

THE STATE

Versus

EDMORE MUDZINGWA

HIGH COURT OF ZIMBABWE

MAWADZE J

MASVINGO, 19. 20, 16 SEPTEMBER, 2016, 25 MAY, 13 & 27 JULY, 2017

Assessors

1. Mr Mutomba
2. Mr Gweru

CRIMINAL TRIAL

E. Chavarika, for the State

Ms Sithole & J. Chipangura, for the accused

MAWADZE J: The accused is arraigned on charge of murder as defined in s 47(1) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*]. The now deceased Rosemary Munodzana was the accused's estranged wife and they had three children together.

The charge is that on 26 January 2015 at Gwaseche business centre in Chiredzi, Masvingo the accused fatally stabbed the now deceased with a knife once on the chest and once in the stomach.

The accused resides in Binga. The now deceased his estranged wife had returned to her maternal home in Chiredzi from the marital home in Binga allegedly due to marital problems between the parties. The now deceased had subsequently secured a job as a shop attendant at Gwaseche business centre at a shop owned by her distant relative one David Hatlani. The accused, on 23 January 2015 decided to follow the now deceased at Gwaseche business centre in Chiredzi from his home area in Binga.

It is the State case that the accused intended to persuade the now deceased to reconcile with him. It is not issue that the next day on 24 January 2015 the now deceased, her brother Munyaradzi and accused proceeded to the now deceased's homestead from Gwaseche business centre where accused had put up on 23 January with the now deceased at the workplace. The purpose of the visit was to discuss accused's visit.

The State alleges it was resolved during this family discussion that as per the custom the accused could only meaningfully discuss the issue after he would have brought his own relatives. The State alleges that after this amicable decision the accused left promising to bring his relatives. The now deceased returned to her work station.

It is common cause that on 26 January 2015 the accused proceeded to Gwaseche business centre. It is not clear where accused went after the discussion at his in-law's homestead. He alleges he put up in the bush for unclear reasons. At Gwaseche business centre the State alleges accused attacked the now deceased who was in a neighbouring shop with her friend a fellow shop attendant in that shop Nelia Rugege.

It is alleged that accused held the now deceased's hands tightly from behind, drew out a knife and stabbed her on the chest after which he pulled out the knife. The now deceased is said to have struggled to free herself from the accused grip but accused continued to hold her as they moved out of the shop. It is alleged the accused proceeded to stab the now deceased for the second time on the stomach and both fell down. The accused is said to have got up, fled from the scene leaving he knife stuck into the now deceased's stomach. The now deceased is said to have bled profusely from the stab wounds and immediately breathed her last. The accused is said to have fled but was later apprehended by members of the public. The now deceased is said to have died from the mortal stab wounds as her left lung was lacerated.

In his rather confusing defence outline the accused nonetheless admitted to stabbing the now deceased but alleges that his mind was clouded by a complex of factors which include voluntary intoxication, provocation, anger and alleged previous assault by the now deceased's brother one Munyaradzi.

The accused said he had left Binga to visit the now deceased for the first time in January 2015 and was not familiar with this area in Chiredzi. The accused said the brother in law who is the now deceased's half-brother Munyaradzi Chigadza brutally assaulted him upon accused's arrival at his in law's home demanding bride price (lobola) and labelling accused's children as wild cats. The accused said he found no joy from the local members of Zimbabwe Republic Police to whom he reported the unprovoked attack as they advised him that the matter was a civil one rather than a criminal one. In frustration due to the unhelpful attitude of the police the accused said he turned to the bottle to find solace. On the fateful day accused said he drank beer from 08.00 hrs until 16.00 hrs when this tragic incident happened.

