

THE STATE  
**versus**  
EDMORE NYAMAZANA

HIGH COURT OF ZIMBABWE  
MOYO J  
HWANGE 11 & 12 NOVEMBER 2015

### **Criminal Trial**

*Miss M Munsaka* for the state  
*T. Mukuku* for the accused

**MOYO J:** The accused person faces a charge of murder, it being alleged that on 2 December 2011, and at a stream in Senza village, Nkayi he wrongfully and unlawfully killed Lizzie Mpofu.

The state tendered the following Exhibits;

- the affidavit of the police officer who identified deceased's body to the pathologist (Exhibit 4,)
- the post mortem report (Exhibit 5)
- the knife that was allegedly used in the commission of the offence (Exhibit 6)

The defence tendered the defence outline which was marked Exhibit 2. The state case hinges mainly on the circumstantial evidence in that there is no eye witness account on the murder itself but there are witnesses who told the court the following:

#### Samkeliso Sibanda

She told the court that she had gone to church with the deceased whereupon the accused came looking for deceased, deceased then told her that accused said they should go together as there had been a break-in at their home in Gweru. The witness discouraged the deceased from going with accused and told her that they would go together at the end of the church meeting. After the church meeting the three walked together although she was at a bit of distance from accused and deceased and did not hear what accused and deceased discussed. They later found a scotchcart and she asked for a lift, they were offered a lift but accused discouraged deceased from boarding

the scotchcart and said him and deceased would remain behind and follow. That was the last this witness saw of deceased and then she heard the following day that deceased was picked dead after she did not pitch up the previous night. She also attended the scene and realized that where deceased had died was about 9 paces from the place she had parted with accused and deceased as she boarded a scotchcart. She said she was related to deceased and she knew accused well and would not mistake him for any other person as she had seen him on two previous occasions when he visited. This witness gave her evidence well and she was a fair witness. A question was posed to her as to what deceased and accused talked about and she said whilst, she did not hear, they appeared to be conversing well and did not seem to be fighting.

This is in our view is a comment coming from a witness who is not trying to concoct any story, for had she been bent on building up a story she could have insinuated that they were quarrelling. Nothing much turned on the cross examination of this witness.

Office Amos Mpopu was the second state witness who was the father to the deceased, he also gave his evidence well. He confirmed that although he had not seen the accused at the material time, accused had been seen by his late daughter Sibonginkosi Mpopu and he infact saw the accused's bag which Sibonginkosi brought home saying accused had inquired about deceased's whereabouts and she told him deceased was at church. Accused had then given Sibonginkosi his bag and then followed deceased to church. He confirmed that accused had been coming to his homestead to visit deceased and his two children until that occasion when deceased died and he was never seen ever again. He had previously heard rumours that deceased and accused were not living together in peace and in asking deceased she said all was well. When he told her that people said otherwise, she admitted and said but it was no big deal and that they would eventually manage to settle their differences. When his daughter did not come back home from church and when he could not locate her, he became suspicious that maybe accused had harmed the deceased. He went to check at the scene where Samkeliso allegedly passed with accused and deceased, he thought he would see some struggle marks but did not see any. He then went back home. Little did he know that he left deceased a few meters away from where he had checked.

We consider Amos Office Mpopu to be a fair witness for he even told the court that where the accused and deceased had parted there were no struggle marks, to suggest anything.

This is a witness who strikes the court as being bent on telling the truth and not making up a story. Nothing much turned on the cross examination of this witness, in fact the cross examination elicited very useful comments that in fact buttressed the witness's claims.

The investigating officer Mhuriro told the court how accused made indications freely and voluntarily first pointing at the area, him and deceased parted with Samkeliso and later at the area where he killed deceased. This witness also confirmed that accused had been at large since December 2011 and the docket had since been closed on that account until November 2014, when accused was arrested and the docket was re-assigned to him.

The accused person for himself filed a defence outline and removed himself from the scene of the crime altogether. He said he was never at Nkayi in December 2011. In his evidence in chief he said that he last visited Nkayi in 2008. He last saw deceased at the clinic in June 2009 when they left Gweru for Nkayi. He never heard of the deceased and the children from June 2009 to November 2014 when he was arrested. He did not make any efforts to check on them either. He changed addresses in Gweru because of rental affordability problems. He did not seek to inform deceased and the children of his new residence. He showed the police a spot at the river as the spot where he killed deceased because the police had guns and they had demanded that he shows them the spot. He ended up pointing at any spot. Surprisingly the spot he pointed at according to the investigating officer is the same spot that had been sketched by the previous investigating officer as the one where deceased had been found.

The post mortem report gives the cause of death as haemorrhagic shock, multiple neck stabbing, murder. It further gives the following in detail.

