

THE STATE

Versus

WONDERFUL MANJORO

HIGH COURT OF ZIMBABWE

MAWADZE J

MASVINGO 22 JULY, 7, 8, 17 OCTOBER, 15 NOVEMBER, 2019 20 JANUARY, 21 MAY,
16 JULY & 18 SEPTEMBER, 2020

Assessors

1. Mrs Chademana
2. Mr Mushuku

Criminal Trial

Ms M. Mutumhe, for the state
Mr G. Bwanya, for the accused

MAWADZE J: This was a very protracted trial which commenced on 22 July, 2019 and the defence witness only testified on 16 July 2020, 2020 after which judgment was postponed to today 18th September, 2020. During course of the trial, a trial within a trial was held for the determination of the admission of a warned and cautioned statement and the accompanying video, now exhibits 5(a) and (b) which culminated in a judgment HMA 56/19 delivered on 15 November 2019. We now incorporate this judgment in this final judgment to avoid repetition of some of the issues.

The allegations against the accused are mired in alleged belief in superstition and possible ritual murder and attempted murder.

The accused resides in Village 25, Chief Sengwe in Chiredzi. He is facing two counts of murder as defined in s 47(1) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*] and attempted murder as defined in s 189 as read with s 47(1) of the Criminal Law (Codification and Reform) Act, [*Cap 9:23*] as read with s 47(1) of the Criminal (Codification and Reform) Act [*Cap 9:23*].

In count 1 the charge is that on 18 June 2015 at Gonowani Village, Headman Mpapa, Chiredzi, the accused stabbed the now deceased Stephen Chikucha with an unknown sharp instrument, possibly a knife in the chest causing his death.

In count 2 it is said that on 29 June 2015 at Murengwami Village, Headman Mpapa, Chief Sengwe, Chiredzi the accused attempted to kill a juvenile Onias Chibhombise by stabbing him with an okapi knife three times in the neck.

The accused denies both counts.

At the material time the accused had just returned from South Africa where he was an illegal immigrant. He had been in South Africa from 2010 and only came back on 16 June 2015. He proceeded to Village 25, Headman Machindu, Chief Sengwe, Chiredzi where his mother had relocated to.

The now deceased in count 1 was aged 37 years and was a resident of Headman Mpapa, Chief Sengwe, Chiredzi. The complainant in count 2 was 15 years old and resides in Munengami Village, Headman Mpapa, Chief Sengwe, Chiredzi. Both the now deceased and the complainant were not known to the accused.

In count 1 the now deceased Stephen Chikuchami had spent the day on 18 June 2015 at Muhlanguleni Business Centre drinking beer with friends. Later before sunset he proceeded home alone. The State alleges that the accused met him and attached him with a sharp object, possibly a knife in the chest for purposes of licking his blood to cure an ailment the accused was suffering from. The now deceased died at the scene. It is alleged that one Beauty Aleck had met the accused near the crime scene where accused allegedly later met the now deceased as accused was walking with stick, which stick was allegedly found close to the now deceased's body. The cause of the

now deceased's death was said to be tension pneumothorax secondary to penetrating stab wound on the anterior chest wall.

In count 2 the 15 year old complainant Onias Chibhombise, some eleven days later after count 1 unpenned his cattle on 29 June in the morning and proceeded to the grazing area to herd the cattle alone. It is alleged that the accused approached him as accused was wearing an orange trousers a black/brown jacket with a hood and a pair of sandals. It is said the accused asked some questions to the complainant as he got closer. The State further alleges that the accused then held the complainant, forced him to the ground and stabbed him three times in the neck after which accused again licked the blood from the okapi knife. The accused is said to have fled from the scene leaving the complainant bleeding profusely. The complainant managed to get help from Amos Chinherera who took him to a local clinic and was later transferred to Chikombedzi hospital where was admitted for 3 days. Meanwhile it is alleged that the police who were alerted of this crime attended the scene and trekked the assailants shoe prints with local villagers which led them to the accused's residence culminating in the accused's arrest. After accused's arrest a pair of grey tackies allegedly linked to shoe prints observed in count 1 were recovered, together with the black/brown jacket with a hood, a pair of orange trousers and a pair of sandals all described by the complainant in count 2.

