

THE STATE
versus
CHARLES CHIFAMBA

HIGH COURT OF ZIMBABWE
MAKONESE J
GWERU 1, 2, 3 AND 4 FEBRUARY 2016

Criminal Trial

T. Mpariwa for the state
Ms G. Nyabawa for the accused

MAKONESE J: This matter involves a murder convicted in gruesome circumstances. The deceased was brutally murdered. She was killed in cold blood, in ruthless fashion. The accused was aged 31 years at the time of the commission of the offence. The deceased was aged 29 years at the time she met her death. The accused has been arraigned in this court on a charge of murder. It is alleged that on 12 November 2014 and at house number 4451 Mkoba 17 Gweru the accused caused the death of Fadzisai Leonara Chipfunde by strangling her neck with a cloth and by stabbing her twice on the chest with a knife, realizing that there was a real risk or possibility that his conduct may cause the death of the deceased.

The brief allegations surrounding the commission of the offence are summarized in an outline of the state case (Exhibit 1). The state alleges that on 12 November 2014, and in the afternoon, the accused left his residence and visited the deceased who was at her brother's house, in Mkoba, 17 Gweru. The accused armed himself with an assortment of items, namely a knife, a screwdriver, a bottle of kontakill poison, and four satchets of rat kill poison granules. The accused then confronted the deceased demanding to know why she had terminated their love affair. The accused grabbed the deceased and tied her hands to the back. He tied her legs and with a piece of cloth. He strangled her by tying her neck with a wrapping cloth. Thereafter, the accused stabbed the deceased twice on the chest with a knife, causing her death. After committing the offence, the accused consumed rat kill poison in a bid to commit suicide. Accused also drank kontakill pesticide. The offence was discovered by one Warren Madara who called for help. Accused was taken to hospital where he eventually recovered.

The accused denies the allegation. He tendered into the record of proceedings a defence outline (Exhibit 2) detailing the nature of his defence. He averred that on the day in question he proceeded to deceased's house with the intention of enquiring why the deceased had decided to terminate their love affair. The two had a misunderstanding which led the accused to prepare food which he laced with poison. Accused took the poisoned food whilst the deceased was watching. Deceased alleges that he became dizzy, lost strength and vision and became unconscious soon after taking the poison. He only learnt of the death of the deceased when he gained consciousness in hospital and was deeply hurt as he loved his girlfriend. The accused denied strangling the deceased with a piece of cloth. He denies stabbing the deceased in the chest with a knife or some other sharp instrument. The accused states that the Post Mortem Report does not support the claims by the state that the deceased was killed by the accused. The accused suggests that deceased was killed by a third party after he had taken poison and was unconscious. That third party, so accused avers, is the one who locked the door to the sitting room from inside after killing his girlfriend.

The accused's confirmed warned and cautioned statement was produced as Exhibit 3. The warned and cautioned statement is in the following terms:

"I had a misunderstanding with the deceased on the fatal day. I decided to commit suicide. I prepared food and laced it with poison while the deceased looked and entreated me to stop the suicide act. I recall that after sometime, I started losing strength and vision and voice. I then lost consciousness. I do not know that I murdered the deceased and if I did, how I did so." (emphasis mine)

The state then tendered the Post Mortem Report as Exhibit 4. Dr I. Jekonya compiled the report after conducting an examination of the remains of the deceased. He concluded that the cause of death was:

- (a) Manual strangulation and heart stabbing
- (b) Callous murder.

On external examination the Post Mortem Report indicates the following:

"Marks of violence

1. Has blood on the chest back and head. Has human hair attached to her hair. There is a maroon cloth tightly around the upper neck also covering the mouth. This cloth has an outer tighter reef knot just below the chin and goes tightly around the neck and another

inner reef knot just behind the outer first reef kind and cloth goes tightly around the neck. Accused used this cloth by putting its middle just under the neck front and both halves went behind the neck and met in front to make the second (inner) reef knot (stated above) which also tied the mouth. There is a 12cm long and 4cm wide and 5(mm) deep bruised groove on the skin of the front of the neck. Where the maroon cloth made its first contact with the neck.

