

THE STATE

versus

AITWITNESS MAPURISA

HIGH COURT OF ZIMBABWE

MAWADZE J,

MASVINGO, 8, 9 AND 16 FEBRUARY 2018

Assessors

1. Mr Gweru
2. Mr Dauramanzi

Criminal Trial

T. Chikwati for the state

Ms G. Bwanya for the accused

MAWADZE J: The tragic events in this matter unfolded on the new year's day being 1 January 2017, a day normally associated with merry making, at Bhuka business centre a few kilometres outside Masvingo town along the Masvingo to Beit Bridge highway.

The accused is alleged to have caused the death of one Taruvinga Tazira by stabbing him with an okapi knife on the head in contravention of s 47(1) of the Criminal Law (Codification and Reform) Act, [Cap 9:23] which relates to murder.

On this fateful day the now deceased Taruvinga Tazira aged 23 years was at Bhuka business centre with his friends Wadzanai Sakadzo, Alfred Muteti and Brian Dube, all residents of Action B Resettlement, Mushandike, Masvingo. The then 22-year-old accused a resident of Village 9B Mushandike Resettlement, Masvingo was also at the said business centre with his young brother Innocent Mapurisa. They were all enjoying the new year celebrations with other merry makers. Matters of the heart also took centre stage as a 21-year-old Shelter Mukaro a resident of the same village with the now deceased fell in love on that day with the accused whom she had met for the first time on that day at Bhuka business centre. Shelter Mukaro was in the company of her friend a fellow villager, Roselyn Philemon younger to her who apparently found comfort in the company of accused's young brother Innocent Mapurisa.

Later in the day a misunderstanding arose between the now deceased's friend Wadzanai Sakadzo and accused's young brother Innocent Mapurisa almost resulting in a fist fight. The state alleges that the now deceased as a good Samaritan tried to forestall this fight much to the chagrin of the accused who apparently wanted to watch a free boxing match between his young brother and Wadzanai Sakadzo. It is alleged the accused told the now deceased not to stop the fight but the now deceased was unperturbed.

It is the state case that this was the genesis of the altercation between the now deceased and the accused. The accused is alleged to have jumped on to the now deceased causing the now deceased to fall down. The accused is said to have sat on the now deceased's chest, and pulled out a knife. One of the now deceased's friend sensing danger, Alfred Muteti, is said to have tried to avert the danger by pulling the accused away from behind but was allegedly stopped by the accused's young brother Innocent Mapurisa who in turn held Alfred Muteti. The accused is said to have proceeded to stab the now deceased in the left side of the head with a knife which accused failed to remove. The accused is said to have fled from the scene. The now deceased is alleged to have tried to flee also but collapsed after a distance. He was ferried to Masvingo General Hospital from where he was transferred to Parirenyatwa hospital in Harare where he passed on three days later on 4 January 2017 allegedly as a result of the head trauma arising from the stab wound.

In denying this charge the accused raised the defence of self-defence. As per his defence outline the accused proffered the following version of events;

The accused said he was walking with his girlfriend Shelter Mukaro at Bhuka business centre on that fateful day on 1 January 2017 at about 20.00 hrs when some two young men not known to the accused one Brian Dube and Wadzanai Sakadzo threatened to beat up the accused for indecently behaving with Shelter Mukaro whom they allege was their sister. The accused said these two young men pulled away Shelter Mukaro saying they were taking her home. Thereafter the accused said he saw a group of young men including he now deceased and Alfred Muteti who threatened to assault the accused. The accused said he was cornered by the now deceased and his colleagues who proceeded to assault him with fists. The accused said he fell down and was further pummelled on the face, head and neck as he lay helplessly on the ground. The accused said as he lay down he fortuitously picked a knife which should have been dropped by the deceased or one of the now deceased's friends. In a bid to escape the accused said he threw the knife in the direction of the now deceased. The now deceased then cried out that he

had been stabbed which caused the now deceased's colleagues to retreat. The accused said this gave him the chance to flee from the scene. It is the accused's contention that he reasonably acted within the bounds of self-defence as he genuinely believed his life was in danger. On that basis therefore the accused prays for his acquittal on the proffered charge of murder.

