

THE STATE

Versus

GLADMORE VUNDLA

IN THE HIGH COURT OF ZIMBABWE

BERE J with Assessors Mr J. Sobantu & Mr T.E. Ndlovu

HWANGE CIRCUIT COURT 29 & 30 JUNE & 3 JULY 2017

Criminal Trial

Miss M. Munsaka for the state

T. Nkala for the accused

BERE J: Gladmore Vundla (the accused) stands charged with the murder of Pation Dhudhuza (the deceased) who lost his life on the 1st of December 2016 at Sofie Nzima's homestead, Sijanke Village 4, Inyathi, in Matabeleland North Province.

The state case is that at the time of his death the deceased and the accused were fairly close to each other although they were not related. The deceased was a builder and the accused was his assistant. On the date of the murder and on their way home the deceased requested the accused to dig a certain herb for him but the accused refused owing to his religious persuasion and the matter ended there.

The two then proceeded to the accused's homestead where the deceased sat on a stub chatting on his cellphone after having exchanged perfunctory greetings with the accused's mother who was lying outside her hut owing to her ill condition. Close by was the deceased's 7 year old boy who had just returned from school.

Without any provocation, the accused went round the hut and armed himself with a log (exhibit 1) whose length was given as 70cm and weighing 701 grams. The accused, without any warning struck the deceased five times all over his head. When the accused did so he was heard uttering the words "ngizakubulala" in isiNdebele whose translation is "I will kill you". After delivering the fatal blows, the accused ran away from the scene leaving his mother trying to

administer basic first aid to try and save the deceased's life. The deceased died on the same day on admission at Inyathi Hospital.

The post mortem report noted the following injuries on the deceased's remains: subgaleal haematoma (complete frontal region) and Biparietal region; circular depressed frontal skull bones fracture with multiple bones fragments (on the middle of frontal bone); Line of fracture on the parietal bone; skull base fracture on both atterir fossa and left media foesa; subarachnoid haemorrhage; complete frontal lobe and biparietal lobe ad severe and marked cerebral oedema. One can note from the description of the deceased's skull that the assault was an extremely severe one which was well executed with the intention of ensuring that the deceased would never survive.

The accused's defence was one of self-defence and the explanation was that when the accused declined to dig a herb known as "mswantsi" presumably in isiNdebele, as requested by the deceased, the deceased attempted to assault the accused for his rudeness and that this refusal had infuriated the deceased.

The accused said after this mishap both the accused and the deceased took different directions. But as fate would have it, the two met again at the accused's homestead. The accused then said that he noticed the deceased opening an okapi knife in a sitting position and he thought the deceased wanted to attack him. The accused said he then stood up and went some distance to grab the log which turned out to be the murder weapon and hit the deceased twice on the head in self-defence before he fled the scene. The accused denied ever uttering words to the effect that he was going to kill the deceased.

The star witness for the state was the deceased's 7 year old boy who appeared to have been at a vantage point at all the critical moments in this case. After pausing a few questions to this young boy the court formulated the view that he was able to give evidence in full glare of

members of the public and thus waived the need to clear the court to enable him to give evidence in camera as envisaged by section 319B¹ of the Criminal Procedure and Evidence Act [Chapter 9:07].

The young boy took the court through the happenings of the day starting from the time that the deceased requested the accused to dig the herb for him right up to the time of the deceased's brutal murder.

The witness told the court that he joined the deceased and the accused from school and was present when the deceased requested the accused to dig a certain herb for him. According to the witness, the accused declined to dig the herb owing to his religious persuasion. The witness said the deceased understood the accused's position and the matter ended amicably and that there was no quarrel or dispute over this issue between the deceased and the accused.

The witness further told the court that upon getting to the accused's mother's homestead the deceased sat on a stub and as has become customary with many of us, the deceased could not resist the pleasure of going on social media with his cellphone. The witness said as the deceased was deeply immersed in this social cellphone media, the accused went round to a foul run and without any warning savagely assaulted the deceased with exhibit I five times, twice each on the two sides of the head with the fifth blow landing on the middle of the deceased's head. The five blows rendered the deceased helpless. As the accused was delivering these merciless blows he uttered the words that "I will kill you" in isiNdebele, and immediately fled from the scene.