2. Has two stab wounds on the left side of the chest. The first stab wound (a) is 3cm from the midline and in 3cm above the left-breast nipple (level of fourth intercostal space.) It travelled upwards in the chest wall muscles and entered the left cavity just between the first and second ribs adjacent to the sternum. In the chest cavity it stabbed the heart as noted below (a). Second chest stab wound (b) is 4cm below stab wound (a) and runs upwards again and went into the chest cavity between third and fourth left ribs adjacent to the sternum and stabbed the heart as noted below i.e. heart stab wound (b).

Internal examination

Skull: No fracture

Brain: Normal

Pericardium/Heart

- (a) Stabbed upper part of the heart 1 x 0.8cm at the junction of heart and aortic root.
- (b) Stabbed lower part of the heart 0.8 x 0.6cm i.e. lower left ventricle from the pericardium to the endocardium.
- (c) The above (a) and (b) heart stab wounds caused minimal haemo pericardium and very minimal haemothorax (blood in the chest cavity).

Other remarks

The heart stab wounds (a) and (b) are fatal and were carried out at the point of death of the deceased or just after death since there was very minimal haemo pericardium. If these stabbings had been done while fully alive there was going to be massive haemo pericardium and massive haemothorax because the heart will be strongly pumping or partially pumping therefore the direct immediate cause of death should have been the neck manual strangulation. This was an intentional callous murder.”

The State then produced a knife with a black handle as Exhibit 5. The knife which was still stained by what appeared to be human waste weighs 0.065kg. Its blade is 12cm long and ± 2cm at its widest point. A screwdriver with a green handle was entered into the record as Exhibit 6. It weighs 0.05kg. Its length is 17cm and the metal portion is 7cm in length. A blue plastic cup recovered at the scene of the crime was tendered as Exhibit 7. The last Exhibit 8 is an empty brown pesticide bottle.

The State case

The state led *viva voce* evidence from four witnesses. I do not propose to summarise what each witness stated but shall endeavour to highlight the salient points in each witness evidence.

Warren Madara

This witness is 19 years old. He completed his 'A' Level studies and is waiting to gain entry at University. He was the first witness to arrive at the scene of the crime as events began to unfold at house number 4451 Mkoba 17, Gweru. The witness knew the accused as the deceased's boyfriend. The deceased was his sister-in-law and they were residing together at this residence. On 12 November 2014 and at about 1530 hours he arrived home from school and found the gate locked. He knocked at the gate but no one came to open the gate. He phoned the owner of the house Takudzwa Chipfunde who advised him to jump over the gate as the deceased was inside the house. Warren jumped over the gate and entered through kitchen door. He was met with a strong smell of a pesticide. He observed some vomit on the floor and the trail led to the sitting room. The witness observed that the door to the sitting room was locked. This was unusual as this door was never locked before. He tried to open the door but realized that the door was locked from inside. The witness phoned Takudzwa again and told him about the locked door. He was advised to forcibly open the door. The witness did as instructed but failed to open the door. The witness also noticed that the door was blocked by a heavy object. The witness later ascertained that there was a male person inside the locked room. The witness enquired where the deceased was and he was advised that she had gone to Mkoba 19. Takudzwa then asked the witness to hand over the phone to the deceased but this was not possible as the male voice responded by saying deceased was not in the house. At that stage Takudzwa advised the witness that he was sending his friends to the house to assist. At that point Nigel, (deceased's son) arrived at the house. Nigel proceeded to the locked room and when he came out of the house he informed the witness that his father (accused) was inside the locked room. The witness left the house and enlisted the assistance of Dalton Chikonye and Brian Muverengi who both failed to open the locked door. When Takudzwa Chipfunde later arrived at the house he broke down the door to the sitting room. The witness then went inside the room and observed the accused lying on a sofa motionless but breathing. Next to the sofa was some blood stained vomit. The witness

also observed that the accused had soiled himself. He testified that he noticed that the deceased was lying prostrate on another sofa. Blood was oozing from her head and face and on the floor was a pool of blood. The witness observed that the deceased's hands were tied from the back. She was lifeless. Takudzwa went to report the matter at the police station. When the police arrived they took control of the crime scene and an ambulance ferried the accused to hospital.

