

THE STATE
versus
LOVEMORE KURANGANA

HIGH COURT OF ZIMBABWE
HUNGWE J
MUTARE, 29 February 2016; 1 & 3 March 2016

ASSESSORS : 1. Mr Magorokosho
 2. Mr Chidawanyika

Murder trial

M Musarurwa, for the State
S Chikamhi, for the accused

HUNGWE J: The accused killed his friend and neighbour but upon being charged with murder as defined in s 47 (1) of the Criminal Law (Codification & Reform) Act; [*Chapter 9:23*] he pleaded not guilty.

In his defence outline he stated that on the day in question the deceased invited him to join him for a beer drink at his home. He had been in his tobacco field. He obliged. According to him, they had enjoyed the traditional brew from 10h00 till 15h00. Around 15h00 he had accidentally spilled part of the brew. His friend, the deceased, did not take lightly this mishap. He remonstrated with him over the incident accusing him of carelessly wasting his brew the preparation of which the accused had not made any contribution towards. The accused claimed that the deceased took out a bow and arrow and chased him away. He went home.

Later that night his attention was drawn to the barking of his dogs. They were near the edge of his premises. He took a torch to go and investigate.

When he got to a pit where he kept his agricultural equipment he discovered that his friend, the deceased, had fallen headlong into the pit where he kept his plough, wheel barrow, yoke, barbed wire and shovel as well as a mattock.

He had then pulled him out. He discovered that the deceased had passed out. He had a wound on the right side of the forehead. He took some water and poured it over him. The deceased came to his senses and walked back home without saying a word. This incident occurred around 19h00 of the same day.

The next day the deceased came back to inquire from him how he got injured. He explained the events of the previous fight. Deceased left upon being satisfied that he had not been assaulted; but had fallen into a pit. Later, according to the accused the deceased had returned in the company of his relatives seeking an explanation as to how he had got injured. The deceased's relatives indicated that accused should pay deceased's hospital bills because the deceased had been injured whilst at the accused's residence. Subsequently the deceased had made a report to Police claiming that accused has assaulted him because his health had deteriorated.

However, an eye witness to the events which unfolded on this fateful day had a completely different version.

Tafadzwa Iyanai, the deceased's wife gave the following testimony in court during trial. On 8 February 2015 the accused came and joined her husband on a beer drink at their home around 10h00. They spent the greater part of the day enjoying the home brew together with music from a solar powered radio.

Towards sunset the power was too low for the purpose. Deceased decided to disconnect the solar panel indicating to his friend, the accused, that he needed to take a nap.

When he went into his bedroom with the panel, the accused took away the radio and left the deceased's residence. Deceased asked the accused why he was taking away his radio which had no battery power. Accused challenged deceased to follow him home if he wanted his radio. A little while later the witness could hear the accused speak from the edge of his field. Deceased decided to make a follow up as he feared that the accused may have left the radio by the wayside.

After the now deceased arrived at the accused's residence, the witness heard the two shout at each other. She decided to follow up after her husband. Upon her arrival she found the two facing each other literally squaring up following the burst-up between erstwhile friends. She asked the accused to give her the radio so that she and her husband both leave.

She told the court that she had to quickly retreat to avoid a hoe strike by accused. After this, accused threw away the hoe. Her husband hurriedly took her by the hand to leave the accused's residence. At the same time he indicated that they will resolve the radio issue

the following day. As they left, the accused asked the witness why she had followed her husband since it was him who he was after. The accused would poke the deceased with the hoe as they walked. On occasions the deceased would fall down. When the accused tried to strike or poke the deceased on one such occasion, the now deceased challenged him by blocking the hoe and asking why the accused was doing this.

Upon being challenged, the accused threw away the hoe and ran back to his residence. When he came back he was wielding an axe. She had her husband took to their heels. They feared for their lives. Whilst deceased ran homeward she headed for the bushes from where she observed the following events. From a secure hiding spot, she saw the accused run after the deceased with the axe in a raised position.

He caught up with the deceased after a short distance. He then struck the deceased with the axe.

Although there was enough light at dusk around 6pm in February 2015, she was unable to see exactly how the axe landed on her husband. The deceased fell down. She screamed for help but did not approach the scene. She emerged from her hiding place and saw accused rush back home. He brought a bucket of water which he poured over her husband. After this ritual deceased regained his consciousness and got up.

He walked away and she joined him as they both walked home. She noticed that the deceased was bleeding from a wound to the forehead. Although she has suggested that they attend at a clinic, the deceased declined her suggestion offering instead to go there the next day. The following day they had first gone to a Police base at Chegore. There was no Police officer to attend to them the whole day. The Special Constabulary present explained that he could not take the report. It was only on the following day, 10 February 2015 that they got a Police request for medical examination form. They then approached the clinic at Chipfatsura.

