

THE STATE
versus
PHILLIP CHIURUNGE

HIGH COURT OF ZIMBABWE
BERE J
MASVINGO, 1 October 2014 and 2 October 2014

Assessors: 1. Mr Mushuku
2. Mr Dhauramanzi

Criminal Trial

E Chavarika, for the State
J G Mupoperi, for the accused

BERE J: On 13 February 2008 and at Village Matema, under Chief Mapanzure in Masvingo Province, Ndaichinyei Chimbuya (“the deceased”) lost her life in very painful circumstances which were caused by persistent assaults.

The State alleges these persistent and systematic assaults were perpetrated against the deceased by the accused who stands charged of the crime of murder as defined in s 47 (1) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*].

The allegations against the accused are that on the fateful day the accused approached the deceased at her homestead and accused her of practising witchcraft.

The accused force marched the deceased to her now late son Munyaradzi Zimuto’s and the late village’s homesteads. Whilst at these places the accused is alleged to have indiscriminately and severely assaulted the deceased several times with a log.

The post mortem report (exhibit II) noted that the deceased sustained deep scalp lacerations on the left and right frontal region of the head. Further, a depressed skull fracture on the frontal bone was also noted. The deceased was also observed to have fractured right

tibia and fibula as well as bruises on both thighs. It was the head injury which caused the deceased's death.

Dr Godfrey Zimbwa who was called to testify on the post mortem examination testified to the effect that the injuries to the deceased's head were consistent with a severe force having been applied to the deceased's head and further that there were at least two most pronounced blows to the deceased's head.

Further, the doctor expressed the view that it was impossible for the head injuries to have been caused by a single deflected blow as suggested by the accused in his defence outline as well as evidence in chief.

In his defence, the accused, whilst admitting to having assaulted the deceased, denied that he was responsible for the two fatal head injuries. He stated that he was aware of the single head injury which was a result of a deflected blow which he had intended for the deceased's shoulders.

The court had to deal with two competing versions which sought to explain how the deceased sustained the fatal head injuries, one given by the accused and the other which supported the State Case through one Simbarashe Chimbuya who claimed to have seen how the deceased sustained some of the injuries. No one saw the deceased being assaulted on the head so the inferences on those injuries were largely circumstantial.

The evidence of the State largely centered on Simbarashe Chimbuya who was staying with the deceased during her life time. The deceased was this witness's maternal grandmother and the accused was his maternal uncle.

Simbarashe took the Court through the various stages of assault starting with the collection of the deceased from her homestead by the accused right up until the witness eventually parted with the accused and the deceased as the two headed to the village head's homestead.

Simbarashe's evidence was that he kept vigil on the movement of the accused and the deceased as the accused, accused the deceased of her alleged practice in witchcraft. The witness testified that from the moment the accused collected the deceased from her homestead accusing her of practising witchcraft he was in a combative mood and would shove and punch the deceased as they headed to the deceased's late son Munyaradzi's homestead.

The witness saw the accused assaulting the deceased with a stick which he said was about a metre long with its diameter from where the accused was holding at about 4cm with

its thicket part measuring about 5cm in diameter. Simbarashe said this stick resembled a hoe handle and that the accused was using the thicker part in assaulting the deceased on the shoulders. The deceased was subjected to severe assaults to the extent that at one stage she had to kneel down and ask the accused to forgive her. The witness reckons severe force was being used to assault the deceased.

Simbarashe witnessed numerous assaults being perpetrated against the deceased and these assaults got confirmation from the accused who however sought to play down the severity of such assaults. In the court's view the position adopted by the accused is understandable.

Of significance in the testimony of Simbarashe were the accused's utterances that he was going to suck the deceased's blood that day. The witness saw the deceased attempting on countless occasions to ward off the blows delivered to her by the accused. The deceased was using her hands to try and protect herself.

Whilst it is accepted that Simbarashe generally told the truth, sight must not be lost that he testified of having seen the deceased with broken or fractured hands, something which the post mortem report did not speak to. It is possible the witness may have exaggerated his testimony in this regard.

