

THE STATE
versus
PATRICK MAPITA

HIGH COURT OF ZIMBABWE
TSANGA J
HARARE, 2 March 2018

Assessors: Mr Chidyausiku
Mr Gweme

Criminal trial

Ms N Mazvimbakupa, for the State
E Maposa, for the accused

TSANGA J: The accused Patrick Mapita pleaded guilty to a charge of murdering his father on the night of 20th of May 2013, when he is alleged to have struck him with a pestle following a domestic dispute. The court, however, entered a plea of not guilty and proceeded on this basis. This was a factual case of patricide in which the accused pinned his defence on provocation in terms of s 239 (1) (a) of the Criminal Code. According to the state summary, the dispute that night had been over sour milk that the deceased had sourced from another village. The accused had asked the deceased for some and had been given albeit under protest. The accused who had then retired with his wife to his own hut that night, had returned some fifteen minutes later and confronted his father for continuously scolding him. He had then assaulted his father by striking him with a pestle. He had sustained injuries from which he died that night. The following morning the accused had gone to report firstly to his friend and then his uncle that his father was ill and bleeding from the nose and mouth. Investigations by those he reported to led them to report the matter to the police after seeing the deceased in his bloodied condition. The accused had thereafter given his statement to the police that he had indeed killed his father. He had also informed one of the witnesses, a

member of the Neighbourhood Watch, that the deceased had scolded him calling him uneducated.

The evidence of the state witnesses was not in dispute and was in line with the above facts. It was all admitted in accordance with s 314 of the Criminal Procedure and Evidence Act [*Chapter 9: 07*].

The accused's warned and cautioned statement was admitted as Exh No. 2. In it he freely admitted to assaulting his father after he had scolded him and he got angry. In it he also remarked that his father had been scolding him for many years.

The accused took to the stand. According to him the dispute that led to the fateful attack on his father erupted that night as a result of his father eating six mice that he had caught that day. Contrary to what the state had averred, he clarified to the court that the dispute about milk had in fact occurred a few days earlier. He told the court that it was never his intention to kill his father but rather to "discipline" him for eating his mice. Suffice to state that mice are a delicacy in some parts of the country and are not necessarily a symptom of poverty, although poverty cannot be ruled out. His version was that he had struck his father on the neck at the back of his head once and he had fallen down. He had then administered two more blows with the pestle, which, according to the weight certificate, was 105 cm in length and weighed 2.260 kg. The pestle itself was admitted in evidence as Exh No 3. The post-mortem report was also admitted in evidence as Exh No. 1. It revealed that the deceased was aged about 70 years and had sustained a deep laceration on the side of his face. He also had a crushed upper and lower jaw. His cause of death was recorded by the doctor as severe head injury (crushed face) secondary to assault.

The State submitted that the accused should be found guilty of murder in terms of s 47(1) (b) in that he must have realised from his actions that death would result and yet had proceeded with his attack regardless of the deathly consequences that would ensue. Accused's counsel, on the other hand, submitted that the facts spoke to provocation as partial defence to murder since it was never the accused's intention to kill his father and neither had he foreseen that death would result given that he merely intended to "discipline" him. Reliance was placed on s 239 (1) (a) of the Criminal Code which provides as follows:

239 When provocation a partial defence to murder

- (1) If, after being provoked, a person does or omits to do anything resulting in the death of a person which would be an essential element of the crime of murder if done or omitted, as the case may be, with the intention or realisation referred to in section *forty-seven*, the person shall be guilty of culpable homicide if, as a result of the provocation

(a) he or she does not have the intention or realisation referred to in section *forty-seven*; or

Cases of parricide, where parents are killed by the children, are sadly not uncommon in our country. Killing one's own parent crosses the boundary and culturally it is indeed believed that dire consequences will flow from the spiritual realm for such an act. The taboo against parricide is to be found in virtually all cultures. Such crimes, however, are said not to be committed in a vacuum given that they are often carried out by children who have experienced forms of psychological or verbal abuse.

