

THE STATE
versus
VUSUMUZI NGWENYA

HIGH COURT OF ZIMBABWE
MOYO J
HWANGE 9 NOVEMBER 2018

Criminal Trial

Ms *M Munsaka* for the state
C Muleza for the accused person

MOYO J: The accused person faces a charge of murder it being alleged that on the 2nd of June 2014 at around 20:00 hours the accused struck the deceased Harris Mdutshekela Ngwenya with an axe several times on the head causing deceased's instant death.

The following were admitted into the record

- 1) the authority to prosecute
- 2) the state summary
- 3) the defence outline
- 4) the accused's confirmed warned and cautioned statement
- 5) the post mortem report
- 6) the two psychiatrists reports
- 7) the axe that was allegedly used in the commission of the offence.

They were all duly marked.

- The post mortem report gives the cause of death as

- 1) Brain haemorrhage
- 2) multiple skull fractures
- 3) callous axing

The post mortem report also noted multiple facial fractures and multiple wounds. The evidence of witnesses Sergeant E Shove, Sergeant M Magwala, Constable Petros Hwidza, Constable M Siziba and Dr I Jekenywa was admitted into the court record as it appears in the state summary.

Petros Ngwenya and Bekezela Ndlovu gave *viva voce* evidence for the state. Accused gave evidence for the defence. The facts of this matter are that accused was deceased's son. They lived together at deceased's homestead. Accused seems to have been a problem child from the state witness accounts, he wanted to depend on his elderly father for sustenance as both state witnesses told the court that he did not fend for himself or his family. They even said he would cause trouble if his father did not give him some tobacco. On the fateful day, accused went into the deceased's bedroom hut when his mother had gone to bath and he axed the old man several times on the head causing his instant death. He then went to tell Petros Ngwenya that deceased had been bitten by a snake. They both went to check on deceased but accused did not go into deceased's bedroom but instead went into his own bedroom hut. Petros Ndlovu then discovered that deceased had been chopped on the face with some bones having splattered on the floor.

The following morning people converged at the deceased's homestead and accused upon being questioned admitted to killing the deceased. He was arrested and he led to the recovery of the axe as he made some indications to the police. The accused person had a warned and cautioned statement recorded from him, it reads thus:

“I admit to the charges of murdering Harry Mdutshekela Ngwenya by axing him five times on the head, I murdered him because he was chasing me from my own homestead after he has ruined his homestead. If I came home with food I had bought, he would take away the food and give that food to his own children. If I asked for my belongings that he sometimes took without my authority I would appear a bad person to the eyes of the general public. All this frustrated me and I murdered him”

In his defence outlines however he then introduces a partial defence of provocation to the extent that he lost self-control. He says deceased beat him up with a knobkerrie he got angry, went to take an axe and he struck deceased on the head/face. In his evidence in chief accused also departs from both his confirmed warned and cautioned statement and the defence outlines. In his evidence in chief he says they spoke about groceries earlier in the day.

The matter subsided. In the evening they chattered, amicably, parted ways, deceased went to sleep and accused remained in the kitchen.

Deceased then called accused and struck him with a knobkerrie as accused knelt before the deceased in the bedroom, accused got angry, went outside took an axe and butchered the deceased.

In his defence outline he says they spoke with deceased about groceries in the afternoon and deceased was dismissive, in the evening an argument ensued between accused and deceased in relation to the groceries. Deceased insulted accused. Deceased retired to his bedroom hut and then called accused. Deceased then struck accused once with a knobkerrie as he entered. He then went out and got an axe then struck the deceased.

In accused's confirmed warned and cautioned statement there is yet another version of deceased having been murdered by accused because he was chasing accused away from his (accused's homestead after deceased had ruined his own homestead. He also said if he come home with food he had bought, deceased would take the food and give the food to his own children. If accused asked for his belongings that accused would have taken without deceased's authority accused would appear as a bad person in the community.

Now from the court record, there are two versions by the accused person on what transpired on the day in question. They are also three versions as to the subject matter of what the two fought over what accused is telling the court can only be false. It also defines logic that accused would part amicably with deceased only for deceased to call him and just beat him up with a knobkerrie without saying a thing.

Also, accused did not tell Petros Ngwenya, Bekezela Ndlovu and the police that deceased had with in fact assaulted him with a knobkerrie making him angry. The knobkerrie is definitely an after thought, there was no knobkerrie or assault on accused by the deceased, in this equation. Accused tried to build up a case against deceased, as he did not want to divulge the exact reason why he killed the deceased because he knows the reason is not acceptable, it is not worth telling that's why he keeps on going round and round in circles telling a story that not only lacks sense but which story has diverse versions on the some occurrence.

It is the finding of this court that the partial defence of provocation as pleaded by the accused person is non-existence as the facts upon which he has tried to build it have fallen apart.

The accused person butchered a defenceless old man, who was sleeping at the material time, for his own selfish reasons best known to himself. In his confirmed warned and cautioned statement which he gave when his mind was still fresh, he says that he struck the deceased five times with an axe. Petros Ngwenya and Bekezela Ndlovu observed a shattered skull with bones splatted in the room. This was callous, accused could only have desired are thus and that is death. The accused person is accordingly for guilty of murder with actual intent.

Sentence

The accused person is convicted of murder, he is a first offender. He however convicted an abominable act of killing his own father like an animal. The deceased was attacked in the most gruesome manner, with flesh and bones splattered all over the room. The assault was for selfish reasons only known to the accused. These courts frown at the loss of life through violence. Accused is also unrepentant because a person who is contrite does not try to build up versions that are not true. A contrite person is honest enough to be candid with the court. The accused seems to have carefully planned the assault on his father, and struck him while he was sleeping and alone. Members of our society heed to conscientious on the sanctity of life through appropriate sentences. The accused deserves a lengthy custody sentence in the circumstances. The accused person is accordingly sentenced to 30 years imprisonment.

National Prosecuting Authority, state's legal practitioners
Legal Aid Directorate, accused's legal practitioners