During the trial a total of 3 Exhibits were produced. These are;

Exhibit 1 a post mortem report authored by Dr Roberto who examined the remains of the now deceased and indicated the cause of death as severe cerebral oedema and damage, subdural haematoma and subdural haemorrhage arising from the head trauma caused by the stabbing. We shall later revert to these findings.

Exhibit 2 is the knife which accused stabbed the now deceased with. We noted that it is a rather unique knife, probably a hunting knife. Its blade has a cutting edge on side and rugged or grooved edge on the other. The handle is 14 cm long, the blade is 11 cm long and it weighs 159g. The thick part of the blade is 200 mm. Indeed, it is a lethal weapon. This knife can be folded and fits well in a pocket.

Lastly Exhibit 3 is a report by Dr Maxmillian N. Dzowa who attended to the now deceased at Parirenyatwa hospital in Harare, after his admission on 2 January 2017. The following is outlined in that report;

- i) the now deceased had the knife Exhibit 2 lodged in his left side of the head
- ii) he was sedated for a CT scan of the head to be taken and in preparation for the theatre
- iii) the now deceased's condition is described as being bad as he was deeply torpid (i.e. death like or comatose)
- iv) he was intubated and taken for CT scan which revealed that he had sustained "*a perforating injury starting from the left temporal area with a trajectory passing through the supranorial compartment on the left crossing the midline in a diagonal posterior inferior direction through the posterior fossa. The tip of the knife was lodged in the bone of the right side posterior fossa and there was evidence of pressure in posterior fossa and bleeding along the tract of the knife*"
- v) the knife was removed on 2 January 2017 and the now deceased was put in the intensive care unit for the post operation care but he passed on 4 January 2017.

The testimony of Dr Roberto a forensic pathologist who compiled the post mortem report and Forgiveness Nkomo a police detail who arrested the accused was admitted in terms of s 314 of the Criminal Procedure and Evidence Act [*Cap 9:07*].

The state adduced evidence from Shelter Mukaro, Wadzanai Sakadzo, Alfred Muteti and Dr Maxmillian N. Dzowa. In turn the defence led evidence from the accused.

In our view the cause of the now deceased's death is not in issue. The same can be said about the injury he sustained and the medical procedure the now deceased went through before he unfortunately passed on 4 January 2017. To shed more light on this we shall deal with the evidence of Dr Maxmillian N. Dzowa who led a team of doctors who attended to the now deceased and compiled the report Exhibit 3. He also explained certain medical terms contained in a rather illegible post mortem report compiled by Dr Roberto.

Dr Maxmillian N. Dzowa (Dr Dzowa)

Dr Dzowa who has a degree in medicine and surgery and a masters' qualification as a neuro surgeon with 3 years experience. He specialises in diseases relating to the brain, spinal cord and nerves. He was the lead doctor who attended to the now deceased from 2 January 2017 at Parirenyatwa hospital until the now deceased's death on 4 January 2017.

In his evidence Dr Dzowa said the now deceased was admitted with a knife lodged in his head. His blood pressure was inaudible (or very low) and was bleeding profusely from both the nose and the mouth. He explained how the now deceased was treated, and the medical procedure carried out.

Dr Dzowa said the now deceased was given medication to raise his blood pressure and had to be sedated in order to insert a tube to enable him to breath and avoid blood going into his lungs. In order to remove the knife embedded in the now deceased's head a scan was done. This was a necessary procedure as pressure was building in the now deceased's brain.

In relation to the injury sustained by the now deceased Dr Dzowa said the knife entered through the left side of the head right into the head and was lodged on the opposite (right side) of the head. As a result, there was a lot of bleeding inside the head and also pressure was building inside the head. The now deceased whose blood pressure was exceedingly low and going down was in a comatose which meant he was unresponsive and not feeling any pain.