The evidence of Warren Madara reads well and is easy to follow. He gave a clear narration of what he observed. There was no exaggeration on his part. His testimony was not controverted in any material respects by defence counsel under intrusive cross examination. His evidence is credible and is worthy of belief.

The second state witness was Takudzwa Washington Chipfunde

This witness testified that he is the owner of house 4451, Mkoba 17, Gweru. He knows the accused as the deceased's boyfriend. He knew the deceased during her lifetime as his sister. On 11 November 2014, a day before the fateful day, the deceased visited him at his house. The accused was also present at the house. The deceased complained that accused was physically abusing her. She wanted to terminate her relationship with the accused. She further complained to this witness that on a previous day the accused had tied her hands and legs with a piece of cloth and threatened to commit suicide whilst she watched. After receiving this report the witness proceeded to deceased's house and collected some of her belongings. He told accused that the deceased would now be staying at his house and that he did not want accused at deceased's house. Accused pleaded to be allowed to sleep over till the next day. The following day 12 November 2014 at around 1600 hours the witness was at work when he received a call from Warren Madara indicating that the gate was locked and there was no one coming out to open the gate. This witness advised Warren to jump over the gate and enter the house. A little while later, Warren phoned again and told him that he had entered the house but could not gain entry into the sitting room as the door was locked from inside. The witness phoned his friends Dalton Chikonye and Brian Muverengi and requested them to go to the house to ascertain what was going on. After knocking off work the witness rushed home and observed that there was vomit and human faecal waste on the floor. The trail of the vomit and human waste led to the sitting room. The witness then observed that there was a lock set on the sitting room door which

was previously not there. This door had always been left unlocked. The witness proceeded to kick in the door. Upon entering the sitting room he said he was shocked to observe the deceased lying on a sofa prostrate. She had her hands tied to her back with a piece of cloth. Her legs were also tied using some clothing from the sofas. She was facing downwards. He checked her pulse and noted that she was dead. The witness observed blood on the deceased's head and face. There was blood coming out through her eyes. On the other side of the room the witness observed the accused lying on another sofa, which had been used to block the door. The witness further observed that there was faecal waste on the sofa on which accused was lying. The witness left the room crying. He realized that the deceased's son Nigel had followed him into the room and had witnessed this horrific scene. The witness proceeded to make a report at the police station. Before leaving the premises he instructed Brian Muvengeri not to allow anyone into house. When the witness came back in the company of police officers he observed that accused had removed all his clothes and was naked. It was then that the witness was informed that the accused was alive. The police instructed the accused to rise up and kneel on the floor to enable them to handcuff him. At this stage that accused said to the witness:

“Sorry, I did not expect this to get this far.”

The witness stated that he was restrained from assaulting the accused by the police. The witness indicated that a knife, screwdriver, a bottle of pesticide and a blue plastic cup were recovered from the crime scene.

The witness explained that he had enjoyed good relations with the accused before this incident but that relations were strained when he was informed that accused was abusing the deceased. The witness was subjected to lengthy cross-examination. He was comfortable on the witness stand. He was not discredited in any manner. He was a credible witness and the court accepts his evidence as an accurate reflection of the events prior to the date of the commission of the offence, and of the observations he made at the scene of the crime.

The third state witness was Dalton Chikonye.

He resides at 4533 Mkoba 17, Gweru. He is a friend and neighbour of the last witness, Takudzwa. He knew the deceased during her lifetime as his friend's sister. He knew accused as the deceased's boyfriend. On 12 November 2014 he received a call from Takudzwa to go and

find out what was happening at his house, as someone appeared to have locked himself in the sitting room. Upon arrival at the house, the witness observed that the accused had locked himself in the sitting room. He tried to open the door but failed as the door was locked from inside. He called out to the accused to open the door. The accused refused to open the door and claimed that he was drunk. The witness enquired why the house was smelling of pesticide and the accused responded by saying the house had been fumigated. The witness went further to ask accused where the deceased was and accused responded by saying she was not at the house and had gone to Mkoba 19. The witness left the premises and concluded that the accused was drunk. After a while this witness received a message from Brian Muverengi to the effect that he should proceed to Takudzwa's house because something bad had happened. The witness said when he arrived at Takudzwa's house he was informed that accused and the deceased were dead and were in the sitting room. He later gathered courage and entered the house with Brian. On entering the house they discovered that accused was still breathing. The deceased had no pulse. She was dead. The deceased had blood all over her head and face. She was facing downwards. Her hands were tied at the back. Deceased had a cloth tied tightly around her neck and legs. Her mouth was tied with a piece of cloth. The witness testified that after the arrival of the police they took over the crime scene.

