

THE STATE  
versus  
PAMELA PHIRI

HIGH COURT OF ZIMBABWE  
HUNGWE J  
MUTARE, 23 & 29 February 2016 and 1- 4 March 2016

Assessors: 1. Magorokosho  
2. Chidawanyika

### **Criminal Trial**

*Mrs J Matsikidze*, for the State  
*Ms M Mandingwa & C Tavagadza*, for the defence

HUNGWE J: The accused, a school lady teacher, faces a charge of murder it being alleged that on 15 June 2015 at Nyakatsapa High School, Chief Mutasa, Watsomba, Penhalonga, with actual intent or realising the real risk or possibility of death occurring struck Manners Bhowa with an axe several times on the head and face thereby inflicting injuries from which the said manners Bhowa died.

She pleaded not guilty.

The State and the defence agreed that the uncontested evidence of the following witnesses be admitted for the record in terms of s 314 of the Criminal Procedure and Evidence Act, [*Chapter 9:07*].

1. Morgan Chisedzi, the High School Headmaster.

The deceased was his deputy. He noticed that the deceased failed to report at the morning school assembly on Monday 15 June 2015. He was amongst members of staff to first see the motionless body of the deceased inside the bedroom.

2. Zvinaiye Mapara is another member of staff who had last seen the deceased on 13 June 2015 shelling maize at his residence. He was partly of the team led by the head to go to deceased's residence in response to a report by the deceased's son in the morning of 15 June 2015.
3. Chipu Mareya is also another member of staff who witnessed the group led by the Headmaster.
4. Georgina Manyadzo is the school nurse who certified the deceased dead upon sight of the body mutilated head of the deceased.
5. Detective Assistant Inspector George Sithole of the Zimbabwe Republic Police Scenes of Crime took the photographic scene of the crime and produced the photo album which he handed over to the Investigating Officer.
6. Michael Sembani is the Zimpost employee who weighed the axe, an handle, being the murder weapon and compiled a certificate of measurement and weight.
7. Nyaradzo Mraga a member of the CID investigating team who witnessed the formal recording of the accused's warned and cautioned statement as well as indications by the accused. She drew the sketch plan from these indications. It was to this witness that the accused handed over the deceased's mobile phone handset.

The following documentary exhibits were produced by consent:-

- a) The axe blade;
- b) The broken axe handle;
- c) The certificate of weight for both 1, 2;
- d) The photo album consisting of 23 photographs;
- e) An Asha Nokia prone belonging to the deceased;
- f) The sketch plan; and
- g) The accused's warned and cautioned statement confirmed by the magistrate on 19 June 2015.

The State called and relied on the evidence of the deceased's father, the deceased's two sons, the investigating officer and a medical doctor.

The thrust of Alban Tawengwa Bhowa's evidence was that the accused was his daughter in-law. During the Easter 2015 holidays his son had visited him at their rural home in Chiduku communal lands. He noticed that his son had a swollen and red eye. It had been inflicted on him by the accused over a trivial issue. He had suggested how to assist in resolving the issue.

He was to travel to Nyakatsapa and convene a consultation with his son's in-laws. Two months later his son was dead.

Lloyd Tariro Bhowa told the court that although he never witnessed any physical encounters between his parents generally, the accused was in the habit of accusing their father of being possessed by evil spirits such that she had stopped her children from visiting their rural home in Chiduku. The thrust of his evidence gave a background to the events leading to the discovery of his father's dead body on 15 June 2015. According to him, although he could not say who provoked the fight between the two, they would fight over trivial issues like cleaning the yard or the house. As a rule of thumb, as soon as a quarrel erupted between their parents, their mother demanded that they leave them alone. Even so, his evidence was that the accused was in most instances responsible for initiating these quarrels or fights because she was the more quarrelsome of the two.

As the children grew up their parents' quarrels became fewer and far between.

He then told the court of incidents which occurred after they moved to Nyakatsapa High School. These incidents persisted during their stay at Nyakatsapa.