According to Dr Dzowa the now deceased had to be taken to the theatre in order to remove the knife lodged in his head. He said this was a difficult process as the knife was embedded in the skull. The knife was in the skull bone to the hilt. The whole blade was inside the skull and in order to remove it they had to first remove the bone around the knife blade and its end was also lodged into the bone. After this delicate process of removing the knife the blood was removed around the knife tract or path. He said the other specialists dealt with stopping the bleeding from the ear, nose and mouth. After this procedure the now deceased was taken to the ICU but his blood pressure remained very low and was virtually brain dead. The now deceased passed on 2 days later on 4 January 2017.

Dr Dzowa was of the view that in order to inflict such an injury severe force was used. This was informed by the fact that the knife perforated the skull and remained embedded in the other side of the skull. It could not be removed without going through the medical procedure he explained. Further Dr Dzowa pointed out that despite their valiant efforts the now deceased's chance of survival was very minimal because the knife perforated the brain from one side of the head to the other side thus cutting across the vital brain areas responsible for important body functions like breathing and performance of the heart.

Dr Dzowa commented on the accused's version on how the now deceased was injured, which is that the accused had thrown the knife at the now deceased from a distance. The doctor dismissed this as not possible because the knife went through the skull to the other side of the head and was only stopped by the handle. This means that the whole blade 14 cm long was inside the skull and this could not have been achieved by merely throwing the knife at the now deceased hitting his head at a distance. In fact Dr Dzowa said the knife entered the skull above the right ear and went through the skull upto below the left ear (which is on the other side).

We also benefitted from Dr Dzowa's explanation of the medical terms contained in the post mortem report which was also not very legible in some portions. The important findings contained in the post mortem report are as follows;

- i) the now deceased's brain was swollen and there was bleeding inside the brain
- ii) there was lots of water inside the now deceased's lungs which impaired his breathing
- iii) the heart muscle of the now deceased was swollen
- iv) there were fluids outside the now deceased's intestines

- v) there was blood within the now deceased's stomach and there was irritation of the stomach wall
- vi) the cause of the now deceased's death was the severe swelling and damage on the passage of the knife; bleeding inside the skull all arising from the head injury caused by the stabbing with the knife

There is no doubt in our minds that the now deceased sustained very serious and fatal injuries caused by being stabbed with a knife in the head. The knife was lodged deep in the now deceased's head and could not be removed by hand. It is our finding that for the knife to be embedded to such an extent and depth severe force was used. It can therefore be inferred that the intention in inflicting such an injury was clearly to cause death.

Having resolved the cause of the now deceased's death our next task is to resolve how the now deceased sustained this fatal injury. Put differently, which version is true, the one given by the accused or the other alleged by the state. To resolve this, we turn to the evidence of the witnesses who were present at the scene and juxtapose their testimony with that of the accused.

Shelter Mukaro (Shelter)

Although Shelter did not witness how the now deceased was stabbed her evidence is important in shedding light on the events preceding the stabbing of the now deceased.

Shelter resides at Stand No. 3 Action B Mushandike, Masvingo in the same neighbourhood with the now deceased and his friends. She grew up with the now deceased. She had no love relationship with the now deceased or his friends but instead regarded them as her brothers. She only came to know accused on 1 January 2017 when they met at Bhuka business centre where she had gone to celebrate the new year's day with her friend Roselyn Philemon at midday. Accused proposed love to her and she accepted. She was thereafter introduced to accused's young brother Innocent Mapurisa who in turn ended up in the company of her friend Roselyn Philemon.

Shelter said she and Roselyn Philemon are the ones who approached the now deceased and his colleagues requesting that they should go home with them later that day as it would be unsafe for the two girls to proceed alone in the evening. The now deceased and his friends Brian Dube, Wadzanai Sakadzo and Alfred Muteti agreed.

Shelter said as it was getting dark the now deceased's colleagues Brian Dube and Wadzanai's Sakadzo came to where she was with the accused and told her that it was time for them to go home. This was in order as per her previous request and accused raised no objection. She said in a friendly manner both Brian Dube and Wadzanai Sakadzo each held her hand pulling her and as persons she regarded as brothers there was nothing amiss about it. She told them to release her and let her walk on her own as she wanted to follow behind them with the accused. They obliged. By then Roselyn Philemon was ahead of them with accused's young brother Innocent Mapurisa.