After the accused's arrest an identification parade was held. In count 1 Beauty Aleck is said to have managed to identify the accused and in count 2 the complainant Onias Chimbombise is said to have also identified the accused.

In his defence which he maintained throughout the trial the accused vehemently denied the allegations in both counts. He said he was new in the area and was not known to both the now deceased and the complainant. As a result he said he had absolutely no cause to attack them.

The accused denied that he was suffering from any ailment which would warrant some rituals for treatment. Instead he said he had returned from South Africa to obtain a passport.

In count 2 the accused said he had spent the day at his residence with his mother and siblings only to be arrested on these allegations when he was never near both scenes of crime in both counts 1 and 2. After his arrest he said he was severely assaulted by the police who wanted him to confess to both counts which he did due to pain. The accused said all what is captured in

his so called warned and cautioned statement and the accompanying video Exhibit 5 (a) and (b) is what the police told him to say. Further he said the said witnesses were coached by the police to pick him on a choreographed identification parade where he was conspicuous on account of his short hair and attire.

During the course of the trial a total of 9 exhibits were produced. We assess the probative value of these exhibits as follows;

Exhibit 1

This is a psychiatric report by Dr Patience Maunganidze a psychiatrist who examined the accused and established that the accused had no mental disorder at all. This examination became necessary in view of the nature of the allegations made against the accused, the nature of the offences and the manner they were committed. Indeed there is nothing of suggest that the accused was or is afflicted by any mental disorder.

Exhibit 2

This is a post mortem report in respect of count 1. It shows that the now deceased Stephen Chikuchani then aged 37 years was killed. The doctor observed a stab wound on the left posterior cervical triangle, another two stab wounds on the left anterior chest wall measuring about 2 cm causing haemorrhage. The cause of the now deceased's death was tension pneumothorax secondary to a penetrating knife stab wounds on anterior chest wall. Indeed the now deceased in count 1 who had spent the better part of the day at a local business centre drinking beer with friends and in good health was killed when he was attacked with a knife as per Exhibit 2.

Exhibit 3

This is a medical report in respect of the complainant in count 2. Onias Chibhombise compiled on 30 June 2015. We note that the medical affidavit was done in a perfunctory manner as injuries observed were not described in full. All the doctor said is that the injuries were very serious, had been inflicted with a sharp object using severe force and that permanent injury was likely. This medical report nonetheless confirms the attack on the complainant in count 2. We however had to rely on the complainant's evidence in count 2 to appreciate the exact nature of the injuries he suffered. The complainant explained that he was stabbed three times with a knife. The first blow was on his wrist and he showed us a healed scar. Two further blows were delivered on

the neck, one just below the chin and the other right on the neck. Again we observed the healed scars on the neck. It is clear that whoever attacked the complainant in count 2 in such a manner intended to kill him or did foresee the possibility of death. The charge of attempted murder in count 2 is therefore well made.

Exhibit 4(a) and (b)

These are pictures in relation to an identification parade in count 2. In Exhibit 4(b) the complainant is approaching the parade and in Exhibit 4(a) the complainant picks on the accused. It is common cause that the accused was identified by Beauty Aleck in count 1 (not in pictures) and by the complainant in count 2 as per Exhibit 4. All what the accused is saying is that the police coached the witnesses to identify him. In respect of Exhibit 4 we noted that there were 8 people wearing different clothes on the parade. They were almost of same stature and height. Some were wearing tackies and others sandals. Most of them like the accused had short hair. None of them had similar clothes to the other except that they were wearing pair of trousers of different colours (only one had shorts) and all were wearing t/shirts also of different colours. While it may have been prudent to dress all the 8 participants in similar attire we do not share the accused's assertion that there is something peculiar about him (either in respect of his attire, stature, height or hair cut) which made him conspicuous and therefore easy to identify.

