

THE STATE
versus
SMART SHONHIWA

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 21 January 2012, 15 February 2013, 17 July 2013
and 20 May 2014 and 23 June 2014

ASSESSORS: 1 Mr. Tutani 2. Mr. Chokuvinga

Criminal Trial

D. H. Chesa, for the State
M. Mazanhi, for the Defence

BHUNU J: The accused is charged with the murder of her girlfriend the now deceased Margaret Chitsinde on the morning of 27 February 2011. He is alleged to have cut her throat with an Okapi knife in a scuffle prompted by a domestic dispute.

That that the deceased was stabbed to death during a scuffle with the accused on that day is not in dispute. What is in dispute is whether the accused deliberately cut the deceased's throat or she was accidentally stabbed during the scuffle.

The bulk of the facts in this case are common cause. The undisputed facts are that the accused and the deceased had a long standing love affair. The accused was a respected village head of Shonhiwa village, Chief Chimukoko in the Mudzi District. At the material time he was neck dip in love with the deceased such that he was desperate to marry her.

On the day in question he had spent the night at the deceased's house. Much to his chagrin the deceased had woken up that morning to tell him that she was no longer interested in him hence he should leave her home and go away. Thereafter the deceased left for her fields with her 3 year old son one Nokutenda Josphat Karikoga. She had in her possession a Nokia 1202 cell phone.

The accused later woke up and followed the deceased to the fields where they had a serious misunderstanding resulting in a scuffle in which the deceased was cut on the throat with an Okapi knife that the accused was carrying in his pocket.

The State alleges that during the scuffle the accused deliberately produced the knife from his pocket and cut the deceased on the throat.

The accused's version is that prior to the misunderstanding the deceased had threatened to get rid of him using unspecified means. On that day before leaving for the fields the deceased had poisoned his tea. When he drunk the tea he felt pain in the stomach. He became weak and dizzy. He then decided to go and confront her at the fields.

When he confronted her at the fields an altercation ensued resulting in a scuffle. The deceased knew that he was carrying a knife in his pocket. During the scuffle she then forcibly extracted the knife from his pocket. She prised it open and was somehow accidentally stubbed on the throat as they wrestled for the knife.

That the accused ingested some poison for which he was treated at the hospital is not in dispute. The point of departure is that the State alleges that the accused drunk the poison in a bid to commit suicide after he had been overwhelmed by the murder he had committed. The accused' side of the story as I have already indicated is that he was poisoned by the deceased.

Shortly after the deceased's death the accused however wrote in vernacular what appears to be a suicide note or dying declaration after the accused had ingested poison and was contemplating death. The note was found in his pocket by his wife when he was battling for his life after taking the poison. As translated it reads:

“Mr. Chitsinde ate my goat for nothing and after that he tells me not to marry. I exhausted my cattle supporting his family. I gave him a blanket meant for traditional marriage rituals given to the mother of the bride. I was doing everything for my wife, buying food and clothes for her and her children but today he has told me something that is hurtful. I am Shonhiwa, my herd and money has hurt me.”

The note was written by the accused in what appears to have been a settled hopeless anticipation of death following his ingestion of poison. The note speaks for itself. In that note he vents his anger against one Chitsinde for denying him marriage to the object of his love whom we now know to be the deceased. He attributes his impending death to his failure to marry her after he had squandered his cattle, goats and wealth in a bid to marry her.

Nowhere in that note does the accused allege that the deceased had poisoned him. If the accused was aware that the deceased had poisoned him then undoubtedly he would have said so in that note. The mere fact that he did not do so renders his current allegations that the deceased poisoned him highly unlikely and not in the least probable. His allegations to that effect are patently untruthful and the product of recent fabrication.

Nokutenda Josphat Karikoga though only 3 years of age at the material time was an eye witness to the circumstances leading to her mother's death. He was however 5 years of age at the time he gave evidence at the victim friendly court designed to protect vulnerable witness from extraneous influences that might affect their evidence.

The evidence of Nokutenda needs to be treated with caution because he labours under the disability of youth and immaturity. It is important to exclude the possibility of his evidence being coloured by wild imagination and inability to distinguish fact from fantasy. See *State v Sibanda* 1994 (1) ZLR 394 (S).

Nokutenda though only 3 years old at the material time but 5 years old at the time of his testimony, gave his evidence well in the serene environs of the Victim Friendly Court at Rotten Row Magistrates Court. He was playful but focused and candid in his narration of the events of that fateful day. He recalled that on the day in question he was at the fields with his mother the now deceased. His evidence in this respect is corroborated by the evidence of his 14 year old sister Nomatter Karikoga who testified that on the day in question the boy accompanied his mother to the field after he had cried to go with her. That evidence places him squarely at the scene of the crime.

His evidence was to the effect that the accused followed them to the fields where he picked up a quarrel with the deceased. He then saw the accused tripping the deceased to the ground, producing a knife from his pocket and slitting her throat with the knife. He then observed the accused putting mud in her mouth as well as on the wound.

