

THE STATE  
versus  
MISHECK BRIGHTON MANYENGAVANA

HIGH COURT OF ZIMBABWE  
HUNGWE J  
MUTARE, 26 February 2015, 3 & 4 March 2015

Assessors:               1. Mr Raja  
                                  2. Mr Chidawanyika

### **Criminal trial**

*Ms M Matsikidze*, for the state  
*W Makuyana*, for the accused

HUNGWE J: This case involves a man who killed his wife over some pieces of dried meat which some dog helped itself to.

When he was charged with murder as defined in s 47 (1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] he pleaded not guilty to that charge. Instead he tendered a plea of guilty to capable homicide. The State rejected the limited plea and quite rightly so, in our view. The following facts are not dispute.

1. The accused asked his wife to dry some beef, presumably, to make biltong.
2. He went away to a nearby shopping centre and indulged in intoxicating beverages. Upon his return his wife, the now deceased, advised him that some dog had helped itself to the meat she had left out to dry.
3. He flew into a rage and assaulted her using bare hands.
4. She fled and took refuge at one Nicodemus Kapfumvuti's homestead.
5. He tracked her down and demanded that her hosts must release her.
6. There was some reluctance to expose her to his foul mood initially but the hosts relented after the accused threatened to destroy their homestead.

7. Upon her release and in full view of the concerned neighbours accused assaulted the now deceased initially with open hands, then with a fencing standard that he took from the fencing around the yard. That standard broke. She took advantage and fled as he looked around for another weapon. He found it and persisted in the savage attack of his by then semi naked wife.
8. The neighbours failed to restrain the accused as he was in a wild rage. He took her home.
9. The next morning she died before she was taken to any medical facility.

The medical examination conducted leading to the post mortem report reveals that the deceased had sustained the following injuries;

- (a) Swollen head;
- (b) A deep scalp laceration measuring 6cm x 4cm;
- (c) Exposed bone of the skull;
- (d) Haematoma on the right hand.

The doctor also observed that the deceased's head was soaked in blood.

The doctor concluded that the cause of death was head injury secondary to an assault.

The viciousness with which the accused assaulted the deceased was described by Violet Buwerimwe. She is Nicodemus Kapfumvuti's wife. Mr Kapfumvuti faces mobility challenges. She did not witness how the assault on the deceased began since this took place at the parties' residence. She saw the now deceased arrive at her residence panic stricken. She reported to her that the accused had assaulted her. She had visible injuries like cuts and bruises and was bleeding from the mouth. Deceased was not properly dressed as she wrapped herself in a cloth. Deceased did not disclose the reason for the assault. She decided to give her shelter from the predatory attack by the accused who by then was nowhere in sight. She locked the accused's wife inside their house and went to her garden nearby. Some 30 minutes later, the accused arrived. Her husband was home. The accused demanded that they release his wife. They told him that his wife was not in their custody. He became aggressive and threatened to destroy the couple's homestead if they did not produce the deceased. The accused told them that he had tracked her to their homestead and therefore they had her somewhere. Her husband is disabled. He told her to let the accused's wife out lest they are left homeless. She reluctantly opened the house and asked the accused's wife to come out.

She knew that he was going to assault her because of his known history of physical abuse against her.

As soon as the deceased got out of the house the accused set upon her like a mad person. She told the court that when the accused set upon assaulting the deceased, he was “like a lion”. The accused was wielding a standard pole he had taken from the fence surrounding her homestead. The deceased had a wrap over cloth for a dress. It fell off during the assault after she had run about 30m. She was now naked. The accused took a heavier standard from the cattle pen and resumed the deadly assault of his naked wife. The witness was helpless. She feared he would turn on should she dared to restrain him. She told the court that the accused directed his blows all over the deceased’s body. She was frightened by the degree of violence exhibited by the accused.

In her nudity, she ran back to the cattle pen. Accused pursued her. He took a log which is used as part of a stack of poles to close in the cattle. He used it on the deceased indiscriminately.

For a moment she was immobilised by it all and failed to think rationally till it dawned upon her that the deceased’s life was in danger. She pulled herself together and ran off to find help from other neighbours.

By the time she came back accused and his wife were gone. She therefore did not witness how the assault ended nor did she have an opportunity to assess the injuries sustained by the now deceased. Around 0200 hours she got the news of the deceased’s death.

Accused’s mother saw the extent of deceased’s injuries. She expressed shock upon observing her injuries and asked her son what he had used to inflict such injuries.

We find that the accused assaulted the deceased using two pieces of logs at the Buwerimwe homestead. We also find that the accused struck her several blows all over the body indiscriminately. We consequently find that the deceased sustained serious injury from which she died.

On these facts we are of the firm view that the accused foresaw a real risk of death or serious injury occurring but persisted in his conduct notwithstanding the realisation of the risk of death or serious injury.

The fact that he was drunk in our view did not detract from his ability to realise that assaulting the deceased with a log all over the body indiscriminately was fraught with risk.

Murder is a specific intent crime. The Criminal Law (Codification and Reform) Act [Chapter 9:23] sets out the states of mind required in respect of specific intent crimes and provides that where intention is an element of any crime, the test is subjective and is whether or not the person whose conduct is in issue intended to engage in the conduct or produce the consequence he or she did. There is no suggestion by the state that the accused intended to kill his wife in the sense that he planned it. However where a person engages in conduct which is blatantly fraught with obvious risk, the court will infer that such a person intended the natural and probable consequences which flow from it. The Criminal Law Code provides thus:

**15 Realisation of real risk or possibility**

(1) Where realisation of a real risk or possibility is an element of any crime, the test is subjective and consists of the following two components:-

(a) a component of awareness, that is, whether or not the person whose conduct is in issue realised that there was a risk or possibility, other than a remote risk or possibility, that:

- (i) his or her conduct might give rise to the relevant consequence; or
  - (ii) the relevant fact or circumstance existed when he or she engaged in the conduct;
- and

(b) a component of recklessness, that is, whether, despite realising the risk or possibility referred to in paragraph (a), the person whose conduct is in issue continued to engage in that conduct.

The accused's defence was that he was drunk as such he did not appreciate the full consequences of his actions. In our law voluntary intoxication is at most a partial defence. Part IV sets out how in our law this defence is to be treated. For the purposes of the present case, in order for intoxication to operate as a full defence the accused must show that his intoxication was not voluntarily self-induced, s 220. Where however, as here, the intoxication was voluntarily induced, such intoxication can only serve to operate as mitigatory if the court finds that the accused committed the crime in issue with the requisite intent. The admitted facts show that when the accused arrived from his beer drinking spree he had the presence of mind to absorb the communication relating to how his wife lost the meat to a dog. He then assaulted her. When she sought refuge at the neighbour's, he had the presence of mind to track her using foot-prints. When they reasoned with him not to assault her, he proceeded to do so in spite of the wise counsel from his cousin sister. He was, in our view, aware that his assault on the deceased will have fatal consequences or at least might result in serious injury. Despite this appreciation he persisted with his conduct with fatal consequences.

In our view the State has proved the requisite intent for a conviction for murder with constructive intent.

He is therefore found guilty of murder as defined in s 47 (1) (b) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

*National Prosecuting Authority, state's legal practitioners*  
*Messrs Bere Brothers, accused's legal practitioners*