

STATE  
versus  
CECILIA MUTE MI

HIGH COURT OF ZIMBABWE  
HUNGWE J  
MUTARE, 24 October 2016

### **Murder Trial**

Assessors:   1.     MR RAJAH  
              2.     MR CHAGONDA

*O Muzandaka*, for the State  
*M Simango*, for the respondent

HUNGWE J: The accused faced a charge of murder as defined in s 47 (1) (a) or (b) of the Criminal Law (Codification and Reform) Act, [*Chapter 9:07*].

The State alleged that on 21 February 2014 at Lovedale farm Headlands, the accused unlawfully and with intent to kill, or realising that there was a real risk or possibility that her conduct may cause death and continued to engage in that conduct despite the risk or possibility caused the death of Actor Mugarisi by stabbing him with a knife on the left side of the chest thereby causing injuries from which he died.

She pleaded not guilty to the charge.

In her defence outline the accused gave the following series of events.

On the day, she had a misunderstanding with the deceased who she regarded as her husband.

This misunderstanding arose from the fact that the deceased was deleting certain SMS messages and photos from her mobile phone without her consent. She then took the opportunity,

during the misunderstanding to raise the issue of his relationship with her half-sister who she suspected to be conducting an affair with behind her back.

This issue caused their quarrel to degenerate into an assault on her by the deceased who used clenched fists and booked feet on her. She lost part of a tooth.

When she managed to escape from the assault she ran to the deceased's brother's residence. The deceased caught up with her and apologized. She was persuaded to go back to their residence. Upon their return the deceased indicated to her that he had angered him by raising the subject of his relationship with her step-sister. She realised that the deceased had a temper. She decided to take out the dirty dishes. The accused asked her where she was going and she explained. The deceased then locked the door from inside and began to assault her again.

In the heat of the moment the accused then took the knife she was holding together with other utensils which she dropped, and stabbed the deceased once in the chest. The deceased screamed. She unlocked the door and bolted out while holding the knife.

She ran towards the fields where she informed others what had happened.

She denied that she had any intentions to cause the deceased's death or even to injure him. She states that she was defending herself and did not realise that the stab was likely to cause such grave injury as would result in death.

In her warned and cautioned statement recorded on 23 February 2014 the accused gave a different version.

She said that the misunderstanding arose from her refusal to give the deceased her handset when the accused ask for it to take out her sister mobile number. She told him to use the number which was in his own mobile set. Upon her saying this to him the accused told her he would assault her for failing to respond properly and proceeded to do so. He used a cooking stick and broker one of her teeth in the process. She ran out of the room. He followed her and persuaded her to return.

On her return, the accused says she ate sadza. She however saw that things were not well and she demanded to take out her dishes for working outside. Among the dishes were cups and a knife. In her left hand she carried the pot, cups and a cooking stick. On the other hand she carried a cup and a knife. The accused then pulled her hands behind her back chasing her to drop the pot, cup and the cooking stick.

She suddenly heard the accused cry out for help. She believed this was due to his being pierced by a wire securing the door. When she turned to check on him, she saw blood flowing down his chest. He was looking strength. She did not understand where the knife and cup she held in the right hand had gone. She rushed to the fields to raise alarm so that the deceased is rendered assistance.

In court the accused gave yet another version where the ongoing of their quarrel was his snatching her mobile phone from her after she had refused to give him. He then started deleting SMS text messaged and photos which she had sent to her.

They were on a floor bed. He lay on his back whilst she sent text to him when she confronted him over this he told her off and continued.

She then decided to raise the subject of his affair with her step – sister. This prompted him to assault her. She lost a tooth in the process.

She ran out but he followed and persuaded her to come back after he apologized for his temper.

Once back inside the house the accused suddenly became belligerent and shouted at her. She decided to change into fresh clothes. Accused asked here where she was about to go. She did not respond but upon realising that he was now really angry she demanded to pick up her dirty dishes to take them out for washing. She hoped this will give him time to cool down.

He got up and went to the door which he locked from inside. He announced that he wanted to discipline her thoroughly. He head butted her.

The dishes fell out of her hands. Realising that she was in great danger, she then stabbed him in order to get to safety.

The case for the State was given by Nyasha Maganda. At the time she was fourteen years old.

