

THE STATE  
versus  
INNOCENT ZUNGUNYAI MAPHOSA

HIGH COURT OF ZIMBABWE  
HUNGWE J  
MUTARE, 27 & 31 October and 1 November 2016

ASSESSORS: 1. Mr Magorokosho  
2. Mr Chagonda

**Criminal trial**

*M Musarurwa*, for the State  
*F Matinhure*, for the accused

HUNGWE J: The accused faces a charge of murder it being alleged that on 16 April 2015 at Dzonzai Night Club, Gaza “O”, Chipinge, he unlawfully and with intent to kill, or realizing that there was a real risk or possibility that his conduct may cause death and continued to engage in that conduct despite the risk or possibility assaulted Hazvinei Christine Muriro with open hands, clenched fists and a bottle on the head thereby causing injuries from which Christine Hazvinei Muriro died.

He pleaded not guilty to murder and tendered a plea to culpable homicide. The State rejected the tender and opted for a full trial on the facts.

During trial the following facts were common cause or not in serious dispute.

1. The accused and the deceased were once upon a time boyfriend and girlfriend but had gone their separate ways approximately two months prior to the events which led to the death of the deceased.
2. On the day in question the two met in a bar around 01h30 and a misunderstanding arose following a demand by the accused of his clothes from the deceased. The deceased appeared to have indicated to him that she had burnt these and therefore could not possibly return them.

3. Following this misunderstanding the accused pulled the now deceased out of the bar and began to assault her using open hands and clenched fists.
4. He dragged her towards her residence in the process. Along the way the accused pushed and continued to assault her.
5. Two of the accused's acquaintances remonstrated with him over his behaviour to no avail.
6. Accused then struck the deceased with an empty beer bottle as they got close to her residence. She fell down and bled. He left her outside her residence.
7. In his defence the accused gave the impression that although he had initiated the violence by striking her with open hands and clenched fists, the deceased had fought back.

What led to the use of the empty beer bottle, it is suggested by the accused, was that the deceased was overpowering the accused and had felled him in a fight. He then decided to pull out an empty beer bottle and strike her on the head.

The evidence led from State witnesses however suggests a completely different picture.

In assessing the two versions placed before this court we have considered that these events occurred in the early hours of the morning after a drinking spree by the accused. It is accepted that the deceased was not a drinker. The court also took into account that both the State witnesses and the defence witnesses' perception and memory recall may have been affected by intoxicating liquor as well as fatigue.

Although the State witnesses Tichafara Dambajena and Dzikamai Muchemwa were under the influence of intoxicating liquor, that influence was not such that the witnesses were not in control of their faculties. Clearly, Tichafara Dambajena was mistaken when he told the court that it was the deceased who demanded the return of her clothes. It appears to us that even accepting that his evidence was consequently unreliable when juxtaposed against the evidence of Dzikamai Muchemwa, it is clear however, that in its material respects, the evidence shows that both witnesses were agreed that the deceased did not initiate the violence. It is also clear that there was no evidence that the accused was in any way injured or that the deceased used any type of weapon against him during the fracas.

It is undoubtedly true, as appears from the evidence, that the accused was the aggressor. By his own admission under cross-examination, he struck the deceased. At that

stage the deceased was walking away from him. She therefore did not pose any threat to his life or limb.

The question therefore becomes whether, when he struck her on the head, the accused intended to kill her or he realised that there was a real risk or possibility of death occurring but notwithstanding that realisation, continued to engage in that conduct.

The evidence shows that the accused appears to have been provoked by her attitude over his clothes. He pulled her out of the bar and began assaulting her. He says they fought. We are unable to accept his version because the eye witnesses say they tried to restrain him from assaulting the deceased; not that they tried to restrain the two from fighting. Further the accused, on his own version, states that after she has fallen he had pulled her up and dragged her on.

When he fell he then took a bottle and struck her on the head. He had brutalized her on no less than three occasions before he finally struck her. The bottle blow was motivated more by revenge and retribution rather than any act in self-defence. He was under no attack.

We have rejected his version that he was so intoxicated that this inebriation prevented him from realising the nature of his actions. He was restrained but remained undeterred. Clearly, he intended to push the deceased for burning his clothes. In his vengeful rage he must have realised, and indeed realised that by striking her on the head with a bottle, death may result. It was such an act so fraught with danger that he realised it but did not care. He took the risk.

In any event there is no evidence that the accused was so drunk as to be unable to appreciate the consequences of his actions. His action and conduct were consistent with that of a jilted lover. He was bent on exacting revenge.

In our view he must be found guilty of murder with actual intent as defined in s 47 (1) (b) of the Criminal Law (Codification and Reform) Act, [*Chapter 9: 23*]

## SENTENCE

In assessing sentence the court takes into account the submissions by counsel in mitigation. You are a young first offender. At the time you were under the influence of intoxicating alcohol. You spent some six months awaiting trial.

Further than that, the court finds nothing justifying your behaviour. This is a worst type of domestic violence which resulted in unnecessary loss of life. The deceased had done nothing to provoke you into acting in this manner. You had both gone your separate ways at the end of your relationship and therefore the deceased was entitled to be left alone. If as you say, she had burnt your clothes, you could have sought compensation for the value of those clothes rather than kill her. Society frowns upon this kind of attitude. The only reason you killed her was that she was a woman. Gender based violence must be nipped in the bud so as to protect those women in abusive relationships.

In light of the above, the following sentence is appropriate.

**20 years imprisonment**

*National Prosecuting Authority*, legal practitioners for the State  
*Gonese & Ndhlovu*, legal practitioners for the accused