Shelter said when she and the accused caught up with accused's young brother Innocent Mapurisa she realised Innocent Mapurisa was having a misunderstanding with Wadzanai Sakadzo. She was not privy as to the cause of this misunderstanding. The now deceased then arrived and got in between Innocent Mapurisa and Wadzanai Sakadzo telling them not to fight. The accused was unamused. Instead the accused told the now deceased to let his young brother Innocent Mapurisa fight with Wadzanai Sakadzo. Shelter said at that point the accused suddenly pulled out a knife from the right side of his trousers pocket. She was terrified and screamed for help realising the impending danger. In fear she fled in the direction of her home. After a distance and along the tarred road she saw a group of people gathered. She could not ascertain what was going on as then people started to blame her for having caused the injury to the now deceased. She proceeded home.

Shelter dismissed the accused's version of events as false. She said at the time accused pulled out the knife from his trousers pocket the accused was not under attack from anybody or involved in any altercation with any person. Infact she said she was surprised by the accused's conduct.

Under cross examination Shelter dismissed as false the assertion that she was in love with one Alfred Muteti. She said Alfred Muteti, Brian Dube, Wadzanai Sakadzo and the now deceased were simply her fellow villagers whom she respectfully regarded as her brothers. She said the now deceased and his colleagues were of sober habits as they did not drink beer. Lastly Shelter said it is untrue that Brian Dube and Wadzanai Sakadzo alleged that the accused was indecently assaulting her. Instead none of them talked to the accused who was following Shelter and later walked behind them with Shelter after they had released Shelter's hands.

Wadzanai Sakadzo (Wadzanai)

Wadzanai grew up with the now deceased. They were friends and church mates. He only got to know the accused on 1 January 2017 at Bhuka business centre. Shelter and Roselyn Philemon were his neighbours and regarded them as his sisters. The two girls requested Wadzanai, the now deceased, Brian Dube and Alfred Muteti not to leave them at the business centre later in the day but to go home with them. He later saw Shelter and Roselyn Philemon in the company of the accused and one Innocent whom he later learnt to be accused's young brother.

Wadzanai said when it was time to go home Alfred Muteti proceeded to go and alert Roselyn Philemon who was with Innocent Mapurisa and Wadzanai together with Brian Dube in turn advised Shelter who was with the accused. They both held Shelter's hands telling her it was time to go home. Accused followed behind and when they released Shelter accused walked behind them with Shelter. Roselyn Philemon was in front with Innocent and Alfred Muteti.

Wadzanai said when they caught up with Innocent Mapurisa, Roselyn Philemon and Alfred Muteti he heard Innocent Mapurisa saying "nxaa" a sign that he was unhappy. Wadzanai said he asked Innocent Mapurisa what was wrong. Innocent Mapurisa looked angry and was poised for a confrontation. Wadzanai said he retorted that he did not understand Innocent Mapurisa's conduct telling him that they had allowed accused and Innocent Mapurisa to enjoy the company of Shelter and Roselyn Philemon all day and that it was time to go home with their sisters. He said Innocent responded saying Wadzanai was disrespecting him. At that point the now deceased intervened to stop a confrontation between Innocent Mapurisa and Wadzanai explaining that the two girls were their sisters.

Wadzanai said the accused told the now deceased to let Innocent Mapurisa and Wadzanai engage in a fight. The now deceased intervened. At that point the accused said he was now dealing with the now deceased whom he pushed causing him to fall down. Wadzanai said Alfred Muteti rushed to try and rescue the now deceased as the accused had pulled out a knife and was sitting on the now deceased's chest. By then accused had cut the now deceased in the face with a knife on the forehead and below left eye. Alfred Muteti failed to pull the accused away. The accused then stabbed the now deceased on the head as he sat on the now deceased's chest and tried to pull out the knife but failed. The accused immediately fled. Since they did not know accused and Innocent Mapurisa, Wadzanai said they held Innocent Mapurisa but immediately released him as stones rained at them. Innocent Mapurisa also fled. The now deceased got up with the knife embedded in his head and walked towards home. When they

followed they found that the now deceased had collapsed along the Masvingo – Beit Bridge road. Fortunately, an ambulance from Masvingo stopped and the now deceased was ferried to hospital.