Exhibit 5(a) and (b)

This is accused's unconfirmed warned and cautioned statement and the accompanying video. As already said Exhibit 5 was the subject matter of the trial within a trial and the resultant judgment HMA 56/19. Suffice to say that in that judgment I ruled that Exhibit 5 was admissible after dismissing the accused's assertions thereof. I therefore do not intend to revisit the same issues in this judgment save to consider whether the accused managed to discharge the evidential onus on him to show that the statement is of no probative value, which in my view is a herculean task. In that statement the accused outlined how he left South Africa for Zimbabwe, the health problems he had and how some bizarre rituals were prescribed as means of treatment. The instruction was to stab the victim and lick their blood on the knife. In that same statement accused outlined how he then attacked the now deceased in count 1 and denied intention to kill despite using a knife. He said he unaware that the now deceased later died after he fled from the scene. In count 2 he said

he stabbed the complainant after pretending to be looking for his stray cattle and again denies intention to kill. He explained how he fled from the scene and his subsequent arrest the same day.

It would be foolhardy for us to believe that such a detailed account captured in Exhibit 5 was foisted on the accused by the police. In HMA 56/19 I dealt at length with the accused's assertions and why I disbelieved him. An important feature of Exhibit 5 is that it is an exculpatory statement in which accused denies intention to kill in both counts. In our assessment Exhibit 5 give insight on accused's possible motive and how the offenses were executed.

Exhibit 6

This is a pair of sandals recovered after accused's arrest on 29 June 2015 in count 2. It is the prints of this sandals which were trekked from the scene of crime in count 2 leading to accused's residence. Again accused's belated denial that the pair of sandals are not his cannot possibly be true. This will be clearer when one considers the evidence of Amos Chinherera and Cst. Shepherd Muzangwa.

Exhibit 7

This is a stick found new deceased's body in count 1. Beauty Aleck said when she met the accused on 18 June 2015 the accused was holding a similar stick.

Exhibit 8

This is a note book completed by initial attending detail which outlines the history and chain of investigations done.

Exhibit 9(a) to (c)

These are accused's orange trousers, black jacket with a hood and his pair of tackies all recovered after his arrest in count 2. The pair of tackies are linked to count 1.

The evidence

The evidence of Max Matsikidze (count 1); John Makondo (count 1), Dr Tungamirai Isaac Vengai Rukatya (count 1) and Dr Mutengwe (count 2) was all admitted in terms of s 314 of the Criminal Procedure and Evidence Act [*Cap 9:07*]. In brief it is as follows;

Max Matsilele (Max)

Max was well known to the now deceased. He is not known to the accused. In count 1 on 18 June, 2015 he was with the now deceased at Mhlanguleni business centre drinking beer. He

later left for his residence only to be told of the deceased's death. He proceeded to where the deceased's body was the same day. He saw an unpeeled stick near the body and some shoe prints which he trekked with other villages but lost the prints in the bush.

John Makondo (John)

John knew the deceased as a local person but is not known to accused. He is the one who discovered the now deceased's body as he was driving a tractor. At the scene he observed drops of blood. The now deceased had an injury in the chest and an unpeeled stick was close to his body. This was around 1800 hours and he alerted fellow villagers.

Dr Tungamirai Isaac Vongai Rukatya

He is the one who examined the now deceased's remains at Chiredzi hospital and compiled the post mortem Exhibit 2 already alluded to.

Dr Mutengwere

He is the doctor who examined the complainant at Chikombedzi hospital in count 2 and compiled the medical affidavit Exhibit 3 also already alluded to.

We now turn to *viva voce* evidence led from Beauty Aleck (count 1); Onias Chimbombise (count 2); Amos Chinherera (count 1 and count 2)'A/Assistant Inspector Victor Chinoni (both counts); and Cst Shepherd Muzangwa (both counts).

