

THE STATE

Versus

CABANGANI SIBANDA

IN THE HIGH COURT OF ZIMBABWE
BERE J with Assessors Mr J. Sobantu & Mr T.E. Ndlovu
HWANGE CIRCUIT COURT 27 & 28 JUNE 2017

Criminal Trial

Miss M. Munsaka for the state
K. Dingani for the accused

BERE J: Cabangani Sibanda (the accused) is facing the charge of having murdered Silethiwe Sibanda (the deceased) on 25 February 2017 at Shiella Sibanda's homestead, David I Village, Setshanke, Nkayi District in the Province of Matabeleland North.

On 25 February 2017 the accused pitched up at the deceased's place of residence to repair a scotch cart. As the accused encountered challenges in removing the wheels of the scotch cart, he called the deceased to assist him. As the two were engaged in the work at hand a misunderstanding occurred between the two. The deceased took away the tools which the accused was using which included a pump.

The conflict which appeared to be minor and insignificant ended up with the accused striking the deceased to death with a hoe which was tendered in this court as exhibit III whose dimensions were given as follows: weight 1,590kg, length of the wooden handle 80cm, length of the blade of the hoe 24,5cm and its width 14,5cm.

When the deceased was struck, she died on the spot. The post mortem report which was tendered in these proceedings as exhibit II gave the cause of death as (1) extensive subarachnoid haemorrhage, (2) depressed skull fracture due to assault. The same report summarised the marks of violence as a depressed skull fracture (8 x 5cm) on the left parietal region and extensive subarachnoid haemorrhage.

In his defence to the charge, the accused stated that he did not intend to murder the deceased but that he accidentally injured her as he was trying to ward off an attack which was being perpetrated against him by the deceased.

The accused told the court that he picked up a conflict with the deceased over a pump as a result of which the deceased entered her hut and came armed with a hoe which she attempted to strike him with and which the latter succeeded in disarming her. The accused went on to suggest that, the deceased, having been disarmed of the hoe, she went back into the hut and armed herself with a rake which she intended to use to attack him with. The accused concluded by saying that he accidentally struck the deceased on the back of the head as he sought to ward off an attack against him by the deceased.

There was no direct evidence concerning the alleged fight or the striking of the deceased. The state case largely revolves around the accused's evidence and the single witness' evidence of the deceased's mother, Sheilla Sibanda.

Sheilla Sibanda confirmed the visit by the accused to her homestead where the deceased was staying. The witness confirmed seeing the deceased assist the accused in attending to the scotch cart. The witness said at some stage it appeared that the accused was having challenges in removing the wheel nuts to the wheels on the scotch cart and she then suggested that the accused abandons the task which he was carrying out. After her comments, the witness said she then observed the accused and the witness suddenly leaving where they were working on. As the accused was walking away the witness heard him utter the words to the effect that he was going to kill someone that day. The witness told the court that she engaged the accused with a view to know who he intended to kill to which the accused retorted that some people were proud of themselves.

After these exchanges, the witness saw the accused pick up a hoe which was barely 5 metres away from her and went to the front of the hut whilst the witness remained at the back. Immediately the witness heard a strong "thudding" sound and sprang to her feet to investigate. The witness said to her utter surprise, she was shocked to see the deceased lying on her back

with the accused throwing the hoe close to the motionless body. The witness observed the accused pouring two buckets of water on the deceased but it did not help. The accused apologised to the witness by saying "I am sorry, I am sorry aunt."

Under cross-examination the witness was emphatic that she did not witness the striking of the deceased but that she only reacted to a thudding sound which led her to see the horror of the day.

The witness further confirmed seeing the accused trying desperately to resuscitate the deceased by pouring water on her using a bucket.

When the accused's defence was put to the witness concerning the deceased's alleged attack on the accused using a rake, she was adamant that the rake had always been where it was kept and that she did not see it anywhere nearer where the deceased's motionless body was.

