheral darkening on the left frontal region i.e. 6cm from the side of the left eyebrow and 2cm from the hair line. The left frontal brain and temporal brain were severely damaged as the shrapnel came out at that point 5cm behind the left ear with a 1.2cm skin wound and fractured the left temporal vertical bone. Above the entry wound was a 1.5cm superficial wound which was not a gunshot.
- (b) There was a 2-3mm gunshot entry wound just below the left ear. The shot travelled upwards in the soft tissue, and ended in the left temporal brain through petrous part of the temporal bone with a 1.5cm fracture. Both (a) and (b) injuries severely damaged the brain.
- (c) Front and slight inner side of the left mid-thigh was a 3mm gunshot entry wound with an exit wound 6cm on the back of the thigh (on the inner side).

The internal examination revealed that shrapnel was lodged in the brain. The doctor remarked that gunshot (a) and (b) even individually could have killed the deceased. Gunshot (c) could not have killed the deceased.

The doctor concluded that death was due to head injuries following gunshots causing

severe brain damage.

The evidence of the following witnesses was admitted as it appears in the defence outline by consent in terms of the provisions of section 314 of the Criminal Procedure and Evidence Act [Chapter 9:07] i.e. Delani Moyo, Stanford Ruzvidzo, Trainos Chiwundura, Dr I. Jekeny and Assistant Inspector Machingura.

Five witnesses gave *viva voce* evidence. The first witness was Concilia Ngwenya the mother of the deceased. Her evidence was that she lived at a place called Bhuyu at her homestead in the Tshongogwe area of Lupane. She is a mother of six children and deceased was one of them. She is now a divorcee and her former husband now lives in South Africa.

The witness told the court that she did not know the accused although her daughter the deceased had told her when she returned from South Africa that she was in love with a coloured man. She was unable to recall when the deceased told her that. Deceased did not know how long she had been in love with the coloured man.

However, one day when she returned from Bulawayo in 2012 she informed the witness that she no longer loved the coloured man and he had threatened to shoot her with a gun. The reason why the accused allegedly uttered the threats to shoot her was that she had told him that she no longer loved him and went on to tell him that she was in love with another man.

It was during that period that her mobile phone went missing and she started using her mother's phone. On one occasion while the deceased was using her mobile phone she overheard her talking to the accused telling him to stop sending her groceries. She fairly told the court that accused used to send the deceased some grocery items by bus. The deceased herself used to receive the groceries. She denied receiving the groceries herself. She was emphatic that accused never sent the items to her. It was also her evidence that the accused never contacted her about the groceries which he sent to the deceased.

I pause here to observe that there would be no need for him to contact the witness about grocery items which he was sending to his girlfriend. Similarly, she denied that accused ever sent any money to her personally.

Turning to the issue of whether or not the accused was introduced as a prospective son-in-law, the witness said the accused never introduced himself at all. Neither did the deceased introduce him to members of her family as her prospective husband. The witness testified that the suggestion by the accused that he was introduced to the deceased's uncles and aunts by the deceased as her future husband was false.

The accused himself latter admitted that he had not taken any preliminary steps showing that he was going to be the deceased's husband. He paid no introductory money (*kangaziwe*) to be known as a son-in-law in terms of the customs practiced in the Lupane area. He did not even take steps to be engaged to the deceased.

This court makes a specific finding that the accused was not known as a prospective son-in-law. His relationship with the deceased did not go beyond that of boyfriend and girlfriend. The accused therefore had no claim of right over the deceased.

The witness told the court that the deceased told her that she had ended her love affair

with the accused. She no longer loved him. She told her mother that she was then in love with Sikhumbuzo Khumbulani Dube – “Sikhumbuzo”. Sikhumbuzo was then formerly introduced to family members at a gathering attended by, among other people, the deceased’s uncle Francis Ngwenya and the elder brother of the deceased. Sikhumbuzo was charged “Vulamlo” a token paid to one’s in laws in order for the prospective son-in-law to be allowed to enter into dialogue with the in-laws relating to the envisaged marriage. Sikhumbuzo was going to pay the introductory fee, commonly known as “kangaziwe”.

It was her testimony that Sikhumbuzo made a request to be allowed to start living with the deceased since he had taken the necessary steps in terms of the customs practiced in the area and the elders acceded to his request. At the time she met her death the deceased was staying with her new lover.