The witness gave his evidence with the tone of a mature individual much to the surprise of all of us including the defence counsel as he was later to admit during final submission in court.

If there was any doubt possibly created by the young witness for the state owing to his closeness to the deceased, that doubt was completely obliterated by the accused's own biological

1. Criminal Procedure and Evidence Act [Chapter 9:07]

mother Sofie Nzima who according to our unanimous assessment of her evidence came to court with only one objective, to tell it as it happened. The witness confirmed in every detail everything told by the first witness to the satisfaction of not only the court but I believe even the accused himself.

The witness took it further that as the accused ran away from the scene she pleaded with him not to run away but to wait for the police so that he would himself explain the effect of his evil hand but the accused could not listen to that.

The requirements of self-defence relied upon by the accused finds expression in section 253 of the Code² and those requirements are spelt out in simple terms.

The neat and simple evidence given by the two state witnesses' having been accepted by the court owing to the overwhelming credibility of the witnesses meant that the story told by the accused person could naturally not be accepted.

The accused's story merely served to reaffirm the accused's belligerent attitude and natural stubbornness which probably explains his fidgeting in court as the proceedings unfolded. The accused demonstrated his uncaring attitude when this trial was conducted and his truancy was clearly demonstrated throughout the court proceedings.

We were urged by the defence to make a finding that the accused's reckless use of the murder weapon should lead to us returning a verdict of murder with constructive intent.

We have difficulties in this suggestion for basically two reasons. The strike was not a single blow, not even two blows. The vicious assault consisted of five terrible blows on the deceased's head, an extremely vulnerable part of a human being.

2. Criminal Law (Codification and Reform) Act [Chapter 9:23]

The impact of the assault as already spoken to earlier on in this judgment was never meant to leave the deceased alive – the objective was to murder and indeed a brutal murder occurred.

Secondly and more importantly the utterances which accompanied the assault and attributed to the accused by both witnesses make the accused's objective clear for everyone to see.

When a man threatens to kill and utter words consistent with the killing or murder, and follows that with the murder of the victim, the court has no business engaging in conjecture in trying to ascertain the verdict. The accused would have sealed his fate. The verdict must be consistent with what he himself was recorded as intending to achieve.

We are satisfied beyond doubt and as urged upon us by the state counsel that the accused be found guilty of murder with actual intent.

Verdict – guilty of murder with actual intent.

Sentence

The most significant factor in this case on the part of the accused person is that he is merely nineteen years and a teenager. That must tilt the balance in persuading the court to find that owing to that factor this murder was not committed in aggravating circumstances as agreed upon by both the State and defence counsel.

In mitigation we will accept the accused's youthfulness as a guiding factor. The accused's lack of sophistication and compounded by his having gone up to grade four with his education require serious consideration as a strong factor in mitigation.

The accused is a first offender who unfortunately has started at the wrong end. Ever since this offence was committed, 6 months ago, the accused has been kept in custody and that is some punishment on its own.

In aggravation we note with extreme concern that the accused committed this callous murder against the deceased who stood literally in *loco parentis* to him with not the slightest form of provocation.

The accused literally ambushed the deceased who was chatting on his cellphone and publicly made known his intention to kill the deceased by uttering words which were consistent with his intention.

Elders look up to the youngsters for their protection and it is unacceptable that a child aged 19 years old would have the tenacity to attack and kill a 43 year old person who is contributing so much to sustain the livelihood of the accused.

As submitted by the state counsel this murder was well calculated and unprovoked as evidenced by the distance which accused covered to collect the murder weapon and coming back to strike to death the deceased.

The nature of the assault was calculated to finish up the deceased and the accused's intention was well pronounced by the accused's failure to render basic assistance to the deceased after the terrible blows despite persistent pleas from the accused's biological mother.

It is equally disturbing that this murder was committed right in front of the deceased's 7 year old boy who will obviously be traumatised by this murder probably for the rest of his life. That callousness of the murder must be adequately punished.

We are concerning that even as we were conducting this trial, the accused showed no sign of remorse.

This accused is one of those young persons the court must feel obliged to remove from society for a reasonably long period of time in the hope that prison life will positively change the accused's perception of life.

Sentence – 22 years imprisonment.

National Prosecuting Authority, state's legal practitioners
Dube & Company, accused's legal practitioners