It was only on 12 February 2015 that an assault docket was opened against the accused. Meanwhile the injury did not get better. They were referred to Mutare Provincial Hospital where deceased was treated and discharged. Weeks later the deceased's condition deteriorated. They went back to Mutare Provincial Hospital where deceased was admitted on 27 March 2015. He passed away on 30 March 2015.

When the defence case was put to her during cross examination, the witness rejected that version of events. She rejected that the deceased had been provoked by a beer spillage. She denied that deceased owned a bow and arrow and rejected the suggestion that the deceased chased or threatened accused with this weapon.

She rejected the claim that deceased had gone to accused residence at night and fell into a pit with the implements. The accused has nothing to his name not even an ox let alone a plough yoke, barbed wire, shovel or mattock. The pit he talked of was used to keep chicks and no one ever fell into it. She disputed the suggestion that the deceased had gone to accused's to enquire how he got injured but explained that accused had bought the axe blade in an effort to try and use what he claimed was a traditional method to heal the wound without success.

According to her, everyone in the village knows about this incident as people responded to her scream later that evening and the deceased was able to narrate to them what had happened. On the other hand the defence did not challenge the witness version of events regarding how the incident unfolded.

Between these two versions we are of the view that the accused was less than honest with this court. His version is so improbable as to be false and we reject it on that basis. Here is a friend who would had called or invited the accused for a beer drink. The accused would like this court to believe that just because he spilt some beer, the deceased took out a bow and arrow and chased him in anger.

He did not controvert the story about the radio or the words he is alleged to have uttered regarding his friend i.e. that he was after him rather than the wife. He did not dispute that initially he had struck the deceased with a hoe before he rushed to fetch the axe. He did not deny that he had come to perform the supposed curing rituals using his axe, the murder weapon.

All in all we hold that the accused, for reasons best known to him, after the radio incident, decided to attack his friend the deceased. Despite his peaceful resistance to the accused's provocative conduct, the accused had decided to abandon the hoe for the axe. The axe weighs 1.99kgs. He chased the deceased whilst wielding it. He struck the deceased onto his forehead. His defence was a bare denial that he had done it.

We find that he did it.

Murder consists in the unlawful and intentional killing of another human being. Where there is no expression of such an intent the law can infer such an intention from the accused's conduct and the circumstances surrounding the commission of the offence and conclude that such an intent existed in the accused's mind. The accused said that he wanted deceased rather than his wife. He took the axe after abandoning the hoe. Usually, an axe is more lethal than a hoe.

Where a person uses a patently lethal weapon like a knife or an axe on another person's delicate part of the body such as the head, an inference that the accused intended to kill is unavoidable.

The accused claims they were both drunk but we do not hold that he was so drunk as to be unable to realise the real risk attendant in striking the deceased on the head with an axe. Such conduct is patently fraught with danger that death may occur. Indeed death did occur. He had proceeded to strike the deceased notwithstanding the realising of real risk or possibility for resulting from such conduct.

He must be found guilty of murder as defined in s 47 (1) (a) of the Code.

SENTENCE

In assessing your sentence I take into account what counsel submitted on your behalf in mitigation. That is all anyone in his position could have said. This is because there are more aggravating features than mitigatory ones.

I say this because by its very nature the crime is a grave one. The law permits the passing of the death penalty in appropriate cases. Society therefore takes a dim view of this crime as it deprives the community of useful members. In the present case, the sheer brutality of the killing increases your moral blameworthiness. The deceased was your good neighbour as is demonstrated by the fact that on the fateful day, he invited you to his residence to partake of alcohol. You both enjoyed the brew without incident till you had drunk to your satisfaction. Unfortunately it would appear that you coveted your neighbour's worldly possessions and demanded his radio which you eventually took against his wish. When he followed-up on this issue you decided to unleash the vicious attack on the defenceless neighbour. He had done nothing to provoke you.

Despite his desire to get away from your murderous attack you pursued him causing his frightened wife to flee for her own safety and observe the unfolding tragedy from a hidden spot. You use crude weapons on the delicate parts of the body resulting in an open scalp wound. The force of the hoe to the head resulted in an intra-cerebral abscess. He stood no chance of survival after this heartless and brutal attack. When you were charged with this crime you went on to concoct a false story as to how he had fallen into an implement storage pit thereby injuring himself. In short you were never really sorry for this brutal and senseless murder for which you had no explanation throughout the trial.

In the circumstances I consider the following sentence appropriate.

18 years imprisonment

*National Prosecuting Authority, State's legal practitioners
Mvere Chikamhi Mareanadzo, accused's legal practitioners*