

THE STATE
versus
NYASHA MUVIRIMI

HIGH COURT OF ZIMBABWE
HUNGWE J
MUTARE, 3 March 2015

Assessors: 1. Mr Rajah
 2. Mr Chidawanyika

Murder Trial

Mrs J. Matsikidze, for the applicant
T G Nenzou, for the respondent

HUNGWE J: The accused pleaded guilty to the count of aggravated unlawful entry as defined in s 131(2) (e) of the Criminal Law (Codification and Reform) Act, [*Chapter 9:23*] (“the Act”). He pleaded not guilty to murder as defined in s 47 (1) of the Act as well as another count of assault as defined in s 89 (1)(a) of the Act.

The state alleged that on 15 June 2012 the accused broke into Gift Mtetwa’s shop and stole property as well as cash amounting to US\$300, 00. Gift Mtetwa and Calvin Musiya teamed up to track down the unknown culprit. They identified him some 1,7km away from their shop after an on-coming vehicle cast its full beam at the accused in the night. He had changed into apparel which he had just stolen earlier! As they tried to effect a citizen’s arrest, the accused stabbed Gift Mtetwa in the abdomen and ran away. He fell down. Calvin Musiya continued with the chase. Accused stopped and then stabbed Calvin in the chest when he attempted to grab him. He died on the spot. The accused was arrested a few hours later the same day. The goods and

most of the cash he had stolen was recovered. The murder weapon was also recovered from him.

In his defence outline the accused admitted that he broke into a shop belonging to one Gift Mtetwa, the complainant in count 2, and stole goods and cash amounting to US\$300. As he was waving down Masvingo-bound traffic on the Mutare-Masvingo highway, he was approached by the complainant in count 2 and the now deceased.

These two men attacked him. He fought them back. In the process he noticed the complainant producing a knife from his waist area. He grabbed snatched the knife away and used it to stab first the now deceased Calvin Musiya and the complainant. He claimed that in doing so he acted to repeal an unlawful attack against his person.

We had no difficulty in rejecting his defence as a recent fabrication for the following reasons. In his confirmed warned and cautioned statement exhibit 5, which was recorded on the same day that these events took place, he admitted that he had broken into the shop and stole property. He said:

“...I broke into Gift Mtetwa’s shop where I stole money amounting to \$300,00 and clothes which belong to Gift Mtetwa and I ran away. Then Gift Mtetwa and Calvin Musiya ran after me in a bid to arrest me. That is when I started to fight them with a knife. That is when I stabbed Gift Mtetwa on the abdomen with a knife. When I tried to run away, Calvin Musiya ran after me, and when I realized that he was about to catch up with me I then stopped and stabbed him on the left side of the chest with a knife. I then ran away after seeing that he had fallen down.”

Although in his defence outline the accused denies that he had the knife, it was plain to us that had that been the case, he would have stated it at the earliest opportunity when he gave his warned and cautioned statement. The fact that he stated that he fought them two men with a knife indicated to us that he had carried the knife specifically to deter anyone who may dare to thwart his plan to break into and steal.

Deceased was found with one stab wound. This is consistent with the version given by the accused in his warned and cautioned statement. That single stab wound was enough however, to result in a litre of blood being found in the deceased’s chest cavity upon examination.

The only which exercised our mind was whether to return a verdict of guilty of murder with actual intent or with obstructive intent.

In our view, the accused, on his own word, decided to beg, borrow or steal. When the first two of his options failed him he settled on the last option.

He broke into accused's shop and stole goods and cash. He had almost succeeded when his luck ran out.

The accused and deceased identified him as he tried to make his get-away. Upon being challenged by the complainant and the deceased, the accused was determined to protect his ill-gotten gains at any cost, even if it meant killing. For that purpose he had, prior to embarking on the enterprise, armed himself with a lethal weapon exhibit 6.

Exhibit 6 is a typical hunting knife. Its blade is 20cm long. It has a jagged edge on the other side.

To plunge such a knife into another person's chest can only result in fatal consequences. The accused realised this. He did not warn his attackers that he was armed or that he would stab if they dared to attack him. Had he done so, one may have inferred that he was mindful of the harm that the use of the knife against his attackers would cause. He just went about the attack against the two victims without regard.

He must have intended to cause deceased death or, in the very least, realized that there was a real risk of death or serious injury resulting from stabbing the deceased with such a big knife as exhibit 6.

In the result he must be found guilty of murder as defined in s 47(1)(b) of the Act in count 3. In respect of count 2 he is found guilty of assault as defined in s 89 of the Act. In respect of count 1, he is found guilty of aggravated unlawful entry as defined in s 131(2)(e) of the Criminal Law [Codification and Reform] Act [*Chapter 9:23*].

*National Prosecuting Authority, State's legal practitioners
Chibaya & Partners, respondent's legal practitioners*