“There are 12 stab wounds on the right side of the neck. The widest is 5cm. The deepest is 7cm. The wounds cut through the skin, muscles and major neck blood vessels.

Right cheek wound 3.5cm wide and 4cm deep. Left cheek 3,5cm wide and 3cm deep. Left ear lobe middle outer part 5mm through and through wound. Bruises of lower limbs.

Samkeliso Sibanda and Office Amos Mpofo also confirmed seeing these multiple wounds on the deceased after her body had been found and they told the court that the knife was left stuck inside deceased's cheek and when a police officer tried to remove it, it broke the handle with the blade meaning inside the cheek.

From the evidence before us the following facts are established.

1. Accused went to Nkayi in December 2011. Samkeliso Sibanda saw him and Amos Office Mpofo saw his bag that he had given to Sibonginkosi upon his arrival.
2. The accused person was the last to be seen with deceased after having pursued her to church and discouraging her from boarding the scotchcart, therefore causing her to remain with him as Samkeliso Sibanda went in the scotchcart.
3. He indicated to the police the place where deceased and himself parted ways with Samkeliso and where he had murdered deceased.
4. From 2009 (according to accused's own version) to 2014, he never checked on the deceased and the children.
5. Accused changed addresses in Gweru and never heard of his wife's death from 2011 to November 2014.
6. The deceased died from injuries sustained from a brutal assault with a knife as evidenced by the post mortem report.

We have already stated that this is a case that hinges purely on circumstantial evidence.

The *Commonwealth Magistrates Book* provides the following on circumstantial evidence;

“Means, motive opportunity are all examples of what is called circumstantial evidence. Where direct evidence of a particular act or state of affairs is not available, one may, and indeed must, have resort to indirect means of establishing facts--- since the direct evidence of a witness is open to all weaknesses of observation and recollection ---- evidence of a circumstantial nature kind may be less contestable and more easily relied upon. To show that a defendant had the means, a motive and the opportunity may go some way towards convincing us of his guilt. It may raise a *prima facie* case against him which he is called upon to answer.”

Where the conviction of an accused depends upon circumstantial evidence, and the drawing of inferences from all the established facts, then the inference sought to be drawn must be consistent with all the proved facts, and the facts should be such that they exclude every reasonable inference from them, save the one sought to be drawn. Refer to the cases of *S v Blan* 1939 AD 288, *R v Edwards* 1949 SR 30, and *Marange and others v S* 1991 (1) ZLR 244 (SC).

In this case accused was the last seen with deceased alive, he thereafter disappeared, left his place of residence and never checked on his children from December 2011 to November 2014. The only reasonable inference that can be drawn here is that accused killed the deceased and

thereafter fled and changed addresses, for had it not been so, accused would naturally check on his ex-wife and children in the three years following deceased's death from December 2011. Even if he claims that he did not know that deceased had died, accused did not attempt to communicate at all with deceased and he in fact changed addresses and did not care that his own children and ex-wife no longer knew where he lived or resided.

The accused person's other problem is that he tries to remove himself from Nkayi altogether and yet the evidence that he was there and was the last to be seen with deceased at about 10m from the place where she was to be later found dead. Even if one were to ask the question is the accused person's defence reasonably, possibly true? It cannot be found to be so, for he says he last saw deceased and the children when they left him for Nkayi in June 2009, he never checked on them, never communicated with them, did not hear about them, did not seem to care and did not know anything about them until November 2014 (5 years later) when he got arrested. This court cannot find such a defence to be reasonably possible true, for no man can behave thus for absolutely no reason as accused would want this court to believe. He also changed addresses but did not bother to inform his ex-wife and children that he now lived at a different place. Guilt signs are seen throughout accused's conduct. He was last seen with deceased by Samkeliso Sibanda and deceased was to be found dead near the place where Samkeliso had left them. Again he later changed addresses and was never to be seen in Nkayi again. It is the finding of this court that the only reasonable inference to be drawn from all the proven facts is that indeed accused killed the deceased although the motive is not clear. The defence counsel had no meaningful submissions to make on behalf of the accused either, in light of the overwhelming evidence. From the injuries detailed in the post mortem report which we have extensively listed in this judgment, the accused person could not have intended anything else except the deceased's death. Death was his aim and object for him to stab deceased 12 times in the neck tearing through major blood vessels, and also proceeding to stab her in the cheeks and on the head several times to an extent that he left the knife deeply lodged with its blade in deceased's cheek. This is a brutal assault and a callous murder where from the court cannot deduct any other aim except to kill the deceased. The accused person is accordingly convicted murder with actual intent.

Sentence: The accused is sentenced to life imprisonment.

*National Prosecuting Authority, the state's legal practitioners  
Maronedze, Mukuku & Partners, accused's legal practitioners*