After the death of the deceased the witness found two photographs in the deceased’s suitcase. One was accused’s and other one was the deceased’s. The accused wrote the following at the back of his photograph on 09-08-2012.

“To Patty,
For you two remember me forever
I love you
DK”

At the back of the deceased’s photograph the accused wrote the following on 08/09/2012 – two days before he shot her dead.

“SPARTISIWE NCUBE
I will always love you
Pliz come back to me, just look how lovely you look in this, photo that you gave me when you were staying at my house
I will never ever let the Devil get into me again Pliz forgive me okay
Danis Konson the one I know you still love.
If ever you come 2 Byo phone me may B you forgot ma number 0777776096. I will be so happy”

The photograph is marked 14/11/2010. Maybe that was the day it was given to the accused. The photographs were marked as exhibit 6.

What is clear is that when the accused was writing that message two days before he killed the deceased he had been made aware that his love affair with her had been terminated that is why he was begging her to “Pliz come back to me.” Emphasis added

The witness also found two letters written on papers bearing his construction company’s letter heads. The first which is marked exhibit 7 was written on 9 August, 2012 and it reads:

“Dear Siphathisiwe,
Was sitting in my bedroom thinking about you now at night after we both sent each

other messages to say gud night. Guess what I was thinking, you will NEVER GUESS BECOZ you still reading this letter “HA HA HA”

Was thinking of when I first met you How you used to come visit me and spend the night with me.

And then – you went to South Africa and we used to communicate.

You then came back to Zimbabwe and now we together again.

Don’t you think that we were made for each other. Umlimu must want me and you to be together. Mina I know that I am older than you but (Love Is Blind It Tickles the Heart and Affects the Brain) and as long as I am alive I promise to look after you Samu and your mother no matter what. I’m just waiting for you to finish all your stresses – Passport. Ubaba nga Samu and all that and I know then that you will tell me something nice which I hope will be soon. I love you my Darling so much. I promise I wish I would have met you sooner because you have changed my life. I am so happy now and always when you go I get disappointed.

When you ready chooz A course Ill pay for you so that tomorrow you can e what eva you want

Good nyt ma love –

Danis Konson

P.S. After reading keep it – Burn it or what eva”

This letter shows that at the time it was written their love affair was still blossoming and that is manifested by the accused promising to look after the deceased and her mother for as long as he lives. He even promised to pay for her tertiary education if she wanted to do any course.

Things had changed by the time he wrote her the letter of 2 September 2012 exhibit 8 which reads:-

“Dear Siphathisiwe,

Firstly I hope you accept the parcels that we sent to you, and also I apologise for what I did to you and hope that you can find it in your heart to forgive me.

I miss all the phone and messages we used to send to one another.

Pliz Patty don’t find anybody. Just wait and see if ever me and you can one day be together.

If ever you come to town to do business feel free to come to the house or phone me to meet you in town and have lunch 2gether and I take you to where ever you staying in Byo when you come.

I also beg you keep you phone on I will not do like b4 and stress you. I will only phone if you give me a call me or you say I can phone you or if you agree I can just send you one only msg a day Pliz.

Love you and God Bless you today and heal your sickness

DK

P/S Can I send your birthday present b4 time (C.3)

Bought the watch in SA for you pliz – (not clear) it”

Emphasis added

As at 2 September 2012 accused’s parcels were no longer welcome that is why he hoped the ones he had sent would be acceptable.

The accused was fully aware at that stage that the deceased had terminated their relationship and was begging her to still give him another chance. The letter also reveals that he had been pestering her through phone calls and messages and promised her that he would stop that and even promised her to only send her one message per day with her consent.

I pause to observe that in quoted letters and messages the accused only talks about his love affair with the deceased. Nowhere does he mention being worried or concerned about his alleged business partnership with the deceased. He was only worried and concerned about the love affair that had broken down.

This witness was cross examined at great length. She was emphatic that the accused was not officially known let alone being known as a prospective son-in-law. She denied that accused ever sent parcels to her. She also denied that accused ever sent money directly to her. She expressed surprise at the suggestion that the accused sometime picked her up with the deceased from Matabisa and drove them to her home.