The accused also gave evidence and called his mother Saliwe Manyoni as a witness.

Beauty Aleck (Beauty) (count 1)

Beauty resides in Godoweni Village, Headman Mpapa, Chief Sengwe, Chiredzi and know the now deceased as a fellow villager but was not known to the accused.

She testified that on 18 June 2015 at about 1600 hrs she was travelling home with her sister in law and mother in law from Mhlanguleni business centre. She met with the accused who was going in an opposite direction. Accused was a stranger to her and he was holding a stick similar to Exhibit 7. As they by passed each other she said accused starred at them for some period and this caused her to have a closer look at accused. She observed accused was light in complexion, of medium height and wearing a black jacket with a hood. Later a tractor driver caught up with them and advised them of the discovery of the now deceased's body.

After accused's arrest she managed to positively identify the accused at an identification parade due to his facial appearance and stature despite having changed clothes. She was adamant that she is not mistaken as to accused's identity.

The value of Beauty's evidence is whether she properly identified the accused a stranger to her. It was in broad daylight. According to her she had a closer look at accused because he stared at her. Later she was able to pick on accused at an identification parade. No plausible reason was advanced as to why Beauty could be mistaken as to the accused's identity. She has no inherent motive to falsely incriminate the accused. Her testimony debunks accused's assertion that he was nowhere near the scene of crime. If she is correct then accused would have told the court a material lie and the question is why. Beauty's evidence reads well.

Onias Chimbombise (Onias)(count 2)

Onias was not known to accused. On 29th June, 2015 he was herding cattle alone in the bush. A stranger approached him, bombarding him with questions. He was asked if he had seen a black bull. He had not. He was asked where he stayed and disclosed it was in Murengwani Village, Headman Mpapa, Chief Sengwe, Chiredzi. The stranger inquired how far his home was from the grazing area and he explained.

Onias said he was with this person for about 5 minutes before the attack. He observed the stranger was wearing an orange trousers, a black jacket with stripes in front and a hood and a pair of sandals. He could see his facial appearance and stature.

Onias said as this person got closer to him he held Onias' shirt, pushed him to the ground and sat on his stomach throttling him. He was stabbed in quick succession on the wrist, on the neck below the chin and on the neck. His cries were muffled. The assailant got up and fled. Onias managed to get help from person at nearby home. He was taken to a local clinic and then to Chikombedzi hospital where he spent three days admitted. He showed us the three healed scars arising from the stab wounds. Onias explained he still feels pain when he turns his head.

Later he was called at an identification parade with about 9 people. He managed to identify his assailant because of his height hair cut style and trousers. He points at accused as his assailant. He disputed that police coached him to falsely incriminate the accused. He denied being shown clothes recovered by police at accused's residence but simply described the clothes to the police.

Again the question to be asked is whether Onias properly identified his assailant. The attack was in broad day light. He talked to the assailant for some time in close proximity before the attack. He could see his facial appearance, stature and attire. He described all this to the police. At an identification parade he pointed at accused as his assailant. There are no factors pointing to his mistaken identity of the accused, let alone a motive to lie against accused. There is no reason why we should reject his evidence.

Amos Chinherera (Amos) (counts 1 and 2)

Amos resides in Chinyatu Village and was known to the deceased in count 1. On 18 June, 2015 he was telephoned by John Makondo after the discovery of the now deceased's body. He proceeded to where the body had been discovered. He too had been with the now deceased that day at Mhlanguleni business centre.

At the scene Amos observed struggle marks and shoe prints of the possible assailant. The now deceased's mobile handset was close to the body and also a stick similar to Exhibit 7 and it had blood stains. He observed a stab wound on the now deceased's chest. As it was late the next day he teamed with other villagers to track the shoe prints of the suspected assailant from the scene but they lost the prints in the bush.

