

PATRICKMADHUME
versus
THE STATE

HIGH COURT OF ZIMBABWE
HUNGWE J
MUTARE, 17, 20 AND 26 June 2014

Criminal Trial

Mrs J Matsikidze, for the accused
W. Makuyana, for the State

HUNGWE J: On 24 March 2012 Tambudzai Maya left one homestead where she had just knocked off duty. She was headed for her residence in Village 11, Mayo.

She did not get home.

The following day some cattle herdmens discovered her body. Her daughter was sitting beside her dead body. The baby was badly injured around the head and face. The mother's head had been crushed.

A report was made to Police at Mayo. There was no clue as to who could have committed this gruesome murder.

On 9 September 2012 Violet Chapwanya left Chikitora homestead in Village 4 Mayo after attending a traditional or cultural ceremony the previous day. She was headed home in Village 2 Mayo. With her was her daughter, Sandra Nyakweto.

The mother and daughter did not arrive home. They were reported missing.

On 19 September 2012, their remains were discovered. Again no one had a clue as to who could have committed these gruesome murders.

In another part of the countryside, specifically at 21 Nami Farm, Macheke, on 23 September 2012 the accused approached Tsikayi Homestead.

He asked Sylvia Munzvandi for overnight accommodation on the pretext that the night was falling and he could not make it to Nyagambe Village before the rains which were

imminent. She took the accused to her husband, one Jairos Tsikayi.

Jairosi Tsikayi, upon being briefed of the stranger's request by his wife became suspicious and quizzed the accused. Before long the accused confessed to Jairosi Tsikayi and his wife that he had committed multiple murders in Mayo.

A member of the local neighbourhood watch committee was called. Accused repeated his confession which was so detailed that it left no doubt in anyone who cared to listen that this was the truth. Accused was arrested and conveyed to Macheke Police Station the following day. He was then transferred to Marondera CID.

The accused was charged with three counts of murder and one of attempted murder arising from the above events.

He pleaded not guilty to all charges.

His defence was simple. He does not deny that the deceased met their deaths in circumstances where foul play was not ruled out. In fact he acknowledged that he made and confessed to the murders first to villagers in Macheke and then to Police.

What he however says is that he had been assaulted prior to making the confessions. As such the confessions are not at law admissible in evidence.

The accused was taken to Magistrates Court, at Rusape on 5 October 2012 for confirmation proceedings in terms of s 113 of the Criminal Procedure and Evidence Act, [*Cap 9:07*].

In the proceedings before the Magistrates two statements which are in effect confirm confessions to the crimes charged, were duly confirmed.

In terms of s 256 of the Criminal Procedure and Evidence Act, any confession of the commission of an offence which is proved to have been freely and voluntarily made by an accused person without his having been unduly influenced thereto shall be admissible against such an accused.

These two statements were subject to a challenge during the present trial. In a trial within a trial, the accused admitted that he made the statements to Police but disputed that he had made these statements freely and voluntarily.

The challenge to the voluntariness during the making of the statement became subject of a trial within the trial.

The challenge failed on the basis that the accused failed to discharge the onus on him to show, on a balance of probability that he did not give his statements freely and voluntarily

without having been unduly influenced thereto.

The accused's statements were therefore admitted in evidence; as Exh 22 his statement in respect of the events of 25 March 2012 and Exh 23, his statement in respect of the events of 9 September 2012.

Exh 22 is a detailed confession regarding to how he met the deceased and her child along a foot path. The exchange of pleasantries ended in threats, then how he forced her off the road and raped her before he murdered her by crushing her head with a boulder. He then used the same stone on the child. He believed he had killed both. He stole her cell phone for good measure.

Exhibit 23 similarly is a confession on how he murdered Violet Chapwanya and her child after raping the mother.

Section 273 of the Criminal procedure and Evidence Act, [Cap 9:07] provides as follows:

“Any court which is trying any person on a charge of any offence may convict him of any offence with which he is charged by reason of a confession of that offence proved to have been made by him, although the confession is not confirmed by any other evidence:

Provided that offence has, by competent evidence other than such a confession, been proved to have been actually committed.”