She was asked to name the people who attended the family gathering when Sikhumbuzo was introduced as a future son-in-law. She named Francis Ngwenya Boy Bafazini and Sikhumbuzo was accompanied by one Never Netha.

It came out in cross examination that the day before accused killed the deceased he had sent her a parcel which she refused to accept and phoned him and told him to collect it. She phoned using the mother’s mobile phone in the mother’s presence. That then established that the deceased had not been accepting parcels from the accused even before 2 September 2012 as reflected in his letter of that day.

When asked how deceased had told her that she terminated her affair with accused she reiterated what she had said in her evidence in chief that when she was in town the accused threatened to shoot her with a gun because she told him that she no longer loved him.

The story of this witness remained clear after cross examination and was easy to follow. She was a credible and reliable witness worth to be believed. This court accepts her story without any hesitation.

Her evidence is supported by that of Francis Ngwenya her brother who told this court that the accused was never introduced to him and other family members as a future son-in-law but the deceased who was her niece had informed him that she was in love with the accused. She had also told him when her love affair with accused broke because of his treatment of her.

This witness told the court that Sikhumbuzo had approached the family of the deceased in August 2012 to initiate the process to marry the deceased. At the time she met her death she had moved to stay with Sikhumbuzo who had requested to start living with her and was granted permission to start living with her after the customary formalities were agreed upon.

The witness said he knew that his niece had renovated a shop at Mateteni Business Centre and was running it selling grocery items like sugar, salt etc. He, however, did not know where she got the money to do that.

The witness concluded his evidence in chief by saying that he thought that the accused killed the deceased about a month after she had gone to live with Sikhumbuzo.

The witness was criticized for having allegedly told the police that the deceased was running a business venture with the accused. His response was that he was answering what the police asked him.

As a whole this witness was also good and he gave his evidence in a straight forward manner. He corroborated the first witness Concilia Ngwenya on all material points. He is worth to be believed. I accept his testimony.

Inspector Merryshen Nyakaza was the next state witness. He was the officer in charge of Jotsholo Police Station at the time the offence was committed. He said the accused arrived at the police station in the morning of the fateful day. The witness found him in the charge office relating a story of being in love with a certain girl with whom he had a misunderstanding. He alleged that he and the girl had agreed to run some business venture together. He went on to allege that he was no longer benefiting anything from the business venture and further alleged that he had heard that the girl was at that time in love with another man. He said he had come to seek police assistance because he did not want trouble. He claimed that he was not a violent man. The witness accepted the accused's story and assigned a senior constable at the station to accompany the accused who had his own vehicle to go and collect the deceased and bring her to the station so that the witness could hear the story of both the accused and the deceased. The officer who was assigned to accompany the accused was Constable Wisdom Matupire. The officer left in the accused's vehicle.

The witness said after some time that morning Cst Wisdom Matupire was brought to the station in a vehicle belonging to one of the councilors. He had been shot on the right breast by the accused but he could still talk. He was in a critical condition and the witness rushed him to hospital. Unfortunately the officer died in a road accident when he was still on sick leave.

It was suggested to the witness under cross examination that the accused did not tell him that they were no longer in love. The witness was emphatic that the accused said he still loved the girl but she no longer loved him. The accused went on to tell him that he wanted to go and see if the money from the business was being used as allegedly agreed in their agreement.

When asked by court if he had asked the accused if he was armed the witness said he did not ask him because the accused appeared to be humble and he said he was a law abiding person who did not want any trouble. The witness could not suspect that he was armed because of the way he spoke as he said he was seeking police assistance because he did not want any

trouble.

This witness gave his evidence in a convincing manner. He is worth to be believed. It came out clearly in his evidence that the accused told him that the deceased no longer loved him but he still loved her. This is corroborated by what is contained in his letter of 2 September 2012 quoted above in this judgment.

The evidence of this witness also shows that the accused pretended to be a law abiding person who did not want any trouble when in fact the opposite is the case.

According to this witness the accused never revealed to him that he had received an SMS message which told him that there could be violence if he went to the deceased. The accused had received such a message the day before i.e 9 September 2012 but did not reveal that information to the police.

The next state witness was Lindiwe Ndlovu. She was the witness who witnessed the murder of the deceased and how Wisdom Matupire the police officer was shot in the chest by the accused.