Despite this, however, we are generally satisfied that this witness's version substantially gave us a fair summary of the accused's uncompromising and aggressive conduct towards the deceased. This is so because even the accused's own guarded version provides some corroboration to the witness's testimony. Further the accused's own, confirmed, warned and cautioned statement speaks to the accused having assaulted the deceased.

The credibility of Simbarashe is demonstrated by the fact that he was honest enough to tell the court that he did not witness the accused deliver the fatal head injuries to the deceased's head, one of which the accused attributes to a deflected blow by the late Munyaradzi.

The difficulty with the explanation given by the accused as regards the fatal head injuries is that throughout the time that he was seen with the deceased he had demonstrated a determination to cause pain to her. Add to this, his declaration that he was going to suck the deceased's blood that day. It does not make sense to imagine that the accused would have referred to anything other than fatally assaulting the deceased whom he believed was behind the illness of his own mother and other relatives. More importantly the evidence of Dr

Zimbwa clearly discounted the accused's theory of a deflected blow to the deceased's head. The evidence in this case clearly shows that the accused set the tone to punish the deceased for allegedly practising witchcraft, and it is inconceivable in our view that given the opportunity (which the accused had in abundance, with the deceased) he would have failed to conclude his objective of fatally injuring the deceased by assaulting her on the head.

We are inclined to accept the assessment of the evidence as put forward by the State that, the accused having put in motion the unlawful assault of the deceased it was only natural that that process be concluded in the most natural way – that is, fulfilling the objective the accused had set to achieve.

As BEADLE CJ observed in *R v Sibanda and Ors*:¹

“Generally speaking when a large number of facts, taken together, point to the guilt of the accused, it is not necessary that each fact should be taken in isolation and its existence proved beyond a reasonable doubt; it is sufficient if there are reasonable grounds for taking those facts into consideration, and all the facts taken together to prove the guilt of the accused beyond a reasonable doubt.”

There can be no doubt in our minds that the circumstances in this case point to the accused having intentionally caused decisive head injuries which took the deceased's life.

If it is accepted, as it should be, that the accused caused these injuries, then the intention of the accused becomes easy to formulate. It is an inescapable conclusion that in assaulting the deceased on the head with the kind of force as noted in the post mortem report and expanded on by Dr Zimbwa, the accused must have intended to achieve one clear objective – to kill the deceased.

Verdict

Guilty of murder with actual intent.

Sentence

This case once again brings to the fore the negative impact of this deep rooted belief in witchcraft by a number of communities in our nation. I must confess this belief is extremely controversial and as a court we cannot claim to have a solution to the impact of this system which dates back to the creation of mankind.

¹ 1965 RLR 363 (A) at 370 A-C

We are obliged as a court to emphasise the sanctity of human life wherever the life of an individual is snatched by the evil hand of another human being. The life that we live demand that it be respected because the tragedy is that once lost it cannot be recreated.

We accept in mitigation that the accused was 34 years old at the time he committed this offence. He clearly acted in a wrong way in trying to deal with the challenges that haunted him as an individual. It looks like he was overwhelmed by his belief that the deceased was a witch.

The accused has the usual family responsibilities placed on his shoulders.

He has been in custody for a period of 4 years and 6 months as a result of the waiting period involved in this case. I agree that such a period must be taken into consideration. Add to this this is the accused's first brush with the law.

In aggravation, the taking of the deceased's life was done in the most heinous fashion. The accused subjected the deceased to a protracted punishment which ended with her death on the date in question.

The method used by the accused was clearly wrong in this case. There are scattered throughout this country local and traditional leaders whose duty is to deal with cases like the one which confronted the accused. The accused had no right to take the law into his own hands because he is not qualified to deal with the situation that he attempted to resolve.

The life of the deceased was not so cheap to be ended in the way it did and the accused was expected to contain his beliefs no matter how strong they may have been.

Chaos and anarchy who enslave this country if those of the mind of the accused person are not adequately punished for their conduct.

It must not be that easy to terminate one's life. Every one of us must learn to respect life for what it is.

Sentence

18 years imprisonment.

Prosecutor General's Office, the State's legal practitioners
Saratoga Makausi Law Chambers, the accused's legal practitioners