

THE STATE

Versus

MUGOVE MAZVIYO

IN THE HIGH COURT OF ZIMBABWE

BERE J with Assessors Mr W. T. Matemba & Mrs C.J. Baye

GWERU CIRCUIT COURT 28 & 29 SEPTEMBER & 3 OCTOBER 2017

Criminal Trial

S. Pedzesayi for the state

P. Rajah for the accused

BERE J: Mugove Mazviyo (the accused) is charged with the murder of Passmore Machiro (the deceased) in violation of section 47 (1) of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. The allegations are that the accused stabbed the deceased to death on the morning of 4 November 2015 at Haygold West 1 -2, Gold Mine, Sino Zimbabwe, Lalapanzi in the Midlands Province.

The brief facts of this case are that on the 3rd of November 2015 the accused, the deceased and fellow miners attended an all night music show at Chilimanzi Bar at Lalapanzi Shopping Centre. In the morning of the 4th of November 2015, the miners were given time to rest due to their drunken state occasioned by the social activities of the previous day. The employer gave the miners a crate of opaque beer which was supposed to be shared among the miners. It is very ironic that this beer turned out to be the genesis of the conflict between the deceased and the accused leading to the untimely death of the deceased.

The accused and he deceased quarreled over this crate of beer leading to sporadic exchanges of blows which resulted in fellow workers successfully restraining the two from fighting.

When everybody thought the conflict had been resolved the accused armed himself with a home-made knife (exhibit 4) which he sunk into the deceased's chest leading to the deceased's instant demise.

Whilst admitting to stabbing the deceased, the accused raised the defence of provocation and the defence of self. The accused said that the deceased and his friend had subjected him to constant harassment and assaults leading him to use the knife against the deceased in a desperate effort to ward off the brutal attack from the deceased.

In support of its case the state led evidence from three witnesses who gave evidence in court, viz, Scotch Mambo, Tachiona Marere and Addlight Parere, with the rest of its evidence going in by way of admissions in terms of section 314 of the Criminal Procedure and Evidence Act Chapter 9:07. He accused relied on his own evidence.

Because the facts in this case were generally not in dispute there was virtually no need for a thorough analysis of the evidence.

The legal position

In our codified law, the requirements of the defence of person or self defence are provided for under section 253¹ and in terms of section (b) thereof anyone who relies on this defence must show that the action he/she took which resulted in the killing was necessary to avert the unlawful attack and that he/she had no any other alternative except to kill to avert such an attack. This must be borne out by the evidence presented to court. It is recognized that in order to successfully raise this defence it must be sufficiently demonstrated that the accused was under "an unlawful attack or that the accused believed on reasonable grounds that the attack on

¹ Criminal Law (Codification and Reform) Act [Chapter 9:23]

him was imminent and that the action taken must have been necessary and reasonable to avert the attack or perceived attack”.²

In crimes of murder, the defence of provocation, if successful does not lead to the acquittal of the accused but at most it can lead to the conviction on a lesser charge of culpable homicide. This defence is provided for under section 238 and 239 of the Code and its requirements are quite clear. If the provocation is deemed to be not sufficient to make a reasonable person in similar circumstances lose his or her self control, then the accused shall not be entitled to a partial defence but such provocation may be regarded as mitigatory.

The evidence

The evidence led from all the three state witnesses in this case was clear that this murder did not occur in the circumstances summarised by the accused person in his defence outline and in his evidence in chief.

All the witnesses were agreed that there had been sporadic fights between the accused and the deceased and the parties had been successfully restrained from continuing with their fights. All the witnesses were agreed that when everyone thought the situation had calmed down, the accused went into his hut, pulled and armed himself with the murder weapon and literally ran after the deceased who was 20 or so metres away from him on his way to his own hut.

It was also the clear evidence of the state witnesses which was accepted by the court without question that when the accused caught up with the unsuspecting deceased he plunged the blade of the murder weapon into the deceased’s chest with the result that the deceased died instantly.

² A Guide to the Criminal Law of Zimbabwe, by G. Feltoe, published by the Legal Resources Foundation, 1989 at p 45

The circumstances described by the accused person and the state witnesses was not such that a reasonable person placed in the position of the accused person would have lost self-control in the manner the accused person did.

The post mortem report (exhibit 3) suggests beyond any reasonable doubt that the knife was used against the deceased with devastating consequences. The court had occasion to see the knife in question and there can be no doubt in our minds that when the accused ran after the deceased he had only one objective in his mind. He had made up his mind to kill, and killing he achieved.

Consequently the accused is found guilty of murder with actual intent.

Sentence

In sentencing the accused person we will be guided by the submissions made by both the state counsel and the defence counsel.

In mitigation we will take into account the following factors. That the accused is a first offender who has spent 16 months on remand awaiting the finalisation of this case. We obviously accept that the waiting period must have tormented the accused person.

The accused has heavy family responsibilities although such responsibilities must always be at the forefront of the accused before he commits such an offence.

The accused and the deceased had been involved in a fight and the accused appeared to have been on the receiving end in the fight.

Both the accused and the deceased had been partaking of alcohol for the whole night before they picked up a misunderstanding in the morning of the murder.

In aggravation we are extremely concerned that our youths seem to be deriving joy and satisfaction in the use of knives to resolve disputes. Valuable lives are being lost in the process.

There is need for courts to send the message loud and clear that these offences have no place in civilized nations like ours.

As highlighted by the state counsel, we are further concerned that this violent conduct is on the increase particularly among those of our youth involved in mining activities.

We are concerned that the accused in this case appeared to have been undeterred by the intervention of the other workers who sought to have the two reconcile and stop the violent conduct towards each other.

It is important to always learn to exercise restraint in the event of anger. Violence can only worsen the situation and can never be a solution.

The following sentence is deemed appropriate.

25 years imprisonment.

National Prosecuting Authority, state's legal practitioners
Wilmot & Bennett, accused's legal practitioners