The accused said the now deceased who had been away to Chiredzi town to order goods for the shop returned at about 16.00 hrs on that fateful day. He said he was further incensed by the now deceased's attitude who had hitherto accepted the accused with open hands when accused arrived from Binga and created the impression that she was willing to reconcile with the accused as she accommodated the accused in her room at her workplace. The accused said to his chagrin the now deceased no longer wanted talk to him on 26 January 2015 and was openly hostile. As a result, the accused said he lost his temper and failed to control his emotions moreso as he was now inebriated and felt provoked by the now deceased's conduct. The accused said he had in his possession a knife he had brought to protect himself from possible further attack by the now deceased's half-brother Munyaradzi whom accused said had wielded a knife, an axe and a spear threatening to kill the accused at the family discussion held the previous day over the issue of bride price.

The accused said at the spur of the moment he then stabbed the now deceased.

The accused's confirmed warned and cautioned statement Exhibit 1 is more or less the same as his defence outline. In view of accused's evidence he later adduced during the defence case as it useful, in a summary, to outline accused's version as per that statement.

In that statement the accused said he came from his home at the instance of the now deceased on 23 January 2015. He said the now deceased welcomed him and accommodated him at her workplace. The next day he said he was taken to his in law's home where the in laws Munyaradzi Chigadza, Kudakwashe Magudu, Hlabwani Hetisani and Kerestina Telele took him to task on how he had arrived in their area as he had never visited them before. During this interrogation the accused said both Munyaradzi Chigadza and Kudakwashe Magudu assaulted him. They threatened to stab him but Kerestina Telele intervened. The accused said he then managed to flee and put up in the bush. Before he left for his home in Binga accused said on 26 January 2015 he decided to pass through the now deceased's work place. The accused said he decided to first buy a knife to protect himself from possible attack by the now deceased brothers. Thereafter he proceeded to Gwaseche business centre where the now deceased was employed. The accused said he located the now deceased inside a shop in which her friend was a shop attendant. The accused said the now deceased was unwilling to talk to accused. According to the accused this incensed the accused and he proceeded to stab the now deceased on the right side of the chest as he was holding her. The accused said he then pulled out the knife as they both went out of the shop. The accused said he stabbed the now deceased again on the stomach causing her to fall down. Accused said he left the scene and the knife was embedded in the now deceased's stomach. He said a group of villagers caught him and took him to the scene of crime where he saw the lifeless body of the now deceased.

The knife in issue was produced by consent as Exhibit 3. It is a kitchen knife 31 cm long. The blade is 19.5 cm long and the handle is 11.5 cm long. Its weight is 0,001 kg. The cause of the now deceased's death is not in issue. She died as a result of fatal stab wounds. This is more amplified in the post mortem report Exhibit 2 compiled by Dr A. Dube on 29 January 2015. The evidence of Dr A. Dube was also admitted in terms of s 314 of the Criminal Procedure and Evidence Act [*Cap 9:07*].

As per post mortem report and Dr A. Dube's testimony the now deceased had two stab wounds, one on the right subclavicular region and the other on the subcoastal region. Her left lung had a laceration. The now deceased had no injuries or lacerations on the head. The doctor concluded that the cause of the now deceased's death was pneumothorax which in simple terms is the presence of air in the pleural cavity surrounding the lungs which leads to

breathing problems. There is therefore a clear nexus between the stab wounds inflicted by the accused and the now deceased's death.

The closing written submissions by *Mr Chipangura* for the accused who took over this matter during the latter part of the trial from *Ms Sithole* is not only illogical but baffling to say the least. *Mr Chipangura's* rather warped reasoning process is that the now deceased did not die from the stab wounds but from the act of pulling out the knife embedded in her body by David Hatlani! The logic of this submission is difficult to appreciate both in the literal and medical sense. It should not detain us at all. How could one discount the effect of the stab wounds from the now deceased's death and argue that it is the mere removal of the embedded knife from the now deceased's stomach, after she had been mortally injured, which caused her death? With all due respect, we dismiss this fauciful and unhelpful theory.

The evidence of Gibson Chauke and Cst July Kanama was also admitted in terms of s 314 of the Criminal Procedure and Evidence Act [*Cap 9:07*]. For clarity purposes it is as follows;

CST KANAMA

He is a member of Zimbabwe Republic Police based at Chambuta police station. His sole role was to witness the recording of accused's confirmed warned and cautioned statement on 28 January 2015 by Cst Kasuru.