“Despite our increased awareness of and sensitivity to the problems of child abuse and family violence, parricides, when they occur, still provoke intense anger and fear in most adults. Parricide represents the ultimate defilement and repudiation of the most sacrosanct human relationship. In our culture, people feel that children should respect their parents through childhood and into adulthood, extolling upon their parents a kind of eternal gratitude. There is an unspoken expectation that regardless of the depravity and violence visited upon a child, the child should treat his or her parents with unconditional tolerance, understanding, compassion and love.”¹

Significantly, what experts urge on the part of the courts, is that we should not look at such cases in a vacuum but should seek to understand any deep seated issues that may inform the case, particularly those arising from the relationship between such parent and child.

We obtain some further insights on parricides from an article by SB Menezes on *Parricides by Mentally Disordered Offenders in Zimbabwe*² in which the following observations are made with regards to its causes:

“According to Connell a son who kills his mother is usually a young unmarried man with an intense relationship with his mother and an absent or passive father. Such men have an intense conflict laden relationship with their mothers. *On the other hand, sons who commit patricide have unusual and difficult relationships with their fathers and are unable to accept a mature male role*”. (My emphasis)

In casu, the accused's own admitted statement in which he said that the deceased had been scolding him **for many years** suggested pent up anger as a basis for the resultant crime of passion. Furthermore, the court noted that from the witness statements, he had told a witness after the commission of the crime that his father had called him uneducated. He had also told the court when asked that he only gone up to grade 7 in terms of his level of education.

¹ See Paul Mones *Parricide: Opening a Window Through the Defense of Teens Who Kill* 7 Stan. L. & Pol'y Rev. 61(1995)

² SB Menezes (MD MRC Psych *Parricides by mentally disordered offenders in Zimbabwe* Medicine and the Law 201050 126-130.

In view of the exhortation to the courts to seek a broader understanding of the contextual backdrop to parricide cases, this court did make a concerted effort to obtain an understanding from the accused as to the nature of his relationship with his father. However, unlike in his warned and cautioned statement, in his oral testimony he painted a picture of a normal father and son relationship emphasising instead that what had happened that night had not been intended. According to his oral testimony, the anger he experienced on that day was not deep rooted but related to the deceased's consumption of his mice on that particular day. Since the accused turned coat on the existence of an emotionally abusive relationship, it may very well then be that the anger over the mice was symptomatic of deeper social issues that emanate from social structures that go beyond the individual, and, that lead people to feel helpless, hopeless, and vulnerable. The high levels of unemployment in our country for instance, appear to give rise to high levels of frustration and criminality among our youth when one casts a critical eye at the criminal cases coming before our courts.

Notably, psychosis is also often said to be a major contributing factor to parricide as the article on Zimbabwean cases referred to above suggests.³ Albeit this was also put forward in this case as a possible contributory factor, mental illness had been twice ruled out by a medical expert. Whilst the murder occurred in 2013, there had been delays in the trial taking off because the accused was said to have exhibited mental illness when brought for trial. The record shows that in May 2015, the accused had been returned to prison by the court for a mental examination to be carried out in terms of the Mental Health Act by a psychiatrist. The sworn affidavit dated 9 June 2015, from the Psychiatrist, Dr Patrick Mhaka, materially read as follows:

“My examination reveals the following: Patrick has not had a history of mental illness in the past, he is saying he is not sure what year we are in and says he does not remember on what day he was born. He is able to describe what happened on the day of the offence. From my examination, there are no signs of mental illness. He does not exhibit symptoms seen in most patients. It appears he is exhibiting malingering and pretending to be mentally ill. He does not show remorse for his offence. Due to his malingering he is making himself unfit to stand trial.

In my opinion at the time of the alleged crime the accused was NOT mentally disordered.

The accused is fit to stand trial.”

He was again examined on 19 September 2017, by the same doctor. Again, a sworn affidavit was deposed to by the examining doctor as follows:

³ See the article by Menezes above.

“Patrick does not suffer from mental illness. He has never been treated medically for a mental illness before. He does not have auditory hallucinations (does not hear voices in his head). He has no paranoid delusions (has no abnormal suspiciousness). He does not have any other symptom of mental illness. I have examined him today and found him to be of sound mind.

In my opinion at the time of the alleged crime the accused was not mentally disordered. The accused is fit to stand trial.”

