

THE STATE
versus
JULIET MUREGA [2]

HIGH COURT OF ZIMBABWE
MAFUSIRE J
MASVINGO, 22 & 23 June 2017; 12 & 19 July 2017

Criminal trial

Assessors: Messrs Mushuku & Mutomba

Mr *B.E. Mathose*, for the State
Mr *M. Mureri*, for the accused

MAFUSIRE J:

- [1] This is the second judgment in the trial in which the accused, an adult female aged thirty years, was charged with the murder for her boyfriend. At the close of the State case, her counsel applied for discharge in terms s 198[3] of the Criminal Procedure & Evidence Act, *Cap 9:07*, on the basis that the evidence adduced by the State was not sufficient for a court, acting carefully, to convict and that as such, there was no reason to put her on her defence.
- [2] We dismissed the application for discharge under judgment no HMA 36-17. That was the first judgment. Thereafter, the accused led evidence in her defence.
- [3] The facts are that the deceased died from complicated 55%, third to fourth degree burns, consistent with paraffin burns. The allegations against the accused were that on 19 December 2015, at her lodgings in Runyararo North West suburb of Masvingo, she caused the deceased's death by drenching him with paraffin from a burning paraffin stove and set him ablaze, intending to kill him, or continuing with her conduct despite realising that there was a real risk or possibility that it might cause death.

- [4] The accused pleaded not guilty. The State had lined up four witnesses. The first two were the accused's co-lodgers. The last two were the investigating officer and the medical doctor who conducted a post mortem examination on the deceased and compiled a report.
- [5] The investigating officer's evidence was on the recording of statements and exhibits. The doctor's evidence was on his post mortem examination and the assessment of the extent and degree of the burns on the deceased, as set out above. The summaries of their evidence were admitted into evidence without objection.
- [6] The first two witnesses, Stella Mutakwa ["Stella"] and Aletha Manatsa ["Aletha"], were key to the State case. But even before they opened their mouths, a great deal of the circumstances surrounding the death of the deceased was common cause, or uncontentious. It was this. The deceased scuffled with the accused inside the accused's room. The deceased's clothes caught fire. He was severely burnt. Neither Stella nor Aletha saw how the deceased's clothes caught fire. Efforts were made to douse the fire to save the deceased. These did not succeed. The deceased was ferried to hospital. He died eleven days later.
- [7] Stella said the deceased was assaulting the accused over some telephone message that the accused had received. The deceased suspected it was from some other boyfriend or boyfriends of the accused. Stella tried to restrain the deceased from assaulting the accused and to separate them but failed. She had been drawn into the accused's room by the noise from the accused's two children who were crying. Inside the house was a lit paraffin stove. It gave the only light in the room. The time was around 18:00 hours.
- [8] Stella said when she failed to separate the accused and the deceased, she decided to take the children outside. On her way back, she heard the deceased screaming. He was shouting, "*Juliet, you have killed me!*" The deceased was burning. Stella asked the accused what had happened. The accused did not answer. But she was trying to put out the fire by pouring water on the deceased. Stella fetched a bucket and also poured water on the deceased. She also observed other people pouring water on the deceased

through the window. Later on the deceased was seated outside the house. Aletha arrived.

[9] Aletha said both she and the deceased owned stalls at some market place where they hawked goods. She and the deceased had a very cordial working relationship. On the day in question, she was in her room. She heard noises from the accused's room. The accused was screaming. Aletha lit a torch and went to investigate. Inside accused's room was no other light except that from her torch. Aletha did not see the paraffin stove.

From her torch light, Aletha saw the accused and Stella scuffling with the deceased.

[10] According to Aletha, Stella was on the bed. Both Stella and the accused held the deceased by the collar. Deceased was holding the accused. Aletha shouted at Stella and the accused to let go the deceased. They did not heed her. She rushed out of the room to go and fetch a neighbour, a policeman. But was not there. When she returned to the house, the deceased was seated outside screaming. The right limb of his trousers was on fire. She fetched a bucket of water and poured it onto the deceased. She then helped him pull down his trousers. She asked the deceased what had happened. He shouted, "*I have been killed by these two women,*" meaning Stella and the accused.

[11] Aletha asked the accused what had happened. The accused retorted it was none of her business. None of the neighbours was helping out. Aletha rushed away to look for a car to ferry the deceased to hospital. She helped the deceased into the car. One of the women present insisted the accused should also accompany the deceased to hospital.

[12] On their way to hospital, it was decided to pass through the police station to make a report. On the way to the police, the accused asked for forgiveness over what had happened. Aletha retorted that if she was to apologise, it was to the deceased, not to herself.

[13] The deceased was admitted in hospital. From time to time Aletha visited him. Eventually he died from his wounds.

