

THE STATE
versus
ROBERT GARAHWA KHUMBULA

HIGH COURT OF ZIMBABWE
HUNGWE J
MUTARE, 18, 22, 23, 24 & 25 June 2015

ASSESSORS: 1. Mr Magorokosho
 2. Mr Chagonda

Trial

Mrs J Matsikidze, for the state
M Mareanadzo, for the accused

HUNGWE J: The accused pleaded not guilty to the murder of his brother over a few pieces of chicken cuts.

The indictment alleged that the accused on 24 March 2014 at Chisumbanje Business Centre Chipinge, he unlawfully and with intent to kill stabbed his brother Mind Khumbula with a knife once under the left side ribs causing him injuries from which he died. In denying the charge, the accused stated in his defence outline that the deceased had approached him and asked to share accused's beer with him. When he refused, the deceased took it by force leading to a fist fight. In the fight, he had torn the deceased's shirt. The deceased struck him with a stone felling him to the ground and rendering him unconscious. When he came to, he found people gathered at the scene. He got up and left the scene for his home. He later was attended at a hospital where he was treated for the head injury sustained in the fight. However in his warned and cautioned statement, recorded six months after the event, the accused told the police that the deceased had engaged him in a fist fight after he refused to share his beer with him. The deceased had struck him three times with a stone after he had fallen to the ground. People then gathered around the scene. He got up and left for his residence.

The evidence led at trial however established a different sequence of events. We found that the evidence show that the following happened.

The deceased, Mind Khumbula, was drinking beer in the company of Freddy Chakara and Samson Sigauke. The accused approached the trio and asked the deceased, his brother, to sell him a few pieces of chicken cuts. The deceased refused to oblige. This angered the accused who suddenly flew into a rage. The accused then grabbed the deceased by his shirt collar. He then pulled out a knife and threatened to deal with the deceased. He immediately carried out his threats in that he ripped away the deceased shirt using the knife rendering the deceased shirtless. Sensing danger, the deceased broke free of the accused's grip and fled from the bottle store into the night. The accused pursued his brother wielding the knife.

The deceased's drinking friends got out to follow the two. By the time they found their friend, the deceased lay wounded. He had been stabbed and was bleeding. At about the same time, accused was seen fleeing from the scene.

One witness, Freddy Chakara, told the court that he arrived at the scene shortly after the deceased had been stabbed. He said that the deceased uttered words to the effect that the accused had killed him for his chicken pieces. The evidence given by Chakara is corroborated by Samson Sigauke. He told the court that when the accused arrived where the three were drinking he had demanded that deceased sells to him a few chicken cuts. Deceased refused. This angered the accused who flew into a rage. The accused held deceased by his shirt collar and ripped his shirt with a knife.

Deceased ran out shirtless with accused who was still brandishing his knife, in hot pursuit.

These two witnesses gave their evidence well. Admittedly, there were discrepancies between their respective versions and what they had given as statements to Police. In our view these discrepancies are minor and do not detract from the general thrust of their evidence. In our view their credibility is beyond reproach.

In arriving at this conclusion we took into account that all the witnesses including the accused had partaken of intoxicating beverages prior to the events in issue. These events took place in a generally mobile environments and the final encounter between the accused and deceased was not directly observed by either Freddy or Samson. They do not claim to have witnessed this episode.

In accepting that they did not witness how deceased met his fate, in our view, underlines their creditworthiness as witnesses.

On the other hand there is the evidence proffered by the accused. He is the only person who could have, if he wished, told this court exactly what took place under cover of darkness when he caught up with Mind Khumbula. He chose not to be forthright. We come to that conclusion on the following basis.

1. In his warned and cautioned statement to the Police, the accused avoided any reference to chicken cuts as the cause of this incident. Instead, he blames the whole incident leading to the altercation on the deceased who he says had taken away his beer by force.
2. He states that he touched deceased's shirt and as a result it got torn. The evidence on this is that he grabbed his brother by the collar and pulled out a knife which he used to rip the shirt off his brother, leaving him topless.
3. He claims in his warned and cautioned statement that the deceased fought him. There is credible evidence from the two witnesses that deceased did not retaliate as the accused abused him inside the bottle store.
4. He claims that deceased struck him with stones three times on the head. Nowhere does anyone relate to such an incident. There was no fighting outside the bottle store which caused people to gather around him and deceased.

In fact people gathered around the deceased after the accused had carried out his heinous act and when he was leaving the scene. The version he gave to Police differs materially from that he gave to his legal practitioner. In his defence outline the accused claims that he had refused to share opaque beer with the deceased. This refusal led to a fight.

When he managed to free himself from the fight he had taken his way home. Deceased followed him, caught up with him and struck him three times knocking him down and unconscious in the process. When he regained consciousness there were many people gathered around them. He got up and left deceased and other people behind. He later went to seek treatment from a local hospital.

In court he gave another version. According to the third version there were two incidents in which the accused had accosted him over the beer. The deceased took his beer by force and asked him to follow him into the bottle store from the walled enclosure. He followed him. Deceased held his shirt from behind and caused it to tear. This was under the enclosure but outside the bottle store. They engaged in pushing and shoving as a result. Deceased struck him with an open hand. He said he then left the scene and proceeded into

the bottle store. When he tried to leave the bottle store, the deceased grabbed him for the second time. He alleged that the deceased asked him where he was going. When he told him, the deceased picked up a stone and struck him on the left side of the forehead. This felled him to the ground and another pushing followed. People gathered and restrained them from fighting by removing the deceased from on top of his body. Upon him being rescued he took his way home.

I have given a detailed narration of the accused's three versions to illustrate the point that his three versions are mutually irreconcilable. Clearly, the accused was not being truthful with the court. In the end we had no difficulty in rejecting his evidence as unreliable preferring instead that given by the two state witnesses.

The issue which remains is whether, in the end the state has managed, absent direct evidence linking the accused to stabbing of deceased to prove its case against him. In our view it has. The evidence before it is that after accused ripped up his brother's shirt and rendered him shirtless, the brother ran out of the bottle store with the accused still holding the open knife in hot pursuit. A short while later, the deceased lay prostrate bleeding from a stab wound crying to whoever cared to listen that the accused had killed him for his chicken cuts.

The accused was seen fleeing from the scene into the darkness. He disappeared from the village for two weeks. If the accused had not stabbed the deceased he would not have fled the scene. If he had not realised that he had killed his brother he would not have fled the village. If he had not intentionally stabbed his brother he would have not given so many versions about a single altercation. If he had not intentionally stabbed the deceased he would at least explained why he ripped his brother's shirt with a knife inside the bottle store rendering the deceased shirtless. If he had not intentionally stabbed the deceased he would have explained to the Police and to court why he chased his half naked brother welding a knife.

He had avoided any reference to the knife as he feared that such reference would lead to the only reasonable conclusion that he had intentionally stabbed his defenceless brother in the ribs. His demeanour in court gave him away as he shifted in the defences which he gave. In our view he tried, unsuccessfully though, to distance himself from the stabbing of the deceased. But in our view all the facts point inexorably to him, and only him, as the person who stabbed the deceased, killing him.

In light of the above we are satisfied that the state has proved beyond a reasonable doubt that the accused unlawfully assaulted the deceased by stabbing him with a knife.

He is guilty of murder as defined in s 47 (1) (b) of the Criminal Law Code.

National Prosecuting Authority, state's legal practitioners
Muringi Kamdefwere, accused's legal practitioners