

THE STATE  
versus  
LOVEMORE SIMOYI

IN THE HIGH COURT OF ZIMBABWE  
BERE J  
MASVINGO CIRCUIT, 3 & 4 June 2015

Assessors: 1. Mr Dauramanzi  
2. Mr Mushuku

### **Criminal Trial**

*E. Chavarika*, for the state  
*S. Chirairo*, for the accused

BERE J: This trial is as a result of the untimely death of Lovemore Simoni (the deceased) on 1 April 2010 at village 2 Levanga, Chiredzi. The deceased died as a result of multiple stab wounds and the accused stands charged of that murder as informed by s 47 (1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*], to which the accused pleaded not guilty.

The allegations as framed by the state are that on 31 March 2010 the accused who was a son to the deceased picked up a quarrel with the deceased over the accused's imputation of witchcraft to his mother. As a result of that dispute the deceased then ordered the accused to leave his homestead. The accused together with his wife and child were forced to put up at a friend's house that evening.

The accused returned to the homestead on the following day, the 1<sup>st</sup> of April 2010 and the dispute with the deceased spilled over to that day with the result that the accused ended up stabbing the deceased thereby tragically ending his father's life.

The accused has put up a defence of self-defence. He said that when he stabbed the deceased, he did so in the heat of the moment. The accused stated in his defence outline that when he was confronted by his parents, his mother was wielding a hoe and the accused

reasonably believed the deceased had cornered and intended to kill him and the accused then struck the deceased in circumstances of self-defence.

### **THE EVIDENCE**

In its effort to secure the accused's conviction the state relied on the following pieces of evidence which were tendered by the consent of both counsel: the accused's confirmed warned and cautioned statement, the post mortem report and the evidence of the following witnesses which was admitted into evidence as recorded in the state summary in terms of s314 of the Criminal Procedure and Evidence Act [*Chapter 9:07*].

Further, the state also sought to buttress its case by leading evidence from the accused's mother, Martha Gumbo and the accused's sister Janet Simoni.

The accused was the sole witness for the defence.

### **THE LAW**

In our law as currently framed the defence of self-defence is recognisable in terms of s 253 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. The act does recognise that self-defence shall be a complete defence in the following situations

“ 253 (1)

.....if

- (a) when he or she did or omitted to do the thing, the unlawful attack had commenced or was imminent or he or she believed on reasonable grounds that the unlawful attack had commenced or was imminent, and
- (b) his or her conduct was necessary to avert the unlawful attack and he or she could not otherwise escape from or avert the attack or he or she, believed on reasonable grounds that his or her conduct was necessary to avert the unlawful attack and that he or she could not otherwise escape from or avert the attack, and
- (c) the means he or she used to avert the unlawful attack were reasonable in all the circumstances.....”

As is clear from the Act, in order to succeed, the defence of self-defence must be well anchored and it admits of no fanciful or imaginative situations. The facts surrounding the situation an accused finds himself/herself in must justify the action that he takes. Anything short of that would deprive an accused of the benefit of relying on this defence.

The evidence of the two state witnesses who struck the court as simple and unsophisticated villagers largely confirmed the dispute that occurred between the accused and the deceased and how it spilled over into the following day leading to the fatal assault.

Both witnesses were largely in agreement that the serious conflict between the accused and the deceased got pronounced and nasty after the accused had openly told the deceased that he would not leave the homestead as instructed by the deceased. The two

witnesses further testified to the effect that as a result the accused and the deceased started shoving each other following the slapping of the accused by the deceased which was followed by a missed clenched fist on the deceased by the accused.

Martha Mlambo testified to our satisfaction that she did not see how her husband, the deceased sustained the fatal injuries as this happened behind the accused's hut where the two protagonists had pushed each other. We accept Martha's evidence that she was nowhere nearer the actual scene of the assault.

This *lacuna* in the state case was filled up by the second state witness Janet who from the look of it appeared to have placed herself at a vantage point to enable her to see what was happening between her brother and the deceased. This witness told the court that when the deceased and the accused got behind the accused's hut the two continued shoving or pushing each other and the deceased started chasing after the accused. The critical part of her evidence was that when the accused was about ten metres away from the deceased who was unarmed, he turned and struck the deceased once on the chest with a knife and that the next thing she saw was the deceased falling, standing up and staggering to walk towards his homestead.

The witness said she did not know how the deceased ended up with multiple stab wounds as she only witnessed one stabbing by the accused. That the deceased staggered as he struggled to walk back into his yard is confirmed by his wife Martha who was the first to render very basic first aid assistance to the deceased as he struggled to recover from the stab wounds. Janet appeared quite candid with the court when she confessed that she did not witness how the other stab wounds were inflicted since at one point she had to look away from the scene where the deceased was stabbed.

Despite the fact that there were some undesirable features of Janet's testimony like the fact that her evidence was punctuated by some loss of memory on certain critical aspects of her testimony we are satisfied that she generally gave us a fair account of the events of the day. We think her evidence may have been affected by the fact that she found herself in the unenviable situation of having to give evidence in a case involving two close family members with whom she enjoyed cordial relationships. The accused is her biological brother and the victim is her biological father.

The only criticism that we found against Martha was her attempt to deny that she had reported the accused to the deceased of having labelled her a witch. This denial is inconsistent with the rest of the evidence in this court which give the impression that the main

source of conflict between the accused and the deceased centred on the former having labelled Martha a witch.

In our view, there is no way the deceased would have known about the accusation of witchcraft other than through Martha. To her credit however, she was candid to inform the court that she did not see how the deceased got the fatal stab wounds.