Wadzanai said accused's conduct surprised him as no one had attacked the accused or provoked him in any manner. He said the knife was in deceased's head to the hilt (handle) and that only the handle was visible.

Under cross examination Wadzanai said he and his colleagues never had an altercation with the accused. He disputed that the accused behaved in an indecent manner with Shelter. He denied that accused just fortuitously picked the knife but that he pulled it out of his pocket. Wadzanai insisted that he never fought Innocent Mapurisa but simply had a misunderstanding with him.

Alfred Muteti (Alfred)

Alfred regarded the now deceased as uncle and he knew the accused as they had written 'O' Level examinations at the same school. The now deceased, Wadzanai, Brian Dube, Shelter and Roselyn Philemon were fellow villagers. He corroborated Shelter and Wadzanai on the request made by Shelter and Roselyn Philemon and how he later approached Roselyn Philemon to advise her that they were going home.

Alfred said he approached Roselyn Philemon who was with accused's young brother Innocent Mapurisa. Roselyn Philemon obliged. As he was walking with Roselyn Philemon he heard Shelter shouting for help. He rushed back.

Alfred said on arrival at the scene he found the accused wielding a knife and seated on top of the now deceased. The now deceased was holding on to accused's hands to prevent being stabbed. Alfred said he tried to pull the accused from the now deceased as the accused was cutting the now deceased on the forehead and nose with the knife. Innocent Mapurisa prevented him by pulling Alfred away. The accused then stabbed the now deceased in the head and fled leaving the knife embedded in the now deceased's head. The now deceased got up and also ran away in the direction of their home. Alfred held Innocent but released him as stones were thrown at Alfred and his colleagues. Alfred said they later found the now deceased who had collapsed along Masvingo – Beit Bridge highway. When an ambulance stopped Alfred accompanied the now deceased to Masvingo general hospital. He was present when the now

deceased was sutured above the eye and on nose bridge. These injuries had been inflicted by accused with the knife. He said since the knife was embedded in the now deceased's head he was transferred to Parirenyatwa hospital.

Under cross examination Alfred denied that he was in love with Roselyn Philemon. He denied that any of his colleagues attacked the accused or that the accused was under any threat. Alfred said none of his colleagues had a knife and that no one ever alleged that the accused had indecently behaved with Shelter.

All the witnesses Shelter, Wadzanai and Alfred gave their evidence well. They materially corroborated each other on how the now deceased was fatally injured. They all dismissed the accused's version that he was under attack and acted in self-defence as false. They all disputed that the accused fortuitously picked the knife. Wadzanai and Alfred explained how accused stabbed the now deceased.

It was evident to us that *Ms Bwanya* for the accused had serious difficulties in cross examining Shelter, Wadzanai and Alfred. Her task was not an easy and enviable one. It was a herculean task for her. Indeed, she groped for meaningful questions but nonetheless failed to ask any relevant questions. In our assessment Shelter, Wadzanai and Alfred were clear, coherent and consistent. Shelter was the accused's girlfriend and would have no reason to lie against him. further, we find no motive for the witnesses to falsify their evidence. They were credible witnesses and we shall place reliance upon their testimony.

The accused

From the evidence before us and the accused's testimony it is clear to us that the accused's version of events is improbable and cannot reasonably be true. If the accused had met Shelter, Roselyn Philemon, Wadzanai, Brian Dube and the now deceased for the first time that day at Bhuka business centre why then is he alleging Shelter was in love with one of the deceased's colleagues? The accused dismally failed to prove this allegation.

The accused failed dismally to show why the now deceased and his colleagues would attack him. He was a total stranger to them and his own girlfriend Shelter dismissed the allegations of anything indecent between her and the accused.

The accused's story on how he ended up in possession of the knife is a very poorly thought account which even a kindergarten kid cannot believe. Even his own girlfriend saw him pulling out the knife from his trousers pocket.

