

**THE STATE**

**Versus**

**VINCENT KARANDA**

**And**

**SILENCE LUNGA**

**And**

**JASTON SHELTON MOYO**

**And**

**OSCAR TINASHE DODZO**

IN THE HIGH COURT OF ZIMBABWE  
MAKONESE J with Assessors Mr Hadebe & Mr Damba  
BULAWAYO 16 & 17 MARCH 2017

**Criminal Trial**

*V. Ndlovu* for 1<sup>st</sup> accused  
*T. Gamure* for 2<sup>nd</sup> accused  
*F. Museta* for 3<sup>rd</sup> accused  
*T. Dube* for 4<sup>th</sup> accused

**MAKONESE J:** On the 14<sup>th</sup> May 2015 at around 1900 hours Lawrence Mbama aged 31 years (deceased) was walking along 6<sup>th</sup> Avenue Extension Bulawayo in the company of Thulani Nkomazana and Petersen Chitanda. When they crossed the intersection with Basch Street, the deceased who was walking behind Nkomazana and Chitanda was attacked by accused and his associates. One of the accused person's colleagues intentionally stepped on the deceased. An argument ensued. Chitanda was attacked by the accused person with a fist and he bled through the nose. The accused and his gang then attacked the deceased and surrounded him. Chitanda tried to intervene but he was no match for the accused and his associates who numbered between 6 to 7 persons. During the scuffle one of the accused's associates drew a knife and stabbed the deceased twice in the back and once on the left thigh. Chitanda was hit

with a brick by accused on the back and as soon as he realised that the deceased had been stabbed he rushed to make a report at Mzilikazi Police Station. Accused and members of his gang stripped the deceased of his shirt and his right shoe and fled into Madlodlo Beer Garden and disappeared. Police details from Mzilikazi Police Station attended the scene and found the deceased lying on the side of 6<sup>th</sup> Avenue Extension in a pool of blood. An ambulance was summoned, however the deceased died at the scene of the crime before he could receive any medical attention.

The state led evidence from Thulani Nkomazana, Petersen Chitanda and Kudakwashe Chibiri before closing its case. The court discharged accused 2, 3 and 4 at the close of the state case. The court made a finding that from the evidence led at the close of the case for the prosecution there was insufficient evidence to warrant the placement of the accused persons on their defence. See the cases of *AG v Tarwirei* 1997 (1) ZLR 575 (S); *AG v Bvuma & Anor* 1987 (2) ZLR 96 (S) and *AG v Mzizi* 1991 (2) ZLR 321.

### **State case**

The state led evidence from Thulani Nkomazana. He testified that he is a vendor. On the night in question he was walking along 6<sup>th</sup> Avenue Extension in the company of the deceased and Petersen Chitanda. When they crossed Basch Street the accused and other persons who numbered six or seven came from behind and attacked them. When Chitanda tried to intervene he was attacked by accused person. The witness was able to positively identify the accused because of his facial features, more particularly he observed a scar on the lower lip. The witness was not able to identify the other assailants because the events happened quickly. The attack took him by surprise. The witness stated that he heard deceased scream that he had been stabbed. He rushed to Mzilikazi Police Station when he realised that the violence was getting out of hand. When the witness returned to the scene in the company of police details he found the deceased dead. His shirt had been removed and one of his shoes was missing. He was lying in a pool of blood. The witness fairly conceded that although he had identified accused 1 and accused 2 at an identification parade on 21 May 2015, he was not able to identify accused 2 in

court. He was however certain accused 1 was the person who attacked Chitanda before turning on to the deceased. The witness conceded that he could not confirm who amongst the accused's group had stabbed the deceased. This is because when the deceased was stabbed the witness was at a distance.

We found the evidence of Nkomazana to be credible. He gave clear testimony regarding the events of the fateful night. He did not exaggerate events and did not seek to incriminate accused 2, 3 and 4. He was not found to lie on any specific aspect of the case. His evidence corroborates that of Chitanda in material respects.

The second state witness, Petersen Chitanda gave clear and credible evidence of the events in question. He confirmed that accused 1 attacked him with a fist in the face, resulting in him bleeding from the nose. He said he was so close to accused that he was able to identify him by his facial features. He said he observed that accused had thick lips. He refused to be drawn into describing the type of clothes worn by the accused on that night. On 21 May 2015 he was called to CID Homicide Section where he was invited to identify the potential suspects. Chitanda positively identified accused 1. He also identified accused 3.

We are satisfied that Chitanda's testimony was credible and reliable. He gave his evidence well and was composed under cross-examination. He was not controverted on any material aspects. His identification of accused is corroborated by Nkomazana.