The accused's testimony, in all fairness was rugged and inconsistent first with itself and with the rest of the evidence on record.

In his defence outline the accused had given the impression that the reason why he stabbed the deceased was because he found himself languished by his mother who was holding a hoe and his father the deceased whom he reasonably thought he intended to attack him.

Contrary to this outline, in his evidence in chief and under cross examination he completely abandoned his defence outline and gave a completely new set of events which surprised all of us and I believe his defence counsel included.

For the first time the accused told the court that as he tried to run away from the deceased, the latter tripped him and attempted to stab him with an okapi knife which he quickly disarmed him of and used the same knife to stab the deceased once around the neck, after which he fled from the scene. By his own testimony he exonerated his mother of any threatened attack on him by admitting that when the accused was tripped his mother was far away from the scene. This part of his evidence accords well with Martha and Janet's evidence but is not at peace with the accused's own defence outline.

Worse for the accused person, his version in court turned out to be a complete departure from his confirmed warned and cautioned statement, exh 1 which gave the conduct of his mother and the deceased as the sole reason why he stabbed the deceased. Poorly recorded as it was, the confirmed warned and cautioned statement gave the reason for the stabbing in accused's own words as follows:

"I deny the charge of stabbing Naison Zimoni with a knife, but what I saw was one wound on his throat. I stabbed father (sic) to death because mother (sic) wanted to strike me with a hoe"

Assuming the court accepts the explanation given by the accused in his evidence in this court, it will be very clear that at the time he attacked the deceased, the accused was no longer under threat because by that time he had succeeded in disarming him. Worse still, the

force he used as informed by the post mortem report would have been too excessive and unwarranted in the circumstances.

But we are not persuaded to accept the version given by the accused person because of its unconvincing nature. The version was clearly an embellished one for the reasons already highlighted.

We are unanimously agreed that the version given by Janet and partly by her mother Martha must carry the day.

The record will show that during the fateful day and as the accused was having exchanges with the deceased the accused was heard by the two witnesses remarking that he was not going to leave the homestead that day and further, that if he was to leave he would only do so after killing either both of his parents or one of them.

In accordance with accused's declared objective during the day of the deceased's stabbing, the evidence of Janet projects consistency. We accept that the accused, as testified by Janet, turned back when he was almost ten metres away from the deceased and stabbed him intentionally because he wanted to see him dead.

The post mortem report speaks to multiple stab wounds as the cause of the deceased's death. These could only have been caused by the accused in the furtherance of his publicly declared objective earlier that day. For clarity's sake the post mortem report had the following observations by Doctor David Tarumbwa.

"Deceased noted to have multiple stab wounds on abdomen head and neck. Grossly severed neck with evidence of massive haemorrhage"

It concluded by saying that the cause of death was "multiple stab wounds".

From the post mortem report we can easily infer that the type of attack on the deceased was never meant to spare his life but to terminate it. The attack was vicious and calculated to ensure the deceased's sudden demise.

We have already made a finding that given the evidence which we have accepted in this case, the defence of self-defence cannot be availed to the accused in these circumstances.

We do not doubt what the accused intended to achieve by this savage attack on his defenceless but aggressive father. The verdict can only be one, the accused is found guilty of murder with actual intent.

### **EXTENUATION**

We do accept as a court that indeed extenuation does exist in this case. This is born out by the persistent harassment that the accused was subjected to by the deceased both on 31 March 2010 and on 1 April 2010. The insistence by the deceased that the accused should leave the only place that he knew as his own homestead must have confused and caused great emotional stress and anxiety to the accused person. Add to this equation, the assault by the deceased of the accused. The accused's attack on the deceased must therefore be looked at within this context. We agree that there is nothing in this case which shows that this case was committed in aggravating circumstances as informed by s 48 (2) of the constitution of this country.

### **SENTENCE**

Some legal writers have remarked that sentencing is blind end of justice, I agree.

In our effort to arrive at an appropriate sentence we will be guided by the following mitigating and aggravating circumstances of this case.

We accept that this offence signifies the accused's first transgression against the law. He has a 9 months old minor to look after. The accused stayed in remand prison for 2 years awaiting the hearing of this case.

The court accepts that the deceased was quite aggressive on the two days that characterised the conflict between the two. We accept as a court that the stigma of having killed his own father will probably stay with the accused for the rest of his life

In aggravation we accept that the attack by the accused on his own father was quite callous. It was not a single, not a double but three dangerous stabbings on the most delicate part of the deceased's body as informed by the post mortem report.

That the accused killed his own biological father provides a further complication to the accused. Our parents look up to us as their form of prime investment to provide them with future security and not as instruments to terminate their lives.

We have been following the conduct of the accused during these proceedings. We were unable to detect any element of remorse on his part despite him knowing that by his conduct he has brought about untold suffering to his mother and the rest of the family by snatching away from them in the most ruthless manner their breadwinner.

The accused's ex-wife should have restrained him from the destructive path that that the accused had chosen against his own mother by labelling her a witch.

When mothers look at their sons, they look up to them as their future protectors and not as individuals who will cut short their happiness.

The accused authored this offence by his hysterically raising unfounded allegations of witchcraft against his own mother. Those allegations were uncalled for.

The accused could have sought the intervention of close relatives or local traditional leaders to deal with the situation that was of concern to him instead of trying to deal with his situation in the manner he did.

22 years imprisonment

*National Prosecution Authority, State's legal Practitioners.*  
*Saratoga Makausi Legal Practitioners, Accused's Legal Practitioners.*