GIBSON CHAUKE

He resides in Ranganai Village in Chiredzi. His evidence is to the effect that on 26 January 2015 while he was at Gwaseche business centre he heard one Nelia screaming. He then saw the accused the now deceased who were holding each other falling to the ground. The accused then immediately got up and fled. He rushed to the scene and observed the now deceased bleeding from the chest and saw a knife embedded in the now deceased's stomach. He decided to chase after the accused and the accused fled throwing stones at him. Undeterred he pursued the accused until he and others apprehended the accused. He said the now deceased died immediately and police were called. All this evidence is not disputed by the accused.

The State led viva voce evidence from 3 witnesses David Hatlani, Kudakwashe Magudu and Cst Tendai Kasuru. The accused gave evidence and did not call any witnesses. We now turn to this evidence.

DAVID HATLANI (DAVID)

David is the owner of the shop where the now deceased worked as a shop attendant and is distantly related to the now deceased. He did not know the accused until the day accused visited the now deceased at his shop on 23 January 2015 and the now deceased introduced accused to him as her husband. He advised accused to visit the now deceased at her maiden home rather than at her workplace. David said the next day the now deceased and her brother Munyaradzi left for the now deceased's home in the company of the accused.

On 25 January 2015 David said the now deceased returned to work accompanied by her brother Munyaradzi. The accused was not present.

The next day David sent the now deceased to Chiredzi town to purchase orders for the shop. This was now on 26 January 2015 the fateful day. He said while the now deceased was away he then saw accused at his shop at 13.00 hrs drinking beer. The now deceased returned from Chiredzi town at about 15.00 hrs and proceeded to pack the items she had brought to the shop without conversing with the accused. After she finished she asked for permission to go and see her friend Nelia Rugele, a shop attendant at neighbouring shop. He allowed her to go. David said he then saw accused using a private entrance into his shop coming from the back of the shop and he advised accused not to use that private entrance but the front entrance used by the public. This was so as the back entrance led to the residence of persons staying at the shop. The accused then sat on the verandah drinking beer.

David said after about 30 minutes his attention was drawn to the neighbouring shop where the now deceased had gone. He then saw accused and the now deceased holding each other and falling to the ground with accused falling on top of the now deceased. He said when accused got up he observed that accused's white t-shirt was now blood stained and accused started to walk away leaving the now deceased lying on the ground. At that stage one Gibson Chauke shouted that the now deceased had a knife stuck in her abdomen. The accused took to his heels.

David said he rushed to where the now deceased was lying. He then lifted up her blouse and observed that a knife was embedded in her stomach to the hilt. In graphic terms he explained that all what he saw was about 5 cm of the handle of the knife. David thought it was a small or short knife and started to pull it out. To his utter shock he realised it was a long knife whose length he estimated to be like a ruler. This would imply that about 25 cm of the knife which was inclusive of the whole blade and greater part of the handle were inside the now deceased's body. He gently pulled out the knife hoping to help the now deceased at the same time calling for the public to chase after the accused who had eluded Gibson Chauke. Many people at the shop had fled when accused stabbed the now deceased and only the now deceased's friend Nelia Rugede and Gibson Chauke remained. Nelia Rugede was just crying.

David said he joined Gibson Chauke to chase after the now deceased but they lost him. He said a villager however advised them where accused was hiding and that accused had removed his white t-shirt. They located accused who again took to his heels but members of the public apprehended him after a chase.

Under cross examination David said when he decided to pull out the knife embedded in the now deceased's body he believed it was not a long knife and did so slowly. He indicated that he was unable to tell accused's degree's sobriety as he was not used to the accused. He said accused was chased after by about 15 young men who only caught up with him after about 1 ½ km as accused was running very fast and has discarded of his white t-shirt.