According to Lloyd, what could precipitate a quarrel was, as an example, when the accused took issue with the rationale behind leaving a bigger and better accommodation for a smaller and cramped one at Nyakatsapa High School.

In May 2015 his mother got employment and accommodation at Little St Augustine's, Penhalonga, as a school-teacher. By then they had secured bigger and better accommodation at Nyakatsapa. Since the accused had her own accommodation at her school she would only come home over weekends.

On 13 June 2015 the accused left for Mutare and came back towards the evening. She found the family engaged in maize shelling after the same had been harvested by pupils.

The accused started shouting at the deceased over why her maize was being shelled without her being consulted yet it was a product of her single effort. His father appeared surprised by her attitude as he expected to be appreciated for assisting in the harvesting of her maize. They were as usual chased away as the quarrel over this issue raged. It went on till the two retired to bed. The next morning Sunday 14 June 2015, he learnt from his younger brother that their mother had returned to her work place. He did not know where their dad was.

He prepared supper for themselves including their father and kept it where he usually accesses it from and retired to bed before their father showed up. The next morning he noticed that their father's supper had not been touched.

When the School Headmaster came they did not open for him as per house rule. He however got worried over his father's whereabouts since this was a work day. He approached their parent's bedroom and called out his father. There was no response. His younger brother opened the door and noticed that the deceased's motionless body was lying on the floor with the rest of his body covered except the feet. He was shocked by what he saw. The children texted their mother but she did not respond. They eventually made a call to her. She advised them to report their findings to the School Headmaster.

By that time he only suspected his father was dead but not sure of it as he had not uncovered the body. This was done when the Headmaster and his staff members came over looking for their father. The bed-room door was opened and the body uncovered. To everyone's shock and horror, the deceased was dead. This discovery hit him like a bolt of lightning. He was shocked beyond measure by the grizzly injuries to his father's head.

The accused later called her sons. She told them to give a false statement to the police, should they be questioned by the police over what had happened. According to the children, the axe was normally kept in the kitchen not the bedroom. Besides the quarrel the children told the court that they had not heard anything to suggest the extent of the violence which could match the horrific mutilation of their father's body.

The evidence given by Liberty Bhowa was generally along the same lines as the older brother.

They were skillfully cross-examined by Ms *Mandengwa* on each and every essential aspect of their evidence and the whole case.

I must observe that we were satisfied that the children were truthful in all material respects. They gave a balanced view of their family life. They did not seem to be biased against their mother as they appropriately apportioned blame on both their parents.

Of course they were horrified by the sight of their dead father and filled with disbelief that any human being was capable of inflicting such harm on another. In our view they were unaware of certain aspects of their parents' marital problems although it was obvious to them that these were present. They felt that their mother's temper would flare unnecessarily over minor and trivial issues. They were close to their father although their mother forbade them from visiting their rural home for reasons connected with evil spirits. They now know better.

All in all we accept that evidence as demonstrating normal marital turbulence which they were able to live with as children, and, to their knowledge, which their parents had been able to navigate this far.

The investigating officer described how the team investigating this case went about the task at hand. They picked some inconsistencies on the boys' statements at the commencement of the investigation. As a result, quite early in the investigation, the investigating team concluded that this matter was an inside job. They were right in so concluding. Upon persistent questioning of the boys and their mother, the mother cracked and began to sing.

The accused narrated how she had committed this grizzly murder. She had been duly and properly warned and cautioned about her legal rights. She later led a team of investigators to places around Mutare where the axe and its handle were recovered from different places. She had carried the murder weapon some sixty kilometers from the scene. The accused's warned and cautioned statement is detailed. It is self-recorded. It carried messages of love for the deceased but it is in many ways deceitful. In it the gist of her defence of self defence is set out at p 4.

