

THE STATE

Versus

VIOLET MOYO

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 24, 25 AND 26 FEBRUARY 2015

Ms P. Munyeriwa state counsel

P. Muzvuzvu defence counsel

Criminal Trial

KAMOCHA J: The 22 years old female accused told the court on arraignment that she admitted causing the death of a 10 months old baby but did not intend to kill him. The allegation was that on 1 February, 2013 and at house number 13889 Cowdray Park, Bulawayo, she did wrongfully, unlawfully and intentionally kill and murder Ethan Mthabisi Phiri a male infant in his lifetime therebeing by suffocating him in a closed linen cabinet. A plea of not guilty was entered as the accused said she lacked the requisite *mens rea* when she caused the death.

A list of exhibits was read and produced in court. The first exhibit was the state outline followed by the defence outline which was marked as exhibit 2. In it the accused maintained that she lacked the requisite *mens rea* when she caused the death of the infant as she had not intended to terminate his life. She explained that by placing the infant in the linen cabinet her intention was to muffle the child's cries in order that the infant could not be heard crying by the neighbours.

She acknowledged that her actions were grossly negligent and that she was genuinely contrite for the suffering she had caused to the deceased and his parents.

She then prayed that she be found not guilty of the charge of murder.

Exhibit 3 was the accused's confirmed extra curial statement. It gives the details of what transpired and reads as follows:-

“My name is Violet Moyo am 20 years old and I was working at house number 13889 Cowdray Park minding a 10 months old baby. It was on a Friday morning when I was left with the child without any serious problem but had flu only. I gave the child porridge at around 07:35 and the child slept and woke up for the second time at around 11:00 hours and gave him porridge for the second time and after he finished eating he started crying. I tried to find the reason why he was crying but I could not get the reason. I got possessed by an evil spirit and laid the child in a cupboard and covered the child with a blanket and closed it and went to the sitting room and watched T.V. forgot about where the child was since my conscience was telling me that the child was grown up. I panicked, I thought of the child. I remembered where I had placed the child. I got into the bedroom and opened where I had laid it and found it dead. The child died in a manner which I was not expecting since I had no intention to do that but I was thinking that the child would stop crying and sleep. Due to the shock I was in, I then had courage of taking the child and laid it between the bed and headboard with the intention to purport that the child had fallen off. Later I got into my sound senses and regretted what I had done and told them the whole truth. I was afraid to tell them the truth soon after the incident since I was confused and could not understand what happened. I said to myself I would tell them when it was over. This is what happened.” Emphasis added.

Exhibit 4 was an affidavit by Constable Isaac Jacob who identified the body to Dr S. Pesanayi who examined the remains of the deceased and compiled exhibit 5 the post mortem report in which he concluded that death was due to (a) asphyxia (b) broncho aspiration. The doctor further remarked that the post mortem was consistent with asphyxia secondary to broncho aspiration.

Exhibit 6 (a) (b) (c) and (d) were photographs of indications made by the accused to Assistant Inspector Gwenya. The indications were made freely and voluntarily without any undue pressure being brought to bear on the accused.

Exhibit 6 (a) is a photograph of the headboard drawer or linen cabinet into which the accused placed the deceased. 6(b) indicates a 2in 1 blanket into which the accused wrapped the deceased before placing him into the headboard cabinet. The blanket was wrapped as if it had something inside – shaped like it had a small child in it. 6(c) indicates the opened headboard cabinet which had another blanket in it. Blankets are normally kept in that cabinet. 6(d) indicates a space between the bed and headboard where accused had placed the deceased and alleged he had fallen.

The state led evidence from two witnesses. Their evidence was not challenged under cross examination and was therefore common cause.

Assistant Inspector Gwenya's evidence was that the accused had covered the deceased's head with the two in 1 blanket. That was narrated by accused as she wrapped the blanket in 6(b). That was also confirmed by the accused herself in her evidence. Faith Natasha Mlalazi whose parents own the house where deceased's parents were tenants narrated in detail what took place on the fateful day. She had seen the baby playing in the morning. At around 12 noon she had asked the accused where the baby was but the accused lied to her that he was sleeping when she had already wrapped him with a heavy blanket and placed him in the headboard cupboard.

At around 3pm the accused who appeared to be in a panic mode called her and lied that the baby had fallen. She went with accused into the bedroom where she found the baby trapped between the headboard and bed. Accused said he had fallen in that position. Natasha said that did not make sense as the head of the baby was in between the bed and headboard. His feet and torso were out. The accused said she is the one who had put him there so as to create an impression that he had fallen. Her plan to deceive was clumsy and could not deceive Natasha.

The evidence of the rest of the witnesses listed on the state outline was admitted by consent as it appears in the state outline in terms of section 314 of the Code.

The accused gave *viva voce* evidence and repeated her confessions contained in the confirmed extra curial statement. She at one stage sought to make some variations which she abandoned under cross examination and did not want to persist with them. She had suggested that she had left a space to allow air into the linen cabinet. She also wanted to change her story and said she had covered the baby with a towel not a two in one blanket. The attempt to change was a feeble one because she quickly apologised and said the alterations were not persisted with.

The correct position was that she had wrapped the 10 month old infant into a two in one blanket. She had completely covered him from head to toe. The baby could not unwrap himself. Having done so she placed the baby like a parcel into the linen cabinet and closed it. She admitted under cross examination that she appreciated that a person needs air to breathe in order

to survive. She appreciated that by wrapping him in that heavy blanket she would starve him of the air. As if that was not enough she put him in a linen cabinet with very limited circulation of air. One would not be too far off the mark in entertaining the idea that she wanted to make sure that the baby died. When she wrapped the child she admitted that she could hear a cry of distress and yet she still placed him in the linen cabinet for a period of nearly 3 hours without checking to see what was happening to him in that condition.

It admits of no doubt that by wrapping a 10 months old infant from head to toe in a heavy blanket and further placing him in a linen cabinet which has a limited circulation of air death was substantially certain. I propose to find the accused guilty of murder with actual intent.

Sentence

The defence and state counsel have summarised all that needed to be said for and against accused.

She would indeed have been sent to no less than 30 years imprisonment if she was not a young woman first offender with a small baby.

Her actions were brutal. She killed the deceased in a cruel and most painful manner. Indeed stories about domestic workers committing all sorts of crimes at their places of work are on the increase. Young couples have endless problems from their child minders. Despite the fact that such crimes are widely reported in the media the miscreants do not seem to be deterred. Time has come for adequate and deterrent sentences to be imposed.

The deceased lost his life at a very early age. This court will always guard jealously the sanctity of life.

In the circumstances the justice of this case will be met by a sentence of twenty-two years imprisonment.

Prosecutor General's Office, state counsel
Mazvuzvu & Mguni defence counsel