In our assessment David gave his evidence well. He is a fairly old man whose testimony was largely unchallenged. In any case he had no motive to falsify his evidence as accused was almost a stranger to him. Further, accused's own defence outline and confirmed warned and cautioned statement is corroborative of David's evidence as accused in the defence outline and confirmed warned and cautioned statement admits stabbing the now deceased and leaving the knife embedded in her stomach.

A proper assessment of David's evidence would discount the possibility that accused was heavily intoxicated. The accused had the presence of mind to immediately flee from the scene of crime soon after stabbing the now deceased and to remove the white t-shirt so that he could not be easily seen as he was hiding in the bush. Further, accused could not possible

have been heavily intoxicated as he managed to outpace sober persons numbering about 15 and to do so for 1 ½ km despite being pursued by young persons. The accused's so called high degree of intoxication in view of such evidence is simply a ruse.

KUDAKWASHE MAGUDU (KUDAKWASHE)

He is deceased's half-brother as they share the same mother and Munyaradzi Chigada whom he said had illegally crossed to South Africa is also a half-brother as they share the same mother.

The evidence of Kudakwashe relates to the family gathering he and others held with the accused and addresses accused's allegation that either Kudakwashe or Munyaradzi or both of them assaulted the accused at that gathering.

Kudakwashe told the court that he did not know the accused until 25 January 2015 when he saw accused at Munyaradzi's homestead in Chiredzi. He was invited by Munyaradzi to discuss the issue of accused who had arrived saying he wanted to take back his wife the now deceased.

Kudakwashe said accused had married the now deceased when the now deceased was staying with their mother in Gokwe. He was not privy as to the details of the bride price accused could have paid to their late mother in Gokwe.

Turning to the gathering Kudakwashe said only Munyaradzi, their father, the accused and the now deceased were in attendance. Accused indicated that he wanted to take back his wife the now deceased back to his home in Binga. The now deceased confirmed that indeed she had directed accused to Chiredzi as this was accused's first visit to Chiredzi. Kudakwashe said it was resolved that since the now deceased had left accused's home due to marital problems with accused it was prudent for accused to bring his own relatives so that they could discuss the problems which deceased had faced causing her to leave for the maiden home. It was agreed that accused would bring his relatives on 14 or 15 February 2015.

Kudakwashe said the discussion was amicable and lasted about 30 minutes. The accused then bade farewell saying he was going back to his home in Binga. Kudakwashe refuted that accused was assaulted or that any threats to assault him were made. The now deceased thereafter left for her workplace.

On 26 January 2015 Kudakwashe said the now deceased telephoned him in the morning saying she was in Chiredzi town on business. Later that day around 14.00 hrs the now deceased telephoned again to say accused was at her workplace and that she was puzzled as to what accused wanted. He was surprised too that accused had not returned to Binga. Barely 20 minutes later Kudakwashe said deceased's friend Nelia Rugede telephone Kudakwashe advising him that the now deceased had been fatally stabbed.

Under cross examination Kudakwashe denied that bride price was demanded at family gathering from the accused. He reiterated that accused had married the now deceased who was staying in Gokwe with their mother and that they would not have known what bride price accused had paid and was outstanding. He stated that it was not their call to demand lobola at that stage from accused but simply wanted to discuss the issue of re-union between accused and the now deceased in the presence of accused's relatives not with the accused alone. He again refuted that accused was assaulted but that he properly bade farewell and left hence his surprise on 26 January to learn of accused's presence at the now deceased's work place.

In our assessment the demeanour of Kudakwashe was beyond reproach. Again no meaningful questions imputing his evidence were put in cross examination. From his evidence there seems to have been no objective reason for anyone to assault the accused. The demands made to accused as per custom in our view are clear and reasonable.

CST TENDAI KASURU (CST KASURU)

The evidence of Cst Kasuru is not challenged at all. He is the investigating officer. His evidence could well have been admitted in terms of s 314 of the Criminal Procedure and Evidence Act [*Cap 9:07*].

Cst Kasuru attended the scene of crime on 26 January 2015 with other 3 police details and found accused apprehended. He recovered the knife Exhibit 3. Upon checking the

deceased's body, he discovered two stab wounds on her chest and abdomen. He then recorded a warned and cautioned statement from accused.