Her testimony was that she did not know the accused but saw him on the day he shot and killed the deceased. She knew the deceased. She rented and operated the shop from April 2012 to August 2012. The witness began working at the shop in August after the deceased had stopped running it.

On the fateful day when she was cleaning the shop in the morning two coloured men, a police officer, and the deceased arrived. The accused's vehicle was parked outside the fence. The deceased went into the shop and told her that when the accused enters the shop and asks her who the owner of the shop was she should tell him that the shop belonged to the deceased. Shortly after that the accused entered the shop. He greeted her as Siphathisiwe's maid or female worker. She answered back. The accused then asked her how business was and she said it was good.

The accused turned and went out of the shop and kicked the shop wall twice. The witness who had been behind the counter in the shop moved away from there and went and stood at a window which was next to the door and watched events as they unfolded.

After kicking the shop wall the accused drew out a black gun from his jacket pocket. He took some steps towards the deceased and was about 3 to 4 metres from the deceased who had her back towards him and shot her below the left ear and she fell down. The police officer who was standing some 4 to 5 metres away turned at the sound of a gun to face the direction of the accused and the accused shot him below the right breast. The police officer ran away. The accused then turned onto the deceased and shot her on the left thigh as she lay down.

After that the accused's friend with whom he had travelled all the way from Bulawayo asked him if he was done. His response was "No, the girl that is in the shop still remains."

On hearing this, the witness immediately turned round and used the back door to get into the bedroom and jumped out through the bedroom window.

The accused realized that she was no longer at the window. He went round the building

and began to run after her. He gave up the chase on realizing that she had outrun him. She was about 50 metres away.

The accused went back to the shops. She heard a fourth shot being fired by the accused. After sometime she realized that the accused and his friend had left and went back to the shops. She found the deceased lying dead on her back on the verandah. She ran to alert people. As she ran she saw people coming towards the shops and she fainted. When she regained consciousness she found herself lying near the deceased's body.

Her evidence was that when the accused was in the shop he never talked about the damaged ceiling as there was no damaged ceiling. The big window at which she stood had no broken panes. The panes were intact and there were no cardboard boxes used instead of proper window panes.

The deceased was approximately 5 metres from the window. The accused moved some steps towards the deceased and was about 3 to 4 metres when he shot her without any warning.

She was emphatic that she could clearly see the police officer from where she stood at the window. He was about 6 to 7 metres from where she was at the window. She emphasized that at no stage did the police officer try to intervene. All he did was turn after hearing gun fire and was shot in the chest when he was 4 to 5 metres from accused.

The police officer was never between the accused and deceased. He stood in a different direction looking at his mobile phone.

The witness was also emphatic that the accused and deceased never spoke to each other from the time of their arrival to the time accused shot the deceased.

It was her evidence that the only people at the shop that time were, deceased, the police officer, accused and his friend, Aletha Mathe who was shop keeper of the other shop and the witness. There were no other people present at the shops.

The witness was cross examined at some length but was never shaken. She was adamant that the accused never went out of her sight from the time he arrived up to the time he shot the deceased. He never left to go to the other shop and returned. She was asked why she witnessed the three shots without running away. She said she could not run away at that stage because the keys to the main shop door were hanging in the key hole on one of the flaps of the door. She only ran away when the accused said she was the only one he still had to shoot. It was then suggested that the accused did not intend to shoot her and did not chase after her. In disbelief, she said he of course did and she broke down. When she was asked if she had not heard the accused and deceased exchanging harsh words outside the shop she was still emphatic and reiterated that accused and deceased never spoke to each other from their arrival until accused shot the deceased dead.

This witness gave her testimony with remarkable clarity and in a straight forward fashion. She was the key witness, in my view, in as far as the murder itself is concerned. Her evidence established the following:-

- (a) The accused arrived at the shop and parked his car outside the fence. Four people came

out of the vehicle i.e. the deceased, the police officer, the accused and his friend.