The accused's case was based on the defence of self defence which according to him was necessitated by the unprovoked and sudden attack on him by the deceased, first, using a hoe and later using a rake.

The accused's evidence concerning how the hoe was introduced to the scene ran into serious problems when compared with the story told by the sole state witness. It got worse when the accused attempted to introduce a rake to the murder scene, which rake was never shown to the investigating officer as an exhibit.

The single state witness is 78 years old and a mother to the deceased and one has to exercise extreme caution when dealing with evidence of such a witness. We were extremely impressed by this witness's evidence in that we could not identify any traces of malice or exaggeration in her testimony. The witness was prepared much to our surprise to give evidence which was favourable to the accused like seeing the accused attempting to resuscitate the deceased's life by pouring water on her body.

To further strengthen her credibility the witness maintained that she did not herself see how the deceased was struck but only learnt of the vicious attack after responding to a “thudding” sound.

The sole witness in our view is the kind of witness whose sufficiency of evidence is contemplated and provided for in terms of section 269 of the Criminal Procedure and Evidence Act Chapter 9:07. We found her evidence not only to have been credible but beyond reproach. Such witnesses are rare.

If indeed the accused had been involved in a scuffle with the deceased before the deceased met her fate, the accused was naturally expected to share this with the witness, including but not limited to showing the rake which was at the centre of his defence to both this witness immediately after the murder and later to the investigating officer.

The situation of the accused is further compounded by the defence which he sought to raise in court. The accused’s own narration of events does not satisfy the requirements of self defence. Under the basics of this defence, a man under threat is expected to behave in normal human manner. Accepting his narrative for a moment (which we do not accept) it would mean that he allowed himself to remain rooted at one place when he clearly noticed that his life was put in serious danger by the relentless attacks by the deceased, which attack had been commenced with a hoe and was to be subsequently continued with a rake. That explanation was clearly a desperate stout effort to mislead the court and we could not allow it to detain us in our assessment of the evidence placed before us.

Having accepted wholesale the evidence of the single state witness, we accept her evidence that she heard the accused threatening to kill someone on that day. We view the subsequent murder of the deceased as a clear implementation of the threat by the accused uttered to the sole state witness.

If a man threatens to kill someone and carries out that threat into fruition the task of the court is made easier when it comes to considering the verdict. It can only be murder with actual intention.

Our unanimous view is that the accused must have been annoyed by the attitude of deceased's mother who suggested that he abandons the work that he thought had performed to the best of his ability. The deceased did not help matters when she sought to reinforce the mother's attitude by taking the pump away from the accused. In our view this is what led the accused to threaten to kill. This is what in fact led him to eventually murder the deceased.

Accordingly, the accused is found guilty of the offence of having murdered the deceased with actual intention.

Verdict – guilty of murder with actual intent.

Sentence

It was evident and a very strong factor in mitigation of sentence that through the testimony of Sheilla Sibanda, that the death of the deceased shocked the accused person to the extent that the accused made an abortive attempt to resuscitate the deceased. That is the highest form of remorse demonstrated by the accused in this case.

It is equally mitigatory that the accused, having performed the task at hand to the best of his ability, he felt humiliated by the utterances made by his grandmother Sheilla that he was at liberty to abandon the task that he had started. The intervention of the deceased clearly triggered the accused's aggrieved conduct. The situation does not require an arm chair approach.

The accused has throughout the proceedings struck us as a person who is genuinely sorry for his conduct.

The accused was closely related to the deceased and because of this we believe the shadow of the deceased will probably continue to haunt him for as long as he lives, that is punishment on its own.

In aggravation, this case once again demonstrates the dangers of failing to exercise restraint in the face of minimal provocation. The conflict that took the deceased's life was clearly unnecessary. It could have been avoided if the accused had sought the intervention of his grandmother.

We are concerned that life in this matter was literally lost within a split of seconds over a non issue at all.

Sentence – 20 years imprisonment

*National Prosecuting Authority, state's legal practitioners
Mweli Ndlovu & Associates, accused's legal practitioners*