The evidence of this witness is straightforward. He gave evidence in a concise manner. There was no exaggeration and his account is easy to follow. He has no motive to lie. The court finds his evidence worthy of belief.

The state called at its fourth witness, Toziva Manyanye. He is an Assistant Inspector with the Zimbabwe Republic Police. He has been in the force for 22 years. He was the Investigating officer in this case. The witness narrated how he conducted his investigations in this matter. On 13 November 2014 and at around 0800 hours he visited the scene of the crime. The scene had been guarded overnight by police details. The witness entered the sitting room. He saw the deceased as he entered the room. She was lying on a two-seater sofa with her face facing down. The deceased had a cloth tied around her neck and mouth. She was donning a T-Shirt. He observed a pool of blood which was drying just below her face. He observed that there was a table on his right. On the table was a screwdriver with a green handle. There was blue plastic cup, a knife with a black handle and some empty sachets (rat kill poison). There was

also a brown pesticide bottle which was empty. There was a pair of green jean trousers and black shoes on the floor. The witness also observed that a second sofa was soiled with faecal waste. The witness interviewed a number of witnesses to establish what had had transpired. Before he left the scene, the witness noted that the sitting room door had been forcibly opened and that the only other entrance to the sitting room was a door leading outside the house. This witness sought permission from the owner of the house to break this door as the police coffin could not be moved through the kitchen door because of its size. The witness confirmed that they broke the padlock to this door as the keys had been lost several years prior to this incident. The witness ascertained that the entire house had bulgar bars on all windows. He concluded that there was no possibility that anyone could have gained entry using the windows to this house at the time of the commission of the offence. The witness later recorded a warned and cautioned statement from the accused. The statement was recorded in the presence of the accused's defence counsel. That statement now forms part of the record.

In spite of the robust cross-examination of this witness, there were no inconsistencies of any material nature. The evidence was given with such clarity that the court is satisfied that the evidence is not only reliable but credible. The evidence corroborates that of the rest of the state witnesses. The court has no hesitation in accepting the evidence of this witness. I find no element of exaggeration or bias in this evidence.

The state then sought and obtained formal admissions on terms of section 314 of the Criminal Procedure and Evidence Act [Chapter 9:07]. The evidence of the following witnesses as it appears in the outline of the state case was accordingly admitted with the consent of the defence; namely;

- (a) Brian Muverengi
- (b) Prince Simbarashe Shumba
- (c) Tinaye Mujeri
- (d) Dr I. Jekeny
- (e) Seargent Kauteno.

The Defence Case

Accused elected not to give evidence under oath. He adhered to his defence outline. He was then cross-examined at length by counsel for the state. He denied killing the deceased. He alleged that an unknown third party must have killed the deceased after he had taken poison and fallen conscious. He stated that he dearly loved his girlfriend. He denied that he had held a discussion with the deceased's brother the day before the commission of the offence. He further denied that he had been told that his relationship with the deceased must end because of his abusive tendencies.