In his own words this is what he had to say:

“My mother then started running and he got hold of her and he slit her on the throat and he then ordered me to sit down. He slit her on the throat using a knife that he had and placed mud on her and my grandmother later came

Q. Where did he place the mud on the deceased?

A. In her mouth and on her throat after he slit her throat so that she could not breath.”

His evidence in this respect finds ample corroboration from the post-mortem report which states that the deceased had, “a severed anterior part of the neck including the trachea and oesophagus soil and grit in the mouth.”

As I have already stated the accused's defence is that the deceased was accidentally stabbed during a scuffle when he confronted her accusing her of having poisoned him. That defence has no ring of truth because Nokutenda the eye witness categorically stated that he saw the accused slitting the deceased's throat. His evidence in this respect is amply corroborated by

the post-mortem report. The nature of the wound as described therein is such that it is consistent with a cut rather than a stab wound.

Regarding the cause of death it states that death was due to:

“Dissecting Cut to the trachea (windpipe) starving victim of air.”

The nature of the wound as observed by independent expert witnesses who had no motive of falsifying facts is such that the evidence of Nokutenda to the effect that he saw the accused slitting the deceased’s throat with a knife is beyond reproach. That evidence is put beyond question by the testimony of Cephass Mutunami the police officer who attended the scene and observed the deceased’s body at the scene of crime. It was his testimony that:

“The cut on the throat indicated that the throat was totally cut. The cut was 6 to 7 cm across. It was a cut and not a stab wound.”

It follows therefore, that the accused’s defence of accidental stabbing in the course of a scuffle is a lie and the product of recent fabrication concocted long after the event in a bid to wriggle out of the crime of murder. That finding of fact is placed beyond reasonable doubt when one considers that in his detailed suicide note or dying declaration written on the spur of the moment when the facts were still fresh in his mind the accused never attributed the deceased’s death to any accidental stabbing.

Nowhere in that missive does he accuse the deceased of poisoning him. On the contrary he attributes his impending death to his failure to marry the deceased due to the resistance of her relatives who had creamed him of his property.

The deceased could not possibly have poisoned his tea before proceeding to the fields. This is because the available evidence establishes that she did not make any tea on that date because there was no sugar as testified by her daughter Nomatter. Her evidence in this respect was amply corroborated by the Investigating Officer Sergeant Mutunami who searched for but did not find any sugar or poison in the house. Although the accused said that he only drunk half of the poisoned tea no left overs of the tea were found in the house.

There is therefore, equally no merit in the accused’s defence of self defence when he

says that he followed and attacked the deceased at the fields because she had poisoned his tea before leaving for the fields. **If it were so, it is surprising and highly improbable that he would have left out such an important fact from his dying declaration or suicide note.**

When everything is said and done the evidence before this court clearly establish beyond any reasonable doubt that the accused slit the deceased's throat following a domestic dispute. Overwhelmed by the gravity of the offence he had committed he ingested poison in a bid to commit suicide. The attempted suicide can only be interpreted as an admission of guilt.

All the State witnesses were honest and credible witnesses who gave their evidence well without any signs of evasion or falsification of the facts I believe them. On the other hand the accused told an incredible story wholly inconsistent with reality and all proven facts. We have no hesitation whatsoever in rejecting his testimony as a concoction of evidence calculated to escape the dreadful crime that he committed.

By deliberately slitting the deceased's throat with a lethal okapi knife the accused had the actual intention to bring about the deceased's death. He is accordingly found guilty of murder with actual intent.

SENTENCE

The accused stands convicted of a very serious crime of murder with actual intent. As I have already indicated he slit the throat of his girlfriend with a lethal okapi knife. He is 54 year of age married with seven married children, two of which are still going to school. The last born is yet to attend school. He is the breadwinner of the family. He is not formally employed but he fends for himself by subsistence farming and building chores. He earns an average hundred (\$100.00) dollars per month. He is the Village Head of Shoniwa Village Chief Chimukoko in the Mudzi area. He has squandered all his assets and savings on the deceased and her relatives. This was foolish and irresponsible behaviour on his part as a village head he should have lead an exemplary life. He had ten beats all of it he squandered on cheap pleasure.

In assessing the appropriate sentence the court will not lose sight of the sanity of human life. Whenever sacred human blood is lost the court take a serious view of that occurrence. I also accept the submission made by state counsel that the offence was committed in the ruthless cruel manner. When someone slits the throat of another with a dangerous knife, he gives that person no chance to survive. Offences of this nature are on the increase, domestic disputes often lead to fatal consequences. There is need to pass stiff and deterrent sentences on convicted offenders so as to deter other light minded persons.

Initially I intended to sentence the accused person to life imprisonment so as to permanently keep him out of circulation in order to protect society from his harmful tendencies. I have however taken heed of the submissions made by both defence and state counsel that the accused is no longer in the prime of his life. In the circumstance a sentence of twenty (20) years will meet the justice of the case. The accused is accordingly sentenced to twenty (20) years imprisonment.

*The National Prosecuting Authority, the State's Legal Practitioners.
Tadiwa and Associates, the Defence's Legal Practitioners.*