On the day in question she was playing outside. The deceased room was behind hers. She was apparently at lequantance to both accused and the deceased.

She heard a loud quarrel and decided to go to that room. She found their door open and she went inside and stood behind the door. The deceased was lying on a spread blanket and the accused was sitting next to him.

The deceased asked for the accused's mobile phone in order to check on certain SMS which accused had received. She refused. The husband then announced that he was going to assault her.

It would appear that this is the point at which she entered because she says the deceased got up and slapped the accused in the face. This prompted the accused to announce that she was going to stab him with a knife.

After he slapped her he resumed his position on the blanket where he lay on his back. Accused then stood up and went straight for the knife which was among kitchen utensils had over a sack spread to the corner of the room.

She stabbed the deceased on the chest once. She removed the knife and bolted out of the house.

The deceased got up but fell down at the door. She threw the knife towards Linda's room.

This version was confirmed by Linda Mapfunde. She had come back from the fields as she was not feeling well that morning to continue with work.

From her room she heard that accused, deceased quarrel. Accused was saying she should take her back to her people. After a brief period of silence she then heard the deceased shout that she had injured him.

She witness when she got out her room, she saw accused walking away from her room. When accused saw the witness she threw away a blood stained knife toward her. The accused told the witness that she had injured the deceased and that they should go and take him.

She went to the deceased's room and found him lying at his door injured and bleeding profusely.

She ran to call for help as accused went to the fields crying out that her husband was dead.

The accused's point out the defence of self defence.

In order for this defence to be a complete defence for a charge of murder, the accused must satisfied the requirements for the defence of person set out – s 253 (1) of the Criminal Law Code.

There are that when he/she had or omitted to do the thing, the  
(a) the unlawful attack must have commenced or was imminent, or

- (b) his or her conduct was necessary to avert the unlawful attack and he/she could not otherwise escape from or arrest the unlawful attack.
- (c) the names used to arrest the unlawful attack were reasonable in the circumstances; and
- (d) any harm or injury caused by hi/her conduct –
  - (i) was caused to the attacker and not to any innocent third party and
  - (ii) was not grossly disproportionate to that liable to be caused by the unlawful attack.

In assessing the evidence this court has settled on the evidence of the eye witness Nyasha Maganda and Linda Mapfunde a representing the more credible version of events leading to the death of the deceased.

In doing so we found that the accused's version was brought with too many contradictions such as wounded render it wholly unreliable and therefore not true.

To begin with we found that the accused's explanation regarding why she departed from her was given two days after the event, wholly unworthy of belief.

She told the court that she led to the police on 23 February 2014 and led to the other witnesses on the day of the events.

It seems to us that she has persisted with the strategy to the whenever it unled her throughout.

It was not difficult to pick her out on her own lies.

She gave a wholly improbable account of how she carried her kitchen utensils just before she stabbed the deceased. She also gave an improbable account of how, the deceased was stabbed both to the police and in her defence outline and in court.

She more probable account is that one ..... by the eye witness Nyasha.

Although Linda says that she did not see Nyasha come out of the room in our matter this is to be expected in a mobile ..... where her attention was first drawn to the accused, and then to the blood stained knife and finally to the deceased.

In our view ..... failure to notice the witness does not detract from the fact that the young Nyasha gave a detailed ..... out of the room where the stabbing occurred.

She was categoric as to what happened first then what followed. She gave a below by ..... account how the deceased met his death at accused's hands.

The accused told her the reason for their quarrel and latter ..... ..after she was slapped by the deceased that she was going to stab him.

She did exactly that.

The question is whether by stabbing her with a knife to the chest, she intended to kill him.

The accused argued that she did not intend to cause his death and that she did not realise that there was a risk of his death coming.

Whilst we are of the view that in domestic violence cases the partner hardly desires the death of his or her partner in most cases. However in situations where a partner picks up a knife and sinks it into the chest of her partner who is lying on her back and that knife pierces into the heart..... on accused could hardly be heard to say that she did not intend to cause his death.

Clearly in such a situation the conduct of stabbing a person laying on the floor with kitchen knife is fraught with shock real risk of death that it becomes foreseen certainty.

In the event we are satisfied that the accused must be found guilty of murder as defined in s 47 (1) (a) of the code.

**Sentence**

18 years imprisonment.