

TIGERE CHIKEDE
versus
THE STATE

HIGH COURT OF ZIMBAWE
MAVANGIRA J
HARARE, 2 October 2013

IN CHAMBERS IN TERMS OF SECTION 35 OF THE HIGH COURT [*CAP 7:06*].

MAVANGIRA J: The appellant was charged with two counts of attempted murder. He pleaded not guilty before the Acting Regional Magistrate at Harare but was convicted after a trial. In relation to the first count the allegation against the appellant was that he “attempted to cause the death of Constable Chimhungwe, Constable Chawapiwa, Tewende, Sergeant Maragedze and Sergeant Zhuwawo by intentionally driving straight towards them, realising that such action could cause the death of Constable Chimhungwe, Constable Chawapiwa, Tewende, Sergeant Maragedze and Sergeant Zhuwawo” (*sic*). In relation to the second count the allegation was that he attempted to cause the death of Constable Chimhungwe by intentionally driving straight towards him realising the possibility that such action could cause the death of Constable Chimhungwe.

On the day in question the police were carrying out an operation to decongest the city centre and they were targeting commuter omnibuses. The State version of events on that day was given by two witnesses, Shepherd Chimhungwe and Lovemore Zhuwawo. Shepherd Chimhungwe’s evidence was to the effect that he was alone when the appellant allegedly tried to run him over. He categorically stated that the appellant by his alleged conduct attempted to murder him and him only. A perusal of his evidence at pp 25, 29 and 30 of the record will show this.

Lovemore Zhuwawo on the other hand, contradicted Shepherd Chimhungwe’s version. He testified to the effect that the appellant attempted to murder five police officers, including him, who were all on the same road in front of the appellant as the appellant drove straight at them. Pages 33 and 35 of the record, record this version. Thus there is a

divergence in the evidence of the two police officers regarding the same incident from which the charge in the first count arises. There is no other evidence that could assist the court in resolving the uncertainty as to what may have happened.

Regarding the second count, the evidence of Shepherd Rumhungwe reads as follows:-

“In front of him were other combs also turning and loading passengers. I went and stood beside him.....When he realised there were no motor vehicles in front of him he drove off in the same manner he had driven before and I was not expecting him to drive off and had not realised the other motor vehicles had left. In the process he hit me with the right view mirror on my right eye. When he hit me I fell to the ground.”

The witness said that he went to the hospital but did not get a medical report. Lovemore Zhuwawo on the other hand, said the following:

“.....When we get there some of the combis started moving away. Complainant went in front of this motor vehicle and ordered it to stop. He was wearing clothes with reflectors. When he stopped him he did not stop but closed the doors and windows and locked doors. He drove and hit complainant who was on the right of combi being where mirror was and he was hit and he fell down.”

Thus while the first witness said that he went and stood beside the appellant, Lovemore Zhuwawo, the second witness said that the first witness went in front of the appellant's vehicle and ordered it to stop. There is a divergence of versions regarding where the first witness was positioned in respect of the second count. The first witness said that he went and stood beside the appellant's vehicle while other officers were on its sides attempting to open the windows so that they could talk to the appellant. He did not state that he stopped the appellant. On the other hand the second witness says that the first witness went in front of the appellant's motor vehicle and ordered it to stop.

As against the different versions given by the State witness, the appellant's version was that the first witness slipped and fell to the ground when he threw a baton stick at his vehicle, losing his balance in the process.

When the State case was closed an application for discharge at the close of the State case was made on behalf of the appellant. It was dismissed, the court indicating that the reasons for the dismissal would follow in the main judgment. No such reasons appear in the main judgment. Neither does the main judgment state the lower court's assessment of the credibility of each witness nor the reasons for accepting the State's contention that the evidence proved the accused's guilty beyond reasonable doubt, more so when the two State

witnesses gave divergent versions. Independent evidence would have assisted in the resolution of the matter. None was adduced.

It is for the above reasons that the State's concession that the conviction is unsafe is confirmed by this court.

In the result, the conviction of the appellant by the lower court is hereby set aside as is the sentence also.

MAVANGIRA J

HUNGWE J agrees