- [14] At one stage during her testimony in court Aletha wept. She said she was overcome by emotion from memories of seeing the accused dying.
- [15] After Aletha, the State closed its case. Mr *Mureri*, *pro Deo* counsel for the accused, immediately applied for a discharge. He said, among other things, that none of the witnesses had seen what happened inside the accused's room. None of them had said how exactly the deceased had caught fire. The State had failed to disprove material averments in the defence outline *inter alia* to the effect that during the scuffle inside the accused's house, in which the deceased had been the aggressor, and the accused had been trying to wriggle out of his grip, the deceased had slipped and lost his balance. He had accidentally knocked down the lit paraffin stove. The paraffin had spilled. His clothes had caught fire and had started to burn.
- [16] Mr *Mureri* also said Stella's evidence largely supported the defence case. He said Aletha's evidence was discredited. Her exaggerated concern for the accused and the assistance that she allegedly rendered him on the day in question was only explainable by the fact that she was, or had been, in a love relationship with the deceased. He said the State had not disproved these material averments. As such, there was no cogent evidence on which the court, acting carefully, might convict.
- [17] We dismissed the application for discharge primarily on the basis that what the accused had stated in her defence outline, and what had been put to the witnesses during cross-examination by her counsel were not evidence. It was common cause that at the crucial moment, the accused had been alone with the deceased inside her room. Stella had gone out. Aletha had not yet come in.
- [18] In the course of our judgment in the discharge application, we said although the State had said that the deceased caught fire because the accused had drenched him with paraffin from a burning stove, none of the State witnesses had said that.
- [19] However, since a life had been lost, and since the evidence showed the deceased had died from burns, and the post mortem report had stated that those burns had been consistent with burns from paraffin, we felt that the evidential onus had shifted to the

accused. She had to explain what had taken place inside her room, especially given that the paraffin burns were those sustained by the deceased on the evening of his scuffle with the accused. How the deceased caught fire was something peculiarly within the accused's special knowledge. Only after all the evidence was on record would we pass judgment on her guilt or innocence or otherwise.

- [20] The accused then gave evidence. She stuck to her defence outline and explained further. She suspected Stella had "sold her out". Earlier on that day she had received a telephone message from her ex-husband, the father of her two children. He had wanted to come and see her. However, she had replied in no uncertain terms that their marriage was over and that she would not want to see him.
- [21] The accused said she had confided in Stella about the telephone message from her ex-husband. She suspected Stella had wasted no time communicating the news to the deceased, because soon thereafter, he arrived unannounced. He never used to come without prior notice.
- [22] When the deceased arrived, he was in an uncompromising mood. With no preliminaries, he demanded to know why the accused was no longer communicating with him regularly. She had retorted that he too was no longer communicating with her regularly. He complained she was now going out with other men. He demanded to see her mobile phone. She refused. He grabbed it from her. She tried to grab it back. They struggled. He hit her several times with clenched fists on the head. He grabbed her gullet and was strangling her. She struggled to free herself. She was screaming. Stella came in.
- [23] As they struggled, the paraffin stove was lit. The accused had arrived when she was about to prepare her evening meal. The time was around 19:00 hours. Lighting inside the room was from a burning candle perched on a push tray. Stella tried to separate them but failed. The accused did not recollect Stella going out of the room at some stage, or taking her children with her.

- [24] As they struggled, the deceased had his back to the stove. The accused could not describe how exactly the deceased caught fire. But she said during the struggle, he accidentally hit the burning candle and it fell from its stand. It went out. She reckons the deceased accidentally slipped and fell. The floor in the room was hard cement. As the deceased fell, he must have knocked down the lit stove. She demonstrated in court how the lid to the fuel tank could not fasten properly. The three fasteners or hooks that should hold the lid in place loosened easily.
- [25] The accused said she had just poured a litre of paraffin into the stove in order to cook her meal. When the deceased knocked the stove down, the lid must have opened and the paraffin spilt. He fell onto the paraffin. His clothes became drenched. He was wearing a nylon jersey and a pair of cotton trousers. They easily caught fire from the burning stove. He started burning. She was shocked. She was screaming. There was a bucket of water inside the room. She poured it on him to put out the fire. Stella also fetched some water using the same bucket, and poured it onto the deceased.
- [26] The deceased crawled out of the room, and out of the house into the yard. A crowd had gathered. Some people tried to douse the fire with soil. Aletha arrived. She also fetched water and poured it onto the deceased. Later on, Aletha brought a car. The deceased was taken to hospital. The accused joined them. She denied she had been forced into the car. On their way to hospital, they passed through the police station. The accused was detained.
- [27] The accused was cross-examined extensively on the cause of the fire and on other aspects of her evidence. To the suggestion that as they struggled inside the room, it was logical that both she and the deceased should have fallen down together since the deceased had been holding her by the gullet and she had been unsuccessful to free herself, the accused said the deceased must have released her the moment he hit the stove.
- [28] To the suggestion that she had told no one about how the deceased had caught fire and was now fabricating events to exonerate herself, the accused said she had had no opportunity to tell anyone immediately after the incident. However, on their way to

hospital, and to Aletha's enquiry, she had told her what had happened. She denied that she had retorted to Aletha that it was none of her business.