Lastly, the manner in which the accused said he injured the now deceased was dismissed by Dr Dzowa an expert witness as improbable. Even common sense would dictate that it is impossible to have inflicted such an injury by throwing a knife from a distance at the now deceased. Indeed, both Wadzanai and Alfred saw clearly how accused stabbed the now deceased. We are baffled that the accused believes this court would buy such a story. The accused failed to prove the requirements of the defence of self-defence as provided for in s 253(1) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*]. He was not under any unlawful attack when he stabbed the now deceased nor was such an attack imminent. It is the accused who was simply the aggressor for no apparent reason except to probably foolishly believe that he was impressing his newly found girlfriend Shelter who instead found his conduct frightening. The defence of self-defence is therefore not available to the accused.

From the evidence before us the accused's intention when he stabbed the now deceased is clear. He intended to cause death and indeed he accomplished this mission.

Accordingly, the accused is found guilty of contravening section 47(1)(a) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*] which relates to murder with actual intent.

VERDICT – Guilty of contravening section 47(1)(a) of Criminal Law (Codification and Reform) Act [*Cap 9:23*] – murder with actual intent.

SENTENCE - The accused now stand convicted of murder with actual intent as defined in s 47 (1)(a) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*]. This was after a protracted trial.

What exercised our mind is the question of what is an appropriate sentence for a 22-year-old or 23-year-old accused person who brutally murdered a 23-year-old innocent man.

It is indeed very difficult to find anything mitigatory in accused's favour especially as regards factors surrounding the commission of this offence. It is in accused's favour that he is a first offender. The accused in that regard deserve to be treated with some measure of lenience.

We have taken into account the accused's personal circumstances although they are not out of the ordinary. The accused is married with one child. His family survives on his manual labour as he is unemployed.

What may be an important mitigatory factor is that the accused suffered from pre-trial incarceration period of one year and 2 months. This should ordinarily reduce accused's sentence with either an equivalent or reasonable period. Indeed, the accused can be described as a youthful offender at 22 years of age when he committed this offence. He is now 23 years old. This is so despite the fact that he is married with a child. Youthfulness may to some extent denote immaturity although *in casu* we should not place undue weight on this factor.

We shall take note of the fact that the accused had consumed alcohol. However, there is nothing in the evidence before us that the accused's judgment was meaningfully impaired by the alcohol he had consumed.

The offence of murder is inherently a very serious offence. The sanctity of human life cannot be over emphasised. The court has the duty to protect human life and ensure that every person understand that human blood is sacred.

This court is worried by the prevalence of murder cases in Masvingo province. What is disheartening is that such murder cases are being committed by fairly young persons. The mind boggles as to why such young persons readily resort to violence at the slightest provocation or at no provocation at all. We do not even understand why on this day you were moving around with a knife in your pocket. This was a day for merry making. The knife itself is very unique. People should be discouraged to move around with such dangerous weapons.

There is absolutely no reason as to why a young man aged 23 years lost his life in such a brutal manner on that day. All the now deceased tried to do was to prevent violence but instead the same violence was visited upon him leading to the loss of his precious life.

It is clear that you were determined to use the knife on that day. You could not be restrained in any manner. You simply was impervious to reason.

There is nothing to suggest that you are remorseful at all. Even at the eleventh hour you remained unmoved by the brutal attack you perpetrated on the now deceased. Dr Dzowa gave a chilling and graphic account of how the knife was embedded in the now deceased's head. You committed this matter in a very callous and brutal manner. We are shocked that you first

decided to give the now deceased an appetiser as it were by first cutting him in the face twice with that knife. Thereafter, you forcefully stabbed him in the head leaving the knife lodged in his skull to be hilt. This kind of brutality is chilling and shocking. Your moral blameworthiness is very high.

The justice of this case demands that we sentence you to a very lengthy prison term of 25 years.

Sentence: 25 years imprisonment.

National Prosecuting Authority, counsel for the state
Chihambakwe Law Chambers, pro deo counsel for the accused