Cst Kasuru confirms accused's evidence that accused had bought the knife Exhibit 3 at Golden City business centre after which accused proceeded to the now deceased's work place at Gwaseche business centre both in Chiredzi. He said accused voluntarily made indications to him on how he had stabbed the now deceased firstly in the chest inside the shop when accused found the now deceased conversing with her friend Nelia Rugege and secondly outside the shop as the now deceased tried to escape in the stomach. He said accused said he had acted in that manner because of the now deceased's conduct of ignoring him and the alleged assault by the now deceased's brothers.

Cst Kasuru said he indeed observed a trail of blood from the shop to where the now deceased's body was outside the shop. He also confirmed at Golden City business centre the shop from which accused had bought the knife Exhibit 3 on 26 January 2015. He dismissed that accused had hitherto made any report of assault and that the police base accused mentioned was none existent.

THE ACCUSED'S EVIDENCE

It is virtually impossible to ascertain the accused's version of evidence in this case. This is so because accused gave inconsistent versions of what he alleges happened and gave no plausible explanations for such inconsistencies.

Contrary to what he had clearly stated in the defence outline and the confirmed warned and cautioned statement the accused was signing a totally different song when he took the witness stand. We shall simply highlight these inconsistencies.

- (a) While accused was clear that he had visited Chiredzi for the first time in January 2015 from his home in Binga in his defence outline and confirmed warned and cautioned statement as was also confirmed by state witnesses, the accused changed and said his visit in January 2015 was a second one as his first was in September 2014. The accused's story became muddled up as he alleged it was in September 2014 when the now deceased's brothers assaulted him demanding lobola and that he fled back to Binga. This was never put to any of the state

witnesses and is at war with accused's confirmed warned and cautioned statement and the defence outline.

- (b) The accused gave a totally different reason for visiting the now deceased's work place on the fateful day 26 January 2015. Accused was now heard to say he had left his money in the now deceased's room when he had been accommodated in the now deceased's room when he first arrived at Gwaseche business centre. Further he was now saying the now deceased angered him by refusing to give him the money or to talk to him. The accused said he had no money to go back to Binga and wanted that money for bus fare. This is new evidence from the accused. Further, how come accused had the money to buy the knife and to drink beer, so we may ask.
- (c) The accused gave a totally different account of what he said happened when he was at Gwaseche business centre on 26 January 2015. The accused's new version was that the now deceased's employer David assaulted him by blocking his way and throttling him ordering him to leave the shop. Accused said he then followed the now deceased at the neighbouring shop to demand his money but David followed him shouting and threatening further assault. As a result, accused said he fled from the business centre. Besides this totally changing the colour of accused's evidence this version was never at any stage put to David.
- (d) In a complete about turn around the accused denied ever stabbing the now deceased. In fact, he professed ignorance on who stabbed the now deceased or how the now deceased was injured. He said when he fled from the business centre the now deceased had not sustained any injuries. To put an icing on the cake as it were accused tried to disown his confirmed warned and cautioned statement alleging police misled him as he was a stranger in Chiredzi. Worse still, accused disowned his defence outline alleging it was fabricated by his legal practitioner! Need we say more as regards accused's credibility? It is virtually in tatters. No reasonable court can believe the accused who seemed to believe the court is a place where one should endeavour not to tell any single truth.
- (e) It was not surprising that when the court asked the accused what version informs his defence the accused in a rather Damascene moment somersaulted and admitted that all he has said in evidence in chief and under cross examination was a big lie. Accused then admitted stabbing the now deceased twice and profusely asked for

forgiveness, and leniency. He could not explain why he was giving these different versions.