This court noted at the hearing that he gave his evidence fully and lucidly as to what transpired that night. It was also very evident from his testimony that he knew what he was doing. However, he did try to introduce some jumbled statements at the hearing to raise doubt on his insanity. For example, despite having acknowledged fully understanding the charge when read to him, when it came to his defence case he did try to act confused about why he was in court. When his counsel reminded him that he had initially said he understood, and, also had his defence outline re-read to him before proceeded with his questioning, the accused was crystalline about had occurred. In view of the clear reports regarding his mental status, this court disregarded his initial acts at being confused as to why he was in court as merely another last attempt at game playing mental illness.

Turning to the issue of foreseeability of death, the severity of the attack does not suggest that it was merely intended to “discipline” for whatever reason the accused may have thought it was appropriate to “discipline” his father. This court is of the view that this is not a case where it can even be remotely argued that the death was accidental or not foreseeable especially when regard is had to the post mortem report which details the extent of the horrendous injuries that the deceased sustained. The attack itself was clearly disproportionate to the issue at hand as described by the accused himself, which was that the deceased had consumed his mice. Furthermore, the accused’s actions following the attack on his father speak volumes to the fact that he could not possibly not have foreseen that death would result. For one, following the attack that night, he did absolutely nothing to seek help until the following morning. When he sought help, he, in fact, according to the admitted evidence of two of the State witnesses Munyaradzi Zvinairo and Peter Kanonuwa, initially spun a tale about his father being ill as opposed to admitting that he had struck him. Indeed there are similar cases of patricide in particular that speak to the foreseeability of death in such situations following a violent attack on a father.

In *S v Muchemesi* HH 287-15, a 26 year old accused murdered his 64 year old father upon whom he had stumbled over in his hut after returning from a beer drink. His father, who had been asleep had scolded him and the accused had attacked him on the head with a log.

Having initially pleaded drunkenness, he had told the court in his evidence that he had been provoked and that the deceased had labelled him a dog. The defence of provocation was held to be unsustainable and disproportionate against the backdrop of the facts and statement that had led to the vicious assault. The accused was accordingly sentenced to 22 years.

In *S v Chigayi and others* HH 248 -17 the primary driver in the commission of the crime was said to be witchcraft. The deceased's four sons had literally roasted their father over an open fire because they believed he was a wizard. They had prevented anyone from rendering assistance to the deceased. They were found guilty of murder with constructive intent and each sentenced to twenty years.

In *S v Chisahwira* HH 149 /15 the accused assaulted his 60 year old father using open hands, booted feet and wooden sticks for allegedly allowing evil spirits to affect the family. He was said to have refused to do some traditional rituals that the accused believed would have cured him of some ailments he was suffering from. The father died from injuries sustained from the assault. Again, the accused was deemed to have foreseen the possibility that the manner of his assault would result in death.

On the facts of the case before us we find the accused guilty of murder in terms of s 47(1) (b) of the Criminal Law Codification and reform Act [*Chapter 9:23*].

Verdict: Guilty of murder in terms of s 47(1) (b) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

Sentence

In mitigation, the accused is said to be a first offender, married with one child. He was also 20 years old when he committed the crime and will turn 25 years old this year. In addition, he is said to have been in custody since 2013 when he was arrested. This court, however, notes that the reason for the delay in his trial that has resulted in him spending a lengthy time in custody has been of his own making. The trial was postponed due to his feigning mental illness.

In aggravation, it is highlighted that he killed his parent and continues to dismiss this as a mere act of "discipline" gone wrong. He believes he should be released. There is no real remorse from the accused. This court observes this speaks to a wanton loss of life over mice which, on the road side, would cost less than a dollar. Whilst appreciating that broader social structural causes or even familial tensions may have contributed to the commission of the crime, this court takes a very stern approach to violence in the home and resolution of disputes through violence. This is particularly so bearing in mind the stark reality as one

proverb aptly puts it, that “the ruin of a nation begins in the homes of its people,” An effective sentence of 8 years called for the accused’s counsel would be wholly inadequate as would be a sentence of 12 years suggested by the State.

Accordingly, the accused is sentenced to 15 years imprisonment.

*National Prosecuting Authority, State’s legal practitioners
Chirenje Legal practitioners, accused’s legal practitioners*