- (b) The accused who was armed with a black pistol concealed in his jacket pocket entered the shop. After a brief talk with the shop keeper whom he called Siphathisiwe's maid or female worker (People do not normally greet others in that rude manner or derogatory manner) he walked out and kicked the shop wall twice in anger and drew his pistol from the pocket jacket.
- (c) He took a few steps towards the deceased and shot her without warning
- (d) When the police officer turned to see what was happening the accused aimed at him and shot him in the chest. He was not intervening at all.
- (e) The accused and deceased did not exchange any harsh words before accused shot the deceased. In fact the two never spoke to each other at the shops. The suggestion that she said she was just using the accused and in any event she paid him with her body is false.
- (f) There were no other people at the shops apart from Lindiwe Ndlovu, Aletha Mathe, the deceased, the police officer and accused and his friend.
- (g) The accused fired 4 shots which were all on target.

This court makes the above as its specific findings.

The investigating officer detective sergeant Mehluli Sibanda was the last state witness. He has been in the police force for 13 years.

On the fateful day he attended the scene of murder. While at the scene he examined the body of the deceased and observed three bullet wounds on it as follows:- one on the forehead, another behind the left ear and the third one was on the left thigh.

I pause to observe that the entry bullet wound on the forehead was inflicted when the accused returned from chasing after Lindiwe Ndlovu. Lindiwe heard the accused firing the shot when he returned to where the deceased was. Accused wanted to ensure that deceased was dead.

The witness recovered 4 spent cartridges at the scene. The accused attempted to evade being arrested by taking a circuitous route to Bulawayo. Instead of using the main road to Bulawayo he took the Dandanda road which goes through Nkayi. He was only arrested when he was at Gwelutshena.

Accused was searched and was found with C.Z. Pistol serial number Z 549408 with a firearms certificate valid until 1 may 2014. The certificate was for home protection only. It was not to be carried about. The accused was aware of that.

The witness said the accused was taken to the scene for indications which he made freely and voluntarily. The witness drew up a sketch plan which was produced in court as exhibit 11.

What is of importance in the sketch plan is that Lindiwe Ndlovu and the accused indicated point "H" as the point where Wisdom Matupire the police officer was standing when the accused shot him in the chest. The officer was 4.8m away on the accused's left side. He was nowhere in between accused and deceased.

This court confirms its finding that the police office was not trying to intervene at all when the accused shot him in the chest below the right breast. The accused shot him deliberately intending to kill him in order to destroy evidence of the murder of the deceased.

The witness told the court that the accused alleged that he had been threatened by the deceased by mobile phone messages. He then took the accused's mobile phone Nokia C3 and opened it. He discovered that the two had been sending each other messages which revealed that they were no longer in good books. One of the messages dated 9 September 2012 about carrying his gun reads:- Dated 09/09/12

"You knew what, I am sick and tired of you. I told you I am married and do you honestly think I can be back with you again. I am waiting for you with my husband. You better come with a gun but once you miss. You are in trouble."

On that same day 9 September 2012 at 17:58 the accused sent the following reply

"This is the last message. Good bye Phati – Won't phone again OK! Keep the phone ok – I had promised it to you. I don't want you to get in trouble with your husband"

I pause to observe that after these messages the accused decided to take up his pistol and travel at night 210 km to Jotsholo to take up the challenge. True to his word that was the last message. He decided to go and kill her.

This witness was briefly cross examined. He was not challenged about point "H" on the sketch plan as being the point where the police office was when the accused shot him although the accused attempted to deny that in his evidence. He was just being untruthful.

This witness was also worth to be believed and this court accepts his evidence.

As a whole the state witnesses gave credible and acceptable evidence. Their testimony was well given. No meaningful challenge was made in respect of the murder itself.

The accused had no witness to call but gave evidence himself. His evidence was contrived. He concentrated on his love affair with the deceased. There is no doubt that he was in love with the deceased but he seems to have wanted the relationship to remain that of boyfriend and girlfriend. This is clear from all his dealings with the deceased. He never took any serious step to marry her. He did not take any steps towards marrying her. He did not take any steps to even be engaged to her.

In his letters he exhibits signs of wanting to buy love. He promises to look after her and her mother for as long as he lived. He, however, fails to do one important thing. He never promised to marry her. That is grossly unfair and immoral, in my view. He wanted to waste a 27 year woman's life by showering her with presents and money with no intention to marry her. He was a dangerous sugar daddy.

She needed to be married and settle down. That is why when she met Sikhumbuzo customary formalities were observed without delay and she was officially permitted to go and live with him.