The last witness called by the state was Kudakwashe Chibiri. He is a police officer in the Zimbabwe Republic Police holding the rank of Inspector. He was attached to CID Homicide as at the material time. He gave an account of how he conducted the identification parade at Bulawayo Central Police Station on 21<sup>st</sup> May 2015. He gave the distinct impression of an officer who was well experienced in the conduct of identification parades. He confirmed that the first witness Nkomazana identified accused 1 and accused 2 as the persons who were amongst the group that attacked the deceased. Chitanda identified accused 1 and accused 3 as the persons who were part of the gang that stabbed the deceased. The witness was credible and reliable. The court accepts his evidence as a correct reflection of his observations. This witness was not found

to exaggerate his testimony and did not show any sign of bias. We have no difficulty in accepting his testimony. The state closed its case after leading viva voce evidence from this witness. As I have already indicated the court discharged accused 2, accused 3 and accused 4 at the close of the state case.

The state tendered a post mortem report compiled by Dr I. Betancourt on the 15<sup>th</sup> may 2015 at United Bulawayo Hospitals. The doctor opined the cause of death was:

1. Hypovolaemic shock
2. Rupture of Femoral Artery and right lung, haemothorax
3. Severe damage due to stabbing injuries

The post mortem reflects that the injuries sustained by deceased must have resulted as a result of deep and penetrating stab wounds.

### **The defence case**

The accused elected to give evidence under oath. His line of defence is that he was never at the crime scene. He was wrongly implicated in this matter. He did not however, raise an alibi. He simply stated that he was nowhere near the scene of the murder and did not take part in the brutal murder of the deceased. The accused gave no credible explanation why he would be falsely implicated. In fact he did not proffer any reasonable explanation. The first two state witnesses identified accused at the scene. The two witnesses identified him positively at an identification parade. He attacked Chitanda with a fist. He was part of the gang that stabbed the deceased. He did not disassociate himself from the further assaults on the deceased. At the time the deceased was stabbed accused was acting in common purpose with his associates. It is not necessary for the court to prove with exact precision who delivered the fatal blow. See *S v Safatsa* 1988 (1) SA 868

I would accept that on the basis of the case of *R v Difford* 1937 AD 370, the accused is not required to prove his defence. In this case, however I am satisfied that accused has not given

any explanation. He has raised a bare denial as his defence. Accused is clearly lying when he says he was not at the scene of the crime. He is not telling the truth when he claims that he did not act in common purpose with the group that attacked the deceased. From the evidence led the accused acted as the leader of the gang. The two state witnesses both confirmed that accused attacked Chitanda with a fist and a brick for no apparent reason. The accused does not seriously dispute that he assaulted Chitanda at point blank range. His identification by the two state witnesses firmly places him at the crime scene.

I am satisfied that on the evidence led, the accused acting in common purpose with his associates attacked the deceased. One of the accused's associates stabbed the deceased twice on the back and once on the thigh. The deceased died as a consequence of the stab wounds. In my view there is sufficient evidence to convict the accused on a charge of murder. However, there is inadequate evidence to prove the crime of murder with actual intent. The accused foresaw the possibility of death as a substantial possibility and proceeded with his conduct regardless. There is no evidence to prove that he possessed actual intention. In the circumstances, accused is found guilty of murder with constructive intent.

### **Reasons for sentence**

In arriving at an appropriate sentence the court takes into consideration all the mitigating features of the case that have been articulated by accused's defence counsel. Accused is aged 33 years. He is not married. He has no children. He has no known dependents. He is a first offender. He was self employed as a vendor selling tomatoes at the time of the offence. This attack on the deceased was vicious and brutal. The accused and his gang showed no mercy on the deceased. Before turning on to the deceased the accused attacked the 2<sup>nd</sup> state witness on the face. This attack caused the accused to bleed from the nose. This is yet again one of those senseless and brutal killings. The level of violence displayed by the accused is alarming. A gang attack usually results in fatalities because the victim is no match for persons that launch violence as a group. In this case the stabbing was barbaric. The attack was unprovoked. The accused and his group fled the scene and disappeared into Madlodlo Beer Garden leaving the

deceased bleeding profusely lying on the edge of the road. Accused showed no remorse and to this day accused person shows no signs of remorse or contrition. Accused has fought in his defence to the bitter end, accepting no role in the attack and assuming no responsibility for the death of the deceased.

The demeanour of the accused in court showed no signs of a person who regretted the death of the deceased. He appears to be one person who has chosen to live by violent means.

The courts have a duty to ensure that the sanctity of human life is guarded jealously. The courts condemn and frown upon those who live by means of violence and terrorize innocent civilians. The sentences that are handed down by these courts in these matters reflect the abhorrence with which courts view the use of violence against innocent persons. The accused has argued that the court should be lenient because he is a first offender. That is the only factor that tends to act in his favour. The court shall also take into account the fact that accused has spent one year 9 months in prison, awaiting trial. The aggravating factors far outweigh the mitigating features.

This is the sentence the court finds appropriate taking into account all the circumstances:

“Accused is sentenced to 20 years imprisonment, of which 5 years is suspended for 5 years on condition the accused is not within that period convicted of an offence of which violence is an element and for which he is sentenced to imprisonment without the option of a fine.

Effective sentence 15 years.”