

FUNGAI MPOFU v THE STATE

SUPREME COURT OF ZIMBABWE
MALABA DCJ, GOWORA JA & CHEDA AJA
BULAWAYO, JULY 30 & 31, 2012

N Nyathi, for the appellant

W Mabaudhi, for the respondent

MALABA DCJ: The appellant was convicted of murder of his former wife one Mtambo aged 25 with actual intent. He was sentenced to death by the High Court after a finding that there were no extenuating circumstances. Although a notice of appeal against both conviction and sentence was filed, Mr *Nyathi* who appeared for the appellant indicated that he had no meaningful submissions to make on both conviction and sentence.

The court is of the view that the concession was properly made under the circumstances of the case.

The facts which are common cause are as follows. The appellant and the deceased were once married. They were separated at the time she met her death on 9 January 2008. The appellant who was aged 34 years at the time met the deceased in the company of her young sister Nomzamo Mtambo when they were walking along a path on their way from Guwe Clinic going home in Kennilworth Village 12. The appellant lived in Village 9.

The appellant accosted the two women and invited them for lunch at his home. They declined the invitation. That apparently infuriated the appellant. He demanded that the deceased should remain behind as he wanted to discuss something with her. The deceased refused.

The appellant started assaulting the deceased with a knobkerrie that had a blunt head. When the young sister tried to intervene, the appellant struck her with the handle of the same weapon. Nomzamo ran away as the deceased was being assaulted further by the appellant who was forcing her to go with him to his home.

The following morning the deceased's body was discovered near the appellant's garden covered with a blanket. The body was covered from the waist upwards. The post-mortem examination revealed the following injuries:

1. A 35 x10cm sharp stab wound below the left angle of the mandible traversing the neck structures. The above wound communicated with
2. A 40 x 10cm sharp stab wound on the right angle of the mandible traversing the anterior to the cervical spine severing the neck's soft tissue including the oesophagus and jugular veins which bled into the surrounding structures.

The cause of death was found to have been:

1. Hemorrhagic shock.
2. Severe cervical injuries due to stab wounds with a sharp object.

It is common cause that the injuries from which the deceased died were caused by the appellant using a spear. The appellant ran away after the commission of the crime and

stayed in the nearby bush where he dug a cave for a home using tree branches to hide himself.

The motive for the murder is clear from the suicide note which he wrote for his mother-in-law and left on the body of the deceased. It is clear from the note that he blamed his mother-in-law for the breakdown of his marriage to the deceased. Although he had threatened in the note that he was taking his own life he developed cold feet.

The court holds that the court *a quo* correctly found the appellant guilty of murder with actual intent to kill.

On extenuating circumstances it was suggested that the appellant was provoked by Nomzamo who after being assaulted by him retorted that he was free to collect his property including the cattle he had paid for lobola.

The court *a quo* correctly dismissed the argument that the utterance by Nomzamo constituted provocation. The evidence shows that she uttered those words in response to the assault upon her by the deceased.

The unanimous view of the court is that there was no misdirection on the part of the court *a quo*.

The appeal is without merit. It is dismissed.

GOWORA JA: I agree

CHEDA AJA: I agree

Lazarus & Sarif, appellant's legal practitioners

Attorney-General's Office, respondent's legal practitioners