

THE STATE  
**versus**  
GERALDINE NYONI

HIGH COURT OF ZIMBABWE  
MABHIKWA J  
BULAWAYO 4 DECEMBER 2018 AND 5 DECEMBER 2018

### **Criminal Trial**

*Mrs T R Takuva* for the state  
*T Tavengwa* for the accused

**MABHIKWA J:** The accused appears before this court on a charge of murder in breach of section 47 of the Criminal Law (Codification and Reform) Act [Chapter 9:23].

The accused allegedly had an altercation with her husband (50 years old, the now deceased, over money. Relatives of the now deceased arrived in a motor vehicle and protested or complained over the accused's treatment of her husband. There was an exchange of harsh words and insults between the accused and the two relatives.

As the relatives were reversing their car intending to leave, the accused allegedly and apparently stabbed the now deceased on the neck with a knife and fled. She later went to the police at Beitbridge and purported to report a domestic violence case. She told the police that her husband was abusing her and that in the latest incident, the husband had stabbed himself in the process of assaulting her. The police attended to the report and got to the couple's home only to find that their purported suspect was in fact a dead man. The accused was arrested and the murder weapon (knife) was picked up some 50 meters away from the couple's home.

The accused pleaded not guilty and in her defence outline averred she and her customary law husband had a huge disagreement over money on 4 March 2017.

She further averred that a physical confrontation ensued between her and her husband provoked by the deceased who indiscriminately attacked her with clenched fists and a belt.

She further averred that she disarmed the deceased of the belt but the deceased punched her with clenched fists despite her spirited and resilient retaliations. She states also that the deceased subsequently armed himself with a knife and attempted to stab her whereupon the two, grappled for the knife and the accused managed to get block the intended stab attack, got hold of the deceased with both hands and caused the deceased to stab himself. She explained that she had weakened the deceased by kicking his testicles.

She denies any intention to actual kill the deceased but acted in self defence. She also chronicles what appears to be the history of their abusive marriage with deceased right up to the fateful day. It appears from her outline that on that on the fateful day, Zwelibanzi Phakathi, and Saidi Chisa whom she claims to be deceased's brothers came, quarreled with her, assaulted her and left. According to her outline her quarrel with the deceased and the subsequent stabbing took place when the two gentlemen had left.

Fine, she contends in her defence outline that there a break in the claim of evidence from the time of the body's pathological examination.

Siphambaniso Magonya was the first state witness. He was a neighbour to the deceased as their houses are semi-detached. He had known the decaeed for almost 2 years and they would neighbourly address each other as brothers though not related.

On 4 March 2017, he was seated outside his house in the evening since Beitbridge if usually hot. Accused was cooking outside. Her husband, the deceased, arrived from work and cordially greeted the witness as usual. The witness then heard what he believed was an altercation over money between husband and wife. The couple however appears to have calmed do, put out the fire and went into the house. He witnessed no physical confrontation at that time. About an hour later two men (Phakathi and Chisa) arrived, blew their car hoe and knocked on the door, claiming the accused was bothering their brother.

Another altercation started. The witness was about 8 metres from the scene of the quarrel.

The place was illuminated the light in the witness yard as another in the living room of his house. The witness denied that Phakathi and Chisa assaulted the accused, adding that he would have seen the assault if it had occurred. He instead only observed a verbal exchange of harsh words. The witness also testified that during that exchange of harsh words, people had crowded at the place along the road that passes by.

This witness said that as the two reversed to leave, the accused was in fact spoling for a light with the deceased persuading her to come back into the house. The witness jumped into the couple's yard but at the same time, the accused passed by running towards the eastern direction. At the same time also, the witness heard someone exclaim "wamubaya nebanga" meaning he/she has stabbed him with a knife.

Siphambaniso testified that before the exclamation, the accused and the deceased had been "pushing and shoving each other and at some stage, he saw the accused holding. He said at that time, Phakathi and Chisa, were just standing leaning against their car.

It must be stated at this stage that from the evidence, there can be no possibility that Phakathi, Chisa or some other person stabbed the deceased. Indeed it has not the accused herself does not claim so as she says the deceased's stabbed himself.

This witness denied the suggestion that the deceased was holding a belt on one hand and a knife on the other. He in fact said he never said the now deceased was holding a knife or a belt at any given time. He also denied the suggestion that the accused ran away because Phakathi and Chisa were assaulting her. They were actually outside the yard leaning against their car. The witness however did not see what the accused was holding if any, as she bolted. The witness says he drew closer and found the deceased lying face down in a pool of blood. The witness said he checked the deceased and the place he was lying. There was no weapon or knife there.