The accused had a clear recollection of all the events leading up to his suicide attempt. Thereafter he appears to have developed selective memory. He spoke clearly and logically about everything else pertaining to this case except the circumstances that led to the death of deceased. He indicated that on the day in question he visited the deceased at her brother's house at Mkoba 17. He found the deceased in the kitchen washing dishes. There was no one else at the premises. He quizzed the deceased about her intention to terminate the relationship. He says he informed the deceased that he could not envisage life without her. He went on to indicate that people would laugh at him if they came to know that the relationship had ended. He confirmed that the relationship had endured for at least four years but he conceded that he had not paid lobola. In essence therefore the deceased and accused were boyfriend and girlfriend prior to this incident. The accused crucially admitted that before he visited the deceased on this fateful day, he had purchased a pesticide, (contakill) and four satchets of rat kill poison. He stated that he was prepared to commit suicide while the deceased was watching if she persisted in terminating the affair. Accused stated that he was prepared to die for her. This he says reflects the deep love he had for the deceased. He further indicated, that his intention was to commit suicide in deceased's brother's house. The accused narrated that once he realized that deceased was determined to end the affair he took some bread and placed the granular rat kill poison on the bread and ate it. The deceased started screaming saying the accused should not have done that. Accused then says he drank the pesticide from the brown bottle. Immediately thereafter he started feeling dizzy. He lost his voice. He lost strength and started to vomit. He proceeded to the sitting room and lay on a sofa. He fell unconscious and only recalls that he gained consciousness at Gweru General Hospital. This is the accused person's version. It is telling to

note that throughout his testimony the accused never expressed any sorrow about the death of the deceased whom he claimed he dearly loved. When he spoke about the death of the deceased, the accused expressed no regrets and there was no emotion shown at all.

The accused was, in the court's view, a poor witness. He was not comfortable when explaining a number of crucial pieces of evidence. Warren Madara, Dalton Chikonye, Brian Muverengi and Nigel Chipfunde all communicated with the accused whilst he was in the locked sitting room but he denied that he spoke to any of these persons and that he had refused to open the door. Further the witness denies that he discussed his dispute with Takudzwa, a day before the commission of the offence and yet on 12 November 2014 he went to visit the deceased he was armed with pesticide and rat kill for the purpose of committing suicide. This does not make sense. Accused went to the house prepared for any eventuality.

The accused's evidence had several inconsistencies. It does not read well. The court finds that his evidence does not tell the whole story. His evidence is therefore rejected by this court.

Proved facts

The court finds that the gruesome murder was committed after careful and meticulous planning. The murder was executed with great resolve and determination. The manner in which the deceased was tied on the legs, hands and mouth indicates that the killer did not want the deceased to survive. The two stab wounds were inflicted with a great degree of force as reflected in the Post Mortem Report. The stab wounds were deep and pierced the heart. The pathologist concluded that the stabbings must have occurred at the point of death or after strangulation because there was no evidence of bleeding in the pericardium. The established fact is that after the deceased was strangled, the attacker wanted to make sure that the deceased did not survive.

The evidence also establishes that from the time the accused was located in the locked room by various witnesses no other person had access to that room. Only the accused and the deceased were in the locked room. The facts establish that the deceased was dead inside the locked room contrary to assertions by the accused that she had gone to Mkoba 19. The results of the Post Mortem Report support the conclusion that the knife recovered at the scene and which was covered with faecal waste was used in the stabbing. It is common cause that the accused

attempted to commit suicide. His life was saved by the witnesses who discovered that he was inside the locked room and broke down the door. He was taken to hospital from the scene of the crime and told Takudzwa that he was sorry for what had happened. These are the established facts.

The Law on circumstantial evidence

The state has largely relied on circumstantial evidence. There is no eye witness account. The direct evidence available relates to the witnesses who testified that they spoke to the accused when he was behind the locked sitting room door. That door was broken down and the deceased's body was discovered inside. There is no evidence that any third party entered or exited the room after inflicting injury on the deceased.

It is important to underline that circumstantial evidence is indeed evidence which the court may rely upon to secure a conviction provided the essential requirements for the adoption of such evidence are met. The requirements for the acceptance of circumstantial evidence are well transversed in our jurisdiction. In the case of *R v Blom* 1939 AD 188. WATERMEYER JA, laid down the requirements as follows:

- “(a) the inference sought to be drawn must be consistent with all the proved facts. If it is not the inference cannot be drawn.
- (b) the proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be doubt whether the inference sought to be drawn is correct.”

See also the cases of *S v Marange* 1991(1) ZLR 244 (SC) at page 249 and *State v Shoniwa* 1987 (1) ZLR 215.

