

THE STATE
versus
LUKU JASI

HIGH COURT OF ZIMBABWE
HUNGWE J
MUTARE, 24 & 25 February 2015 & 3 March 2015

ASSESSORS: 1. Mr Rajah
 2. Mr Chidawanyika

Criminal Trial

Ms *JR Matsikidze*, for the state
Ms *T Gutuza*, for the accused

HUNGWE J: There was no eye witness testimony on how the deceased met his death in this matter. The agreed facts however show that the deceased was alive on the morning of 27 August 2011 until about 09h00 when he was found dead at the bottom of a dry well soon after. This death led to the suspicion that the accused was involved in the now deceased's death. He was charged with his murder. The accused pleaded not guilty to the charge as defined in s 47(1) of the Criminal Law (Codification & Reform) Act, [*Chapter 9:23*].

The following facts were generally common caused or not in serious dispute.

The accused, the deceased John Changana, Samuel Rakabopa the visually impaired gentleman, Blessing Maganzo, Gladys Matungwana, Onias Kaswa, Marjory Razerera, and Noah Chamanga resided in the same locality in Mwaamba Village, under Chief Zimunya, Mutare. On the morning of the day in question Gladys Matungwana sent her son, Piet Matungwana, to the now deceased's homestead to look for thatching grass. Around 06h45 she saw the accused and Blessing Maganzo pass through her residence headed in the direction of the deceased's residence. Upon arrival at the deceased's residence, Piet Matungwana discussed the reason for his visit with the now deceased. By the time Piet left the deceased's residence, Samuel Rakabopa was now present at the homestead. Piet did not see the accused and Blessing Maganzo arrive at this residence but Samuel Rakabopa did. Samuel Rakabopa and the deceased were enjoying an intoxicating beverage when Piet left.

The accused and Maganzo joined the deceased and Rakabopa. Rakabopa left the three as he returned to his residence at around 09h00.

Onias Kaswa made a chicken cage for the deceased. He decided to approach him concerning this product that day. He arrived at the deceased's residence around 10h00 but found no-one at home. He called out for the deceased but there was no response. He went to wait for the deceased at a neighbour's residence hoping that the deceased would turn up from wherever he had gone after a while. The neighbour, Major Razerera, advised Onias to check around since the doors and windows to the residence were open. He went back and checked around. When he decided to check a well the deceased had dug for his use, he made the horrific discovery of the deceased's body on the well's floor. He proceeded to advise the deceased's neighbour, Marjory Razerera. The deceased's brother Noah Chamanga got word of his brother's death soon thereafter as the word about his death spread around the village.

Samuel Rakabopa got the news about deceased's death in the afternoon.

There is some dispute regarding what happened at Rakabopa residence later that same day. According to Samuel Rakabopa, around 19h30 he was at home with his wife when the accused arrived. He entered into this kitchen hut. The accused then remonstrated with Samuel Rakabopa as to why he had exposed him by indicating to the public that he had left the accused together with the deceased upon departing from deceased's residence earlier that morning. He threatened Rakabopa with a hiding for this and left. The accused was never seen in the village until his return some two years later when he was making indications to the police after his arrest. On the other hand, the accused admitted visiting Rakabopa homestead but denied that he had threatened him.

In his defence the accused denied any involvement in the deceased's death. He however agreed that he and Maganzo had proceeded to the deceased's residence in the morning of the day that he died. He admits that upon arrival he had found Samuel Rakabopa present and sharing an intoxicating beverage with the deceased. After the deceased gave them the hammer and US\$2-00 they had left immediately. According to his evidence in court the accused proceeded to the business centre where he entertained himself with beer. Around 13h00 he had left for a local shebeen in Maganzo and one Gwenzi's company. On their way, they met Sam Rakabopa junior who advised them of the death of the deceased. He later went to the deceased's home for the funeral wake. At the funeral wake he learnt that word had spread that he and Maganzo had been that last ones to have seen the deceased alive. He suspected Rakabopa senior of leaking this damaging information. He decided to approach

him at his residence. He told the court that he had not threatened the elder Rakabopa but had only urged him to be truthful as regards the last person to see the deceased alive. According to the accused, it was Rakabopa rather than him who had been the last person to see the deceased alive. The hostility of his fellow villagers, he explained, forced him to withdraw and relocate from the village to Burma Valley.

In court he explained that he had been subjected to threats of violence by the police unless he gave them a warned and cautioned statement. He further claimed that the indications were given to police under similar circumstances. Because he had feared for his safety the accused says that he had agreed to make indications to the police although he knew nothing about the deceased's death. He told the court that the police actually indicated to him how he was to make these indications before they took photographic representations of the same.

The State relied on the evidence of the Investigating Officer to demonstrate how the accused's indications were obtained. Detective Assistant Inspector Saurowe told the court that when the accused had been arrested he gave certain statements on the basis of which he, together with others, decided to take accused for indications. Prior to this, he had properly warned and cautioned the accused in terms which made it clear that he was free to elect whether or not to make indications and that if he elected to make these, they may be used against him in a court of law during his trial. The accused elected to make the indications and freely and voluntarily proceeded to make indications. This evidence was not challenged under cross-examination. The photographs show the accused indicating how he had struck the deceased twice on the head and once on the shoulder. Doctor Kasongo indicated that the compound fracture is consistent with the blow to the head using a log rather than a fall down the dry well. A linear fracture might be the result of a fall onto the floor of the well, not a compound fracture. The injuries sustained are in our view consistent with the evidence given in the indications. Since the voluntariness of the indications was not challenged, we reject any claim by the defence that the indications were not freely made.

As indicated earlier, there was no eye witness to this gruesome murder. The State relied on circumstantial evidence to prove its case against the accused. This evidence is made up by the following independent evidence which, standing alone, is not sufficient to prove the case against the accused.

1. The accused and one Maganzo arrived at the deceased's residence and found another, Samuel Rakabopa present sharing some intoxicating beverage with the deceased.
2. Samuel Rakabopa left the scene soon after the accused's arrival around 09h00.
3. Before 10h00 Onias Kaswa was looking for the deceased but without success.
4. By 10h00 Kaswa discovered deceased's body on the floor of the dry well.
5. When the accused learnt that Rakabopa had advised others that the accused and another were the last to see the deceased alive, the accused approached Rakabopa at his residence and offers him threats over the disclosure.
6. The accused disappeared from the village until his arrest in Burma Valley two years later.
7. Two years later the accused makes indications consistent with the injuries found on the deceased upon examination.

In our view the accused's conduct in firstly threatening the old man Rakabopa over an innocent fact like being the last person to have seen deceased alive, coupled with his subsequent disappearance from the village before clearing his name with the police betrays a guilty mind. If, as he says, he knew nothing concerning the deceased's death, he could have said as much without breaking any sweat at the time police were investigating the matter. Considering his intimate knowledge of how the crime was committed, and taking into account all these factors cumulatively, the only reasonable inference to be drawn is that it is the accused and no-one else who murdered the deceased. In our view the State has proved beyond a reasonable doubt that the accused struck the deceased with a log on the head with intent to kill or realising that there was a risk that serious injury may result from such conduct but persisted in the conduct this realisation notwithstanding.

The accused is found guilty of murder with constructive intent.