The accused was immediately informed that their boyfriend and girlfriend relationship had come to an end. He did not believe and accept that. By so doing he created problems for

himself.

As a witness the accused fared very badly and is not worth to be believed. He was untruthful. For instance he was untruthful when he suggested that the deceased insulted him in front of people at the shop and said she was just using him and she in fact had paid him with her body. He wanted the court to believe that this was said in the presence of many people at the shops. That did not happen at all because Lindiwe Ndlovu who was there said the deceased and accused never spoke to each other and moreover there were no other people at the shops. He also lied about shooting the police officer accidentally when he was about to intervene. He shot the policeman intentionally wanting to kill and murder him.

The accused had alleged that he had a black out and fired indiscriminately but when it was pointed out to him that what he was saying did not make sense he retracted and said he had used a wrong word and that line of defence was not persisted with.

What admits of no doubt is the fact that the accused deliberately aimed at his victims and all his four shots hit the target.

The accused was further untruthful about the damaged ceiling and broken window panes in the shop. Lindiwe Ndlovu said there was nothing wrong with the ceiling and the window panes.

So the accused's suggestion that his shooting of the deceased was triggered partly by the state of the shop was false. He never mentioned that to Lindiwe Ndlovu.

The accused raised provocation as his defence. The accused's provocation is difficult to understand. The accused was told by the deceased that she had terminated what he termed the long standing love affair and had found a man who had even taken steps to marry her. She even called him her husband.

The accused would not accept that and did not believe it. He pestered her for some time. For instance on 2 September 2012 he wrote her a letter pleading with her not to find somebody else. However, by 9 September 2012 she was "sick and tired" of him. He still would not accept what she told him. She told him she was married and warned him to expect trouble from her and her husband if he tried to go to where she was.

In answer to the challenge he armed himself with his C.Z. pistol which he loaded with 6 rounds of ammunition. He then travelled 210 km during the night. When he found out that it was true that she was married he calls that provocation. That is self induced provocation which cannot avail the accused. This court holds the view that what happened in this case does not amount to provocation at all.

The accused is a cunning person. When he got to the police at Jotsholo he cheated the officer-in-charge that he was a law abiding person who did not want trouble yet he was going there to cause trouble. He sought police protection to camouflage what he intended to go and do. He knew that the presence of the police officer would prevent the deceased's husband from shooting him (accused). Having removed the deceased from her husband at Tshongogwe they went to Mateteni. She was now away from her husband who probably had a gun. The accused then took advantage of the situation and decided to shoot and kill her.

Having achieved his objective he attempted to kill the police officer to destroy evidence.

The accused's aim and object when he left his home number 31st Albans Drive, Parklands, Bulawayo was to go and kill the deceased using his pistol which he had loaded with 6 rounds of ammunition. When he got there he achieved his objective by shooting her at close range 3 times. He is guilty of murder with actual intent.

EXTENUATION

The accused carefully planned this murder. He had been thinking about it for quite sometime. When the deceased was in Bulawayo she had occasion to meet the accused and told him that their love affair had been terminated by her. He threatened to kill her with a gun if she implemented that. She told that to her mother.

This court has found that the accused was not provoked by the deceased at all.

The accused is a very cunning and devious person. He sought the assistance of the police to go and carry out his wicked deeds. There was no exchange of words between him and deceased. He shot her without warning.

The suggestion that he was triggered by the fact that deceased was no longer running the shop was just a red herring. He was not concerned about how the deceased was using the money from the business. He said she was free to use it the way she wanted. It is not true that he did not benefit from the business because he said he took some money to use at his construction company. That he planned to kill the deceased is also illustrated by what his friend said after he had shot the deceased and the policeman.

The reason why he killed the deceased was because she had terminated their love affair. His attitude was if he could not have her no one else could.

The accused is so wicked that after chasing Lindiwe Ndlovu trying to shoot her he went back to the deceased and shot her on the forehead to make sure that she was dead.

The accused is inherently wicked. After shooting the deceased he shot the policeman and wanted to shoot Lindiwe Ndlovu to destroy all the evidence.

Because of his wickedness and cruelty I am unable to find any circumstances which may reduce his moral blameworthiness.

In the result I hold the view that there are no extenuating circumstances in this matter.

Sentence

Sentenced to capital punishment.