Under cross examination this witness denied suggestions that the deceased started the fight and that he insulted the accused. The witness described the deceased as naturally a quite man, who spoke in a calm low voice.

The witness was also made to read parts of his statement to the police which seemed in consistent with his evidence in court. However, it is the court's finding that those

inconsistencies it not go to the roof of the witness's evidence such as to discredit it or destroy the state case.

In any event, the witness explained that the police officer who recorded his statement had said right from the start of the recording that his own grasp of the Ndebele language, which the witness had waited to use was not good. This was also confirmed by another state witness, Saidi Chisa.

This witness, in the court's view, was a crucial, neutral neighbour witness who did not take sides in his testimony neither had he then propensity to exaggerate. The court accepts his evidence as an honest and credible account of what he witnesses on that fateful day.

The next two state witnesses were Saidi Chisa and Zwelibanzi Phakathi respectively. The court will deal with their evidence simultaneously as it was similar and corroborative in many respects.

The two were not blood brothers of the deceased as implied in the defence case. From their past acquaintance and close friendship, they addressed each other as brothers.

According to Chisa and Phakathi, the reason for their visit to the couple's home that evening was that the previous day, there had been an outburst by the accused at Phakathi's house, which outburst had unsettled Phakathi's wife. The deceased had then narrated the incident to Chisa and asked him to apologise to Mr Phakathi on his behalf.

On the fateful day, the two had arrived at the couple's home. There was a misunderstanding between Mr Phakathi and the accused. There was an exchange of harsh words. They however denied the suggestion that at their arrival, they knocked at the door calling the accused a birth and all sorts of vulgar names as implied in the accused's defence outline.

Just like the first witness, Chisa also described the deceased as a man who loved his family and was not a violent person. He also described him as a quiet and peaceful man. This corroborated Magonya's description of the deceased.

On the other hand, the witness was told in cross-examination a history of abuse that the accused allegedly endured at the hands of the deceased and that she occasionally had injuries and reported the abuse to him (Chisa). The witness disputed those insinuations and told the court instead that it was the accused who was of a violent disposition because at one time the deceased

had an injury on his hand which he did not want his friends to ask or know about but they nonetheless later learnt that had been stabbed by the accused. She also allegedly abandoned or deserted the now deceased and the couple's very small baby then for a full day or two.

The two witnesses' evidence was corroborated to the extent that after their brief harsh exchange of words with the accused, they reversed their car to leave only to stop after hearing that the deceased had been stabbed. They were adamant that considering the lapse of time between the reversing and the exclamation about the stabbing, there was simply not enough time for the whole occurrence of the events narrated in the accused's defence outline. The two witnesses testified that they never witnessed the couple's alleged grappling with a belt and a knife, neither did they see the alleged kick of the testicles or the actual stabbing. To that effect also, they corroborate the first witness's evidence to some extent. In fact, it is surprising that no other person saw this alleged fighting of the couple that led to the stabbing apart from the accused.

However, under cross examination, the accused ultimately gave the impression that it was a very few moments of event. Whatever the time taken, it should be remembered that the evidence is that a crowd had gathered, not only the three state witnesses and therefore some people must have been able to see the events in the defence outline and also narrated by the accused in court. Though not a finding of fact, the first witness (Siphambaniso) may have been right that the deceased was just stabbed as he continued persuading the accused to come back into the house as she was spoling for a fight with Phakathi and Chisa.

As already shown above, the state witnesses evidence corroborated in material respects. And were given by witnesses who did not seem to or were at least not shown to have a motive to lie against the accused especially the first witness.

The accused herself largely maintained her defence outline when she testified. She however struggled to explain exactly how the death occurred. Under intense cross examination, she ultimately agreed that she caused the accused's death in that she twisted his arm and directed it and the knife to the deceased's right side of the neck.

Earlier on, the accused's defence had become contradictory in that on she was saying that the accused accidentally stabbed himself whilst on the other she was saying she was acting in self-defence when she killed him.

Even if the court were for a moment accept the accused's claim that the deceased attacked her. The requirements of self-defence as envisaged by section 253 (1) of the Criminal Paw (Codification and Reform) Act [Chapter 9:23] were not met. This is so because at paragraph 9 of her defence outline, accused states that on the fateful day, the deceased arrived from work in a drunken state. She enquired from him whether she had earned or at least borrowed rent money since the land lord had been demanding his rent money the previous evening. She claims that it is this questioning that sparked the whole incident that degenerated into verbal abuse, the arrival of Phakathi and Chisa, her confrontation with the two and ultimately with the deceased. She claims that she disarmed the deceased of the belt that he wanted to use to assault her. She also kicked him on the testicles and further weakened him. There was therefore absolutely no reason to kill the