It is apparent from this provision that an accused person can be convicted of an offence with which he is charged if he has confessed to having committed that offence provided that the offence has been proved to have been actually committed.

In *S v Dube* 1992 (1) ZLR 234 (SC) the court quoted the following passage from *R v Taputsa* 1996 RLR 662 (A) at 667 (E) with approval where LEWIS JA stated;

“The effect of Sec 301 (2) seems to be that; where there is evidence *aliunde* proving that the offence has actually been committed the court may satisfy itself of the genuineness of confession by the accused that he committed or took part in it from the nature of the confession itself, where, however, there is no evidence *aliunde* proving that the offence itself has been committed, the court must, in addition, go outside the confession and be satisfied that it is confirmed by other evidence. In the leading case of *R v Blyth* 1940 AD 354, TINDALL JA delivering the judgment of the full bench of the Appellate Division, laid down that the confirming evidence required by the statute must be such as to corroborate the confession “in a material respect” although it need not directly implicate the accused in the offence, and that the statutory requirement, in this regard was similar to that in respect of an accomplice, as explained by SOLOMON ACJ – *R v Lakatula* 1919 AD 362.

In Lakatula's case, it was said that there should be corroboration in some material respect in order that the jury may be satisfied that the accomplice is a reliable witness upon whose evidence they may safely act" (See also *S v Troskie* 1920 AD 466 at 468 per INNES CJ).

Applying this test to confession, it seems that the confirming evidence need not amount to evidence directly confirming that part of the confession in which the accused actually implicates himself in the commission of the offence, it need only be evidence which is sufficiently corroborative of a material part or parts of the confession to satisfy the court that it can safely rely on the confession as a whole to convict the accused."

In our view there is ample evidence in the matter before us to show that the nature of the confession made by the accused were genuine.

Before I outline on the aspect of evidence which leads me to this conclusion, I make reference to the case of *R v Sambo* 1964 RLR 565 at 572 A-C where BEEADLE CJ said;

"If the accused remembers facts on his confession, the knowledge of which he could only have come by being connected with the crime, the mentioning of such facts will of course, the most cogent evidence to show that the confession is genuine. But even if the accused may have been questioned by the Police on these facts, that their mention still has considerable probative value. If an accused freely makes a long statement and all the known facts fit their proper sequence onto this statement, this may often be sufficient on which to base a conclusion that the confession is genuine, even if the police may previously have questioned the accused on these facts because unless the police put the actual words of the statement into the accused's mouth, if his only knowledge of the true facts has come upon police questioning, he is hardly likely to present a coherent and convincing story into which all the known facts dovetail perfectly. A confession of such a type will often therefore, prove its genuineness."

I turn to consider the accused's confession.

In both incidents the accused confessed;

- (1) that he committed the murders in the Mayo area;
- (2) that he first raped the women before killing them;
- (3) that he used a large stone to crash their heads;
- (4) that he killed the children after their mothers.

The evidence led in court shows through the medical reports that there was a large stone which had blood at its centre.

The baby who survived had a depressed skull.

The evidence in the confessions fitted the accused's *modus operandi* as confessed to Jairoso Tsikayi and; later, to police.

In the result we are satisfied that it is the accused and no one else who committed the

crimes. He is found guilty as alleged.

Sentence

In averring sentence, the court takes into account that you are a first offender.

The fact that you confessed your crimes is also mitigatory.

However there is hardly anything to be said in your favour especially because of the wicked and gruesome nature of the crime you committed.

You carefully picked vulnerable women and children who had done nothing to provoke you to commit these crimes.

Before murdering them, you would just rape them in their children's full view.

You would then crush their heads in a most brutal fashion in full view of the children same gratuitous violence on the defenceless children.

Luckily there was a survivor.

Society does not need people like you amongst it.

The only fitting sentence will be as follows:-

Count 1: life imprisonment

Count 2: 5 years

Count 3 life imprisonment

Count 4 life imprisonment

Messrs Bere Brothers, accused's legal practitioners
Prosecutor General's Office, the State's legal practitioners