According to the statement the deceased woke up at around 0400hr and began to assault her. She became emotional. When he turned onto the bed to pick his shoe on his side of the bed, she picked up the axe and struck him first before he could strike her with the shoe. Out of the anger that filled her, she repeatedly struck him till the gushing of blood brought her back to her senses. She then removed him from the bed and lay him on the floor after putting a pillow on this space.

She then washed her hands, took the murder weapon and placed it inside a canvas bag. She left early in the morning for her work place in Penhalonga. This version is carried in the statement given by the accused barely two days after the event on 17 June 2015.

If the accused struck him as he was about to pick up a shoe from the bed's side it means that she struck the deceased whilst he was somewhere on the bed. If so one would have expected the police to have seen the bed-linen drenched or soaked in blood.

The mattress, shown in photograph exhibit 6 (g), does not show any of the signs usually expected of a scene of such brutal proportions. What this means is that she must have washed off the fresh bloodstains before she left. I say this because the only point where there is evidence consistent of the debauchery executed in this bedroom is the pool of blood found where the body of the deceased lay.

Exhibit 6 (h) shows that the base of the bed also had blood. How this got there must be pretty obvious. The deceased was earlier slaughtered on this spot or he was rolled over from the bed after being killed there. However the evidence by Dr Mukuzanga suggests that in order to inflict such deep cuts to the head suggests that the deceased must have been fast asleep or drunk when struck. Further, he must have been asleep on a hard surface when he was struck.

He says that had he been awake natural reflex would have caused him to impulsively and instinctively take defensive action such that his hands would have exhibited signs of him having done so. Besides if he was seated or standing the wounds would not have gone this deep since the force of the blow will push away the deceased's body. What this opinion suggests therefore, is that the deceased was struck whilst in his sleep.

The accused told the court that because they had quarreled she had sat up till 11 or 12 pm watching television as he retired to bed alone. She says she followed him later.

In our view, the probabilities are that she did not join him in bed peacefully as she claims in her defence. She used the tranquility of his slumber to execute her devilish plan, execution style, using a crude weapon, an axe. After accomplishing her objective she cleaned up the room but forgot or did not see the stain on the right side of the bed next to the spot where the deceased's body lay. She would not have left at the time she did if this act was committed after 04h00 on 15 June 2015.

Unfortunately it is not clear when the photographs were taken but it would be closer to 17 June 2015 than further than that date since the police were on the scene on 15 June 2015.

The methodical manner of execution of the crime, in our view, suggest premeditation. She carefully chose an occasion when she could have sufficient time to clean up and take away the murder weapon of crime and hide them in the city. She fed her sons with fabricated story to pass on to the police. She was just cold, calculating and heartless.

Whatever her motivation, we are satisfied that her version is not truthful especially where she suggests that she acted in self-defence to thwart an imminent attack. The accused called three witnesses, namely

1. Varidzo Munyika a counselor and paralegal from Musasa Project, Mutare.
2. Michell Phiri, accused's brother who gave evidence of matrimonial disharmony in the accused's life and evidence about a history of mental illness in the family.
3. Phillip Mukorombindo, a psychiatric nurse from Sakubva who had carried out a psychiatric assessment of the accused a day before she testified.

The evidence of Varaidzo Munyika and Phillip Mukorombindo, it was argued by *Ms. Mandingwa* for the accused, was intended to place before this court scientific evidence which may explain the effect of the severe psychological trauma which the accused went through. If it was to introduce what may be termed expert evidence on the issue in respect of the effect of the psychological trauma from which the accused suffered, it is necessary to bear in mind that expert evidence is largely opinion evidence for which strict exceptions to their admissibility is made.

Put differently, opinion evidence is generally inadmissible. It is admissible only if the person expressing the opinion qualifies as an expert in the field he professes to hold special knowledge, skill or experience.

This expert evidence is admissible testimony relating to a professional, scientific or technical subject. Expert evidence is based on formal and or special study, training or experience that imparts the competency to form opinion upon matters associated with that subject. It is the duty of the authoritative expert to present the necessary scientific/technical criteria to enable the court to test the accuracy of its own conclusions and to form its own independent judgment of the evidence.