Some 11 days later in count 2 on 29 June 2015 while at his homestead the complainant Onias came crying badly injured and reported he had been attacked by some assailant at the grazing area. He was shocked. He took Onias to the clinic and alerted the fellow villagers. He advised the villagers to try and track the shoe prints of the assailant from the scene of crime. Later he was advised of the accused's apprehension. He was at accused's house when a pair of sandals Exhibit 6, and the clothes (pair of takkies, orange trousers and jacket with a hood) Exhibit 9(a) to (c) were recovered at accused's residence. Amos' evidence was unchallenged. It confirms firstly the commission of the offences and how accused was arrested.

Cst Shepherd Muzangwa (Cst Muzangwa) (both counts)

Cst Muzangwa is the police detail who initially attended to the scene in count 1. He observed the stick Exhibit 7 near the now deceased's body, the now deceased's nokia handset and the assailant's shoe prints which they could only track into the bush and lost them. The police made no headway at this stage in count 1.

In count 2 a report was made to him again. The assailant's attire was described to him that is the orange trousers, pair of brown sandals and black jacket with a hood. He teamed with other police details and proceeded to the scene in count 2.

At the scene he observed struggle marks, blood stains and shoe prints of the assailant which wore sandals. He tracked the shoe prints with the help of villagers and they led him to accused's homestead. He found accused at home. Accused was wearing an orange trousers as per Onias the complainant in count 2' description. He searched accused's residence and found the pair of sandals described by Onias and the jacket with a hood. He also recovered a pair of takkies which had similar prints with the one he had observed at the scene in count 1. He took the items Exhibit 6 and 9(a) to (c) as Exhibits.

Under cross examination on Cst Muzangwa conceded that the takkies he recovered were not matched by an expert with the one he saw at the scene in count 1 but insisted the prints were similar. He was clear that in count 2 he participated in tracking the shoe prints up to the accused's residence and recovered the sandals and trousers.

There is absolutely no basis as to why we should reject Cst Muzangwa's clear evidence on what led them to accused's residence and why accused was apprehended. It would be stretching one's imagination too far to believe all his testimony was a fabrication.

D/Assistant Inspector Victor Chinoni (D/Ass Insp. Chinoni)

D/Ass Insp. Chinoni was part of the investigating team with the Investigating Officer D/Sgt Thulisani Moyo.

On 1 July, 2015 he met the accused and conducted an identification parade relevant to count 2 which had 9 people of similar height wearing t-shirts of various colours. The complainant in count 2 Onias identified positively accused at that parade as his assailant. He disputed that Onias was coached on who to pick on or exposed to accused before the identification parade. During the parade photographs Exhibit 4(a) and (b) were taken.

Secondly, he recorded the accused's warned and cautioned statement Exhibit 5(a). The manner he did this is explained in detail in HMA 56/19. In that judgment I dealt at length with his demeanour and credibility as a witness which findings I have no cause not to incorporate in this judgment.

D/Ass Insp. Chinoni said the accused also led the investigating team to scenes of crime in both counts. He conceded that despite accused's assertions that the knife used was at accused's house they searched and failed to find it. Suffice to say D/Ass Insp. Chinoni is not only a very experienced officer with 20 years under his belt but was both eloquent and incisive. He refuted allegations of torture and coercion raised by the accused.

D/Sgt. Thulisani Moyo (D/Sgt Moyo)

D/Sgt Moyo is the investigating officer who took the matter after the accused's arrest in Chikombedzi after count 2.

He said when he initially interviewed accused at Chikombedzi the accused denied both charges but later gave a different version at Chiredzi which was recorded as Exhibit 5. Thereafter accused also led him to scenes of crime in count 1 and count 2. At accused's house he failed to recover the knife used in both counts. He tasked another details to carry out an identification parade in count 1 and Beauty identified the accused.

D/Sgt Moyo denied that accused was forced to make any confession. During his investigations D/Cst Juma gave him the stick Exhibit 7 relevant to count 1 and D/Sgt Muzangwa gave him the sandals Exhibit 6, his note book and other exhibits recovered.