- [29] To the allegation that Stella came into the room after the deceased had caught fire; that she had asked her what had happened and that she had remained quiet, the accused said she did not recall Stella asking her or the deceased anything. She denied that the deceased had shouted, "*Juliet has killed me!*"
- [30] The accused was adamant that the deceased and Aletha had once been in a love relationship. She said before she knew about it, and at the deceased's request, she had assisted Aletha in getting a room to lodge at the same premises where she and Stella were lodging. However, when she eventually discovered this prior love relationship with Aletha, the accused had confronted the deceased about it and about the propriety of him having asked her to assist Aletha to get accommodation at the same premises as herself.
- [31] The accused denied that on the way to hospital she had asked for forgiveness from Aletha. She denied that the deceased had shouted, "*These two women have killed me!*"
- [32] The State submits that the accused must be found guilty of the murder of the deceased. It argues that the cumulative effect of the evidence, much of which was common cause, leads to an inference that, in a state of rage or vengeance for the assault that he had perpetrated on her, the accused had scooped the lit paraffin stove and thrown it onto the deceased who immediately caught fire.
- [33] The State further argues that the accused had an opportunity to explain to Stella and or Aletha, at that early stage, how the deceased had caught fire but that she had not. Her evidence in court was just an attempt to reconstruct the events in order to exonerate herself.
- [34] We believe the accused gave her evidence very well. Although how exactly the deceased caught fire is not fully explained, we have no reason to disbelieve her version. The State's case is mere conjecture. It is based on speculation and rumours.

That she deliberately burnt the deceased was mere suspicion. In any given situation it is suspicion that triggers an investigation. The purpose of an investigation is to gather evidence. The evidence must be cogent and sufficient enough to sustain a conviction. Suspicion alone is not enough.

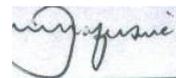
- [35] The inference sought to be drawn by the State, on the cause of the fire on the deceased, must be the only inference, beyond any reasonable doubt, that it was the accused who had deliberately caused it. All other inferences must be ruled out for improbability or otherwise. This cannot be said of the accused's version.
- [36] An armchair analysis of the events on the fateful day, in the comfort of the courtroom, must take into account the exigencies of the occasion. The accused was under an unlawful attack. She was being strangled. She struggled to free herself. The paraffin stove had been lit, not for any sinister purpose, but to prepare food. The accused was not even aware that the deceased was coming. We believe her story. It makes sense. The room was dark. In his rage, the deceased must have ignored the danger posed by the lit stove. It is not an unreasonable explanation by the accused that in their struggle he had slipped and hit the stove as he fell down.
- [37] The accused was entitled to struggle to free herself. That she might not also have fallen down together with the deceased, who was grabbing her by the throat, as the State argues, does not rule out her supposition that the deceased must have released her the moment he had accidentally hit the stove.
- [38] Nothing turns on Stella's allegation that the deceased had shouted: "*Juliet has killed me!*" or Aletha's: "*I have been killed by these two women!*" We find these statements contradictory. According to the State, Stella had nothing to do with the deceased's death. But according to Aletha, the deceased implicated her. Furthermore, Aletha also said that when she came into the room, both Stella and the accused were grabbing the deceased by the collar. So what should one make of this? Was the death of the deceased a joint effort by the accused and Stella?

[39] However, and more importantly, we accept the accused's version that the deceased uttered no such statements, at least to the best of her recollection. It is pointed out these aspects of the evidence of Stella and Aletha were introduced after the trial had already commenced. It had to be adjourned for the State to amend its summary of the evidence to include them. Initially they had not been part of the State case.

[40] At any rate, these alleged utterances by the deceased, if ever he made them, could mean anything. He had been burnt by a paraffin stove belonging to his girlfriend whom he had been assaulting allegedly for cheating on him. Stella must have gossiped to him about what the accused had confided to her earlier on in relation to the text message from her ex-husband. Having caused a storm in which he had come out the loser, the deceased could have said, figuratively, that Juliet [the accused] had killed him, or that these two women [the accused and Stella] had killed him [one because of her cheating, the other because of her gossip].

[41] We are satisfied that the death of the deceased was a horrible accident but which the deceased himself, regrettably, authored. The accused is found not guilty of murder as charged, or of any other offence. She is hereby discharged.

19 July 2017

A handwritten signature in black ink, appearing to read 'J. J. J.', written over a light blue horizontal line.

National Prosecuting Authority, legal practitioners for the State;
Matutu & Mureri, legal practitioners for the accused