Before being given the permission to state their opinion the "experts" are usually questioned by the court in order to evaluate their qualifications and experience on the subject.

“... the fact that an expert witness has impressive scientific qualifications does not by that fact alone make his opinion on matters of human nature and behaviour within the limits of normality any more helpful than that of juniors themselves; there is a danger that they think it does ... Jurors do not need psychiatrists to tell them how ordinary folk who are not suffering from any mental illness are likely to react to the stresses and strains of life.”

In another English case of *R v Gilfoyle* [2001] 2 Cr Ap R5 the accused was charged with the murder of his wife. His defence was that she committed suicide. He sought to adduce evidence from an expert in “the systematic analysis of human behaviour” to assert that the behaviour of the deceased in the period leading up to her death indicated that she had taken her own life.

The Court of Appeal held that the existing academic standing of psychological autopsies was not sufficient to allow their admittance as expert evidence.

The expert conclusions were based on one-sided information in particular from the appellant and his family, who had never given evidence whereas family and friends of the deceased had not been spoken to and, of course, she had not been examined.

Further there was no criteria by reference to which the court could test that quality of the expert opinion: there is no data base comparing real and questionable suicides and there is no substantial body of academic unity approving the underlying methodology.

The scientific literature indicated that there was a lack of a comprehensive assessment and evaluation of the nature and validity of those investigations (into real as opposed to questionable suicides) which had been carried out to date. The conclusion reached were held to be instructed and speculative and the court held that “unstructured and speculative conclusions are not the stuff of which admissible expert evidence is made of.”

In our view the above applies to the evidence of both Varaidzo Munyika and Phillip Mukorombindo. As for Varaidzo, her evidence is only that she once interfaced with the accused at Musasa before 2009 with her mental illness. That relevance of that evidence is to this court obscure.

As for Mukorombindo his report does not qualify to be called an expert. He admitted that he was not an expert in the field. It is not clear whether his report is based on scientific study or specialised training. Even so we are of the view that it is not the stuff of which expert evidence is made of.

The accused's brother's evidence is irrelevant as it is not aimed at proving an issue in the trial.

In our view the accused suffered from no disease of the mind sufficient to qualify her for the exemption provided for in s 218 (4) of the Criminal Code or s 227 of that Code.

As such it is our view that she intended the object of her actions when she struck the deceased with an axe on the side of the head in his sleep.

She is guilty of murder as defined in s 47 (1) (a) of the Code.

### SENTENCE

In assessing your sentence I take into account submissions by your learned counsel in respect of the mitigation of sentence. Your counsel has ably set out the mitigating features of this case as follows. You killed your husband thereby robbing your sons of their father and mentor. Consequently, this has earned you hatred from your own children, the deceased's family was robbed of one of their own. Your counsel indicated that your family has paid compensation to the deceased's family in the form of thirteen herd of cattle. You have also expressed remorse for your conduct. That on its own is mitigatory. Prior to this you were employed as a school teacher and therefore a useful members of society.

That is all one can say in your favour. I say so because you committed a serious offence. Murder constitutes the most serious against the person. As such the courts have been constrained to pass the ultimate penalty for this type of crime. This case must in our view rank as the worst case of domestic violence. Such cases appear to be on the rise. This murder was carefully planned and brutally executed and the scene clinically cleaned after. It was a cold and heartless murder of a spouse by a spouse. But, as they say, there is no perfect murder. All the indicators pointed at you hence you had no option but to admit your role in the murder of the deceased.

In spite of the mitigating features of this case, this court finds that the grizzly and brutal manner by which the deceased met his death calls for a stiff sentence that reflects the court as well as society's revulsion of this type of crime. You are therefore sentenced as follows:

**20 years imprisonment**

*Mhungu & Associates*, accused's legal practitioners  
*National Prosecuting Authority*, legal practitioners for the State