In our assessment D/Sgt Moyo gave his evidence well and was clear on how he linked the accused to the offences.

Accused's case and findings

From the evidence outlined the accused is linked to both counts through direct evidence, circumstantial evidence and his confessions.

The argument by the accused that he was mistakenly identified by both Beauty in count 1 and Onias in count 2 cannot possibly be true in light of the evidence of the two witnesses. Their evidence placed the accused at or near the scene of crime in both counts and poke holes in accused's defence that he was nowhere near the scenes of crime. We therefore reject the accused's defence of mistaken identity let alone being maliciously implicated by Beauty and Onias.

It is also clear that accused was subsequently positively identified by both Beauty in count 1 and Onias in count 2 and a properly constituted and conducted identification parade. We are not persuaded that the identification parades were improperly conducted or maliciously done.

There is clear evidence in our view on how accused was arrested soon after the attack of Onias in count 2. Again it would not make sense that villagers and the police would just find themselves at accused's residence for no reason. Again it cannot be mere coincidence that the attire described by Onias in count 2 as that of the assailant was found with the accused's (Exhibit 6 and Exhibit 9).

The evidence of accused's mother Saliwe Manyoni cannot therefore be possibly true that the accused was always at home at all material times and was simply maliciously implicated. As accused's mother one understands her misplaced desire to rescue the accused even if it meant to misrepresent facts that accused would be within her sight every second!! This explains why she even tried to dispute what accused himself did not deny that upon his arrest he was wearing the orange trousers.

In our view the accused's confession in Exhibit 5 is simply an icing on the cake. That confession dovetails with the other evidence adduced from state witnesses. The accused valiantly tried to distance himself from the confession. He also tried to even disown his sandals Exhibit 6. All in all the accused's version of events does not add up and cannot possibly be true. We therefore reject it *in toto*.

We are satisfied that it is the accused who caused deceased's death intentionally in count 1 and attempted to kill the complainant in count 2. While the accused may not have had the requisite actual intent in count 1 as per his confession he nonetheless did foresee that death may result from his conduct.

In the result, we have entered the following verdicts;

VERDICT

COUNT 1 – guilty of contravening section 47(1)(b) of the Criminal Law (Codification and Reform) Act [Cap 9:23]:- murder with constructive intent.

COUNT 2 – guilty of contravening s 189 as read with s 47 of the Criminal Law (Codification and Reform) Act [Cap 9:23]:- attempted murder.

REASONS FOR SENTENCE

In assessing sentence we shall consider both the mitigatory and aggravating factors.

This was a protracted trial and there is little one may meaningful say in your favour.

The offences of murder and attempted murder are inherently serious offences punishable with lengthy custodial terms. There are no good reasons as to why we should depart from this approach.

It is the duty of the court to protect the sanctity of human life and human blood is sacred. No one has the right to take the life of another.

It is clear that you were very callous in the manner you committed the offences. Despite your belief in superstition and rituals you were selfish. In addition to this you have not exhibited any contrition. It is aggravating that you committed the two offences one after the other. You caused fear, alarm and despondency in the community within that short period of time.

The now deceased in count 1 lost his life in order to fulfil your own beliefs. The complainant in count 2 is very young boy who was traumatised. There is therefore need for deterrent sentence.

We are however alive to your personal circumstances.

You are married with one child. As the sole bread winner your family looks up to you for support.

You committed these offences as a result of your superstitious beliefs that you could be healed by licking human blood.

Another important mitigatory factor is that you have suffered pre-trial incarceration of 5 years. In order to reflect this prejudice to you we shall order the sentence in count 2 to run concurrently with the sentence in count 1.

In the result, you are sentenced as follows;

Count 1:- 20 years imprisonment

Count 2:- 5 years imprisonment

Further it is ordered that the 5 years imprisonment in count 2 is to run concurrently with the 20 years in count 1.

Total effective:-

20 years imprisonment.

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