FINDINGS

- (i) It is the accused who stabbed the now deceased with the knife Exhibit 3 twice.
- (ii) The injuries accused inflicted on the now deceased are very clear as per Exhibit 2 the post mortem report, and David's evidence. The 30 cm knife was left embedded into now deceased's stomach to the hilt.
- (iii) The defence of intoxication as provided in s 221(1) of the Criminal Law (Codification and Reform) Act, [Cap 9:23] is not available to the accused. The evidence of David is clear. The accused fully appreciated what he was doing. See *S. v Dzaro* 1996 (2) ZLR 541 (H). The accused simply drank beer to get Dutch courage.
- (iv) The accused was not provoked in any manner. The defence of provocation as provided in s 239(1) of the Criminal Law (Codification and Reform) Act [Cap 9:23] against is not available to the accused. No one provoked the accused and that is why he gave various inconsistent versions of what happened.
- (v) The intention of the accused when he stabbed the now deceased twice with the knife was clear. He intended to cause death. He clearly planned this offence. He misled the now deceased that he was going back to Binga. Instead he went to a different business centre where he bought a knife Exhibit 3. He followed the defenceless now deceased who was chatting with her friend in a neighbouring shop. The accused pounced on her unexpectedly stabbing her on the chest. He was not done. He kept on holding her and thrust the knife into her abdomen, leaving the 31 cm long knife inclusive of the handle embedded in the now deceased's body. He sought to end the now deceased's life and indeed achieved that. The accused acted with actual intent.

VERDICT

Guilty of contravening section 47(1)(a) of the Criminal Law (Codification and Reform) Act, [Cap 9:23]:- murder with actual intent.

SENTENCE

You now stand convicted of the offence of murder with actual intent.

It is clearly understandable given the facts of this case that your counsel was tongue tied to find anything meaningful to say in your favour.

This is another case which shows the scourge of domestic violence bedevilling our nation. Regrettably a significant number of spouses, especially women are losing their precious lives at the hands of those whose are expected not only to love them until death do them part but to protect them. Indeed, time has come for the courts to deal decisively with this scourge by sending loud, clear and unambiguous signals to the general public that taking one's life has no place in our civilised society. The human blood is sacred and the sanctity of human life should always be upheld. Maybe humanity would be remoulded.

The circumstances of this case show that this not was only a heinous but wicked and callous act. You simply murdered your estranged wife in cold blood. It is aggravating that you actually planned to terminate an innocent life in a cowardly and callous manner.

The mother of your three minor children had not done anything to deserve a premature and painful end to her precious life. It is clear she had decided to leave her matrimonial home in Binga with her 3 minor children to escape from marital abuse and ill treatment at your hands. She retraced her footsteps to her maiden home. As a responsible mother she secured employment to fend for your 3 minor children. It is also clear she was a forgiving person because when you asked to visit her she gave you directions to her work place, accepted you with open hands, fed and accommodated you. She was prepared to give you a second chance and took you to her parents' home to have your possible reunion ironed out as per our custom. So what wrong did she commit? A roadmap was then adopted by her male relatives on how you were to reconcile and there is nothing inherently wrong with that. It would appear that in our patriarchal and male chauvinistic society woman have no constitutional rights or freedom to walk in and out of a relationship.

You planned to commit this offence. You purchased a knife and proceeded to the now deceased's work place to end her life. Indeed, you ended her life in the most cruel and painful manner after you attacked her unexpectedly. You mad sure she would die and had the temerity to leave a 30cm long knife embedded in her stomach to the hilt.

There is no sign of contrition at all on your part. It is understandable that the state has asked for a death penalty. Indeed, your conduct shows that you are a social miscreant and society is better off without you.

The ultimate death penalty is within the discretion of the court. The debate will always remain whether the philosophy of an eye for an eye would not leave everyone blind. Despite that this was a case of premediated murder we shall spare you the death penalty on account of the fact that you had indeed consumed alcohol. Your conscience shall forever be tormented by the fact that you took the life of the mother of your 3 minor children aged 15 years, 12 years and 9 years.

In our view you deserve to spent the rest of your life in prison.

Accordingly, you are sentenced to imprisonment for life.

National Prosecuting Authority, counsel for the State
Pundu & Associates, pro deo counsel for the accused