Whether or not the state proved its case beyond reasonable doubt

It is contended by the state that the evidence of the state witnesses, taken together with the Post Mortem Report and the exhibits recovered at the scene of the crime presents a very strong case which established proof beyond reasonable doubt. I agree with that contention. Faced with insurmountable evidence, the accused gave a false defence which is not worthy of belief. The defence is so fanciful and out of the ordinary that this court makes a specific finding that the only

reasonable inference is that accused planned to commit suicide after murdering the deceased. He believed he was going to die and avoid answering these allegations. Accused's plans failed because he survived the attempted suicide.

Proof beyond reasonable doubt is not proof beyond a shadow of doubt. I am fortified in my view by the remarks of DUMBUTSHENA (CJ) in *S v Isolano* 1985 (1) ZLR 62 at page 64F where the learned judge laid down the position as follows:

“In my view the degree of proof required in a criminal case had been fulfilled. In *Milner v Minister of Pensions* [1947] 1 All ER 372 (KB), Lord Denning described the degree of proof at page 373H as follows:

“--- and for that purpose the evidence must reach the same degree of cogency as is required in a criminal case before an accused is found guilty. That degree is well settled. It need not reach certainly, but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful possibilities to deflect the course of justice. If evidence is so strong against a man as to leave only a remote possibility in his favour which can be dismissed with the sentence of course it is possible, but not in the least probable, the case is proved beyond a reasonable doubt, but nothing short of that will suffice.”

See also the case of, *Bigknows Wairosi v The state* SC 127/13.

I am satisfied that the evidence that has been placed before the court is indeed sufficient, credible and reliable to eliminate any doubt that accused committed this heinous murder. I am mindful of the fact that no onus is placed on an accused person to prove his innocence. I hasten to add that in this case before the court accused's defence amounts to a bare denial. It is the view of this court that it is inconceivable and improbable that an unknown third party could have sneaked into the house after the accused had taken poison and was lying unconscious on the sofa and killed the deceased. The accused had a motive and an opportunity to kill the deceased. He was not prepared to terminate the affair and no one else could have the deceased if he could not have her. The opportunity to kill the accused presented itself when he was left alone with the deceased at the house in Mkoba 17. The accused was well prepared. He had the poison in his possession and when he was convinced that the deceased was not changing her mind regarding the relationship, the accused was not prepared to face reality. He executed his plan to murder the deceased before attempting to commit suicide.

I accordingly, find that that the state has proved its case beyond reasonable doubt. The accused is found guilty of murder with actual intent.

Sentence

The accused has been convicted of murder with actual intent. The accused killed the deceased by tying her hands behind her back and by tying her mouth and legs. The accused died of manual strangulation. To ensure that deceased did not survive accused stabbed the deceased twice in the chest, perforating the chest cavity and the heart. There can be no doubt that this was a most horrific murder committed in cold-blood. The accused person literally executed the deceased in a cruel and brutal fashion. He acted with great resolve and determination. The murder was committed with pre-meditation. The deceased must have died a very painful death. The accused person raised a fanciful and false defence which the court has rejected. He defended himself to the bitter end. He has shown no remorse in any manner shape or form. His cruel deed ended the life of the deceased whose life was at its prime. The killing was unforgivable whichever way one looks at it. Accused contends that he loved the deceased so dearly that he was prepared to commit suicide for her. If that were so, the accused would have killed himself and spared an innocent life. The reason for the killing was purely selfish. The accused's ego is shown by his attitude that if accused could not have the deceased noone else could. I have taken into consideration the emotional and psychological stress suffered by accused as alluded to by defence counsel. I reject the notion that the fear of rejection in some way justifies the killing. These courts will reiterate that women should not be taken as pieces of property that only exist to satisfy the sexual and other needs of their male counter-parts. Women also have a right to say no, to a relationship. Those rights should be protected. The accused's conduct is deplorable and the courts must be seen to uphold the sanctity of human life by imposing just sentences that fit the offence and the offender.

It is this court's view that the appropriate sentence is as follows:

Accused is sentenced to life imprisonment.

National prosecuting Authority, applicant's legal practitioners
Chigariro Phiri and Partners, respondent's legal practitioners