

THE STATE

Versus

ABEL SIBANDA

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
HWANGE 12 JULY 2012 AND 23 NOVEMBER 2012

Mr K. Ndlovu for the state
Mr T C Mukuku for the accused

Criminal trial (Murder)

CHEDA J: Accused is charged with murder to which charge he pleaded not guilty. The circumstances that led to the commission of this crime are, that accused was 31 years of age at the time of this offence. He was employed as a herdboyer and resided at Musa Ndoba Moyo's homestead, Dete. The deceased was 29 years of age and resided at the same homestead with accused. She was married to Musa Ndoba Moyo.

On the 12th October 2011 at around 0600 hours accused and deceased left the homestead in a Scotch-cart towards the grazing area to fetch firewood. They took a long time to come back. Deceased's husband became worried and asked his neighbour Matthew Moyo to make a follow up as he was not feeling well. Mathew Moyo found the scotch-cart and the deceased was lying in a pool of blood with a deep cut on the back of the head, but, accused was nowhere to be found. Accused was later arrested roaming in the Hwange National Park.

The State through Mr *Ndlovu* sought and obtained admissions from the following witnesses:

- (1) Musa Ndoba Moyo;
- (2) Gladys Sigola;
- (3) Wellington Musuna;
- (4) Clifford Ncube;
- (5) Simon Ncube

- (6) Detective Constable O. Phiri and
- (7) Dr Sangnai Pesanai

The relevance and significance of the evidence of Musa Ndobu Moyo is that he was married to the deceased who was 8 months pregnant. On the morning of the 12th October 2011 at around 0600 hours accused came to their bedroom and indicated that he had come to call deceased so that they could go and collect some firewood from the bush. The deceased indicated that she did not want to accompany the accused. This witness then offered to accompany him instead. On hearing this, deceased opted to go as she felt that she could not let this witness go as he was not feeling well. The deceased and accused then left. At about 1300 hours he saw a dog which had accompanied them coming back alone. He suspected that something had gone wrong, he then sent Mathew Moyo to make a follow up which he did and only to return with the news that deceased had died a violent death, but, accused was nowhere to be seen.

As this witness's statement had been admitted, we find nothing wrong with it and accept it in its entirety.

Mathew Moyo gave evidence. His evidence is that indeed he is a neighbour of the deceased and her husband. On the morning of the 12th October 2011 he was asked by deceased's husband to follow deceased and accused to the grazing area which he did. He followed the scotch-cart's tyre marks which led him to a spot where deceased was killed. He found that oxen were tied to the tree a few metres away, he saw a pair of gumboots, a T-shirt and a pile of firewood. On checking the surroundings he saw the deceased lying in a pool of blood. This witness gave his evidence very well and was honest and straightforward. His evidence is, therefore, accepted by the court without any hesitation.

The evidence of Clifford Ncube which was accepted by the defence is that he is a pump attendant at Hwange National Park. On the 13th October 2011 at 1200 hours while on patrol at the park, he saw a man approaching from a distance, when this man saw him he hid behind the bushes. He alerted his colleague and they apprehended him, that person was the now accused. Upon questioning him the accused told them that he was going to Tsholotsho to visit his wife. They advised him that he was lost and offered to help him, but, he started running away. They

gave chase and subsequently arrested him and handed him over to their authorities. They later learnt of his arrest in connection with this case.

This evidence poses no problems as far as its credibility is concerned and its admission by the defence is in order and is therefore a true reflection of the events of this incident. The court, therefore, unhesitatingly accepts it in its entirety.

A post –mortem report was produced as Exhibit 6 and it indicates that deceased suffered a cervical spine fracture and she died from this wound and that she was indeed pregnant.

The State then closed its case.

- (1) Accused opened his defence by giving his evidence. His evidence was that indeed he was employed by deceased's husband as a herdboys. On this fateful day he left with deceased to go and fetch firewood.
- (2) In his defence outline and the warned and cautioned statement he stated he was in the process of cutting firewood and it is at that point that he missed the firewood and struck the deceased on the back of her head and she died. This, according to him happened accidentally. He further stated that he used severe force, but, did not intend to kill the deceased.
- (3) In his evidence in-chief he stated that while he was chopping firewood the axe slipped from his hands and accidentally struck the deceased to death.

These are two different versions of what is supposed to have taken place on the same day and time. In the court's view for the axe to have slipped from his hands resulting in it striking the deceased, it means that he no longer had a grip on it when it landed on the deceased, whereas, if it landed on the deceased as a result of him missing his intended target, being the firewood he still had a grip on it. The later explanation sounds true to the extent that it did not slip from his hands, but, that it struck the deceased while he was still holding it.

If it was accidental there is no reason why accused should have given two contradictory explanations on a material issue, that is, how the injury was sustained. Again, if it was accidental there is no reason why the accused would have found it necessary to shift positions

from this supposedly innocent incident and/or accident. Under cross-examination, accused was very evasive and struck the court as a dishonest witness.

His explanation of how the axe landed on the deceased's neck resulting in a 5cm deep cut to an extent of fracturing the cervical spine is inconsistent with a mere accident as he would want the court to believe. In addition his immediate conduct after this incident is suspicious in that he did not render first aid, did not make a report to the deceased's husband or to any other person at all. Instead, he firmly secured the oxen to a tree and ran away into the National Park. When he was seen by Clifford Ncube he lied about his mission at the National Park. His explanation cannot be believed.

Mr *Mukuku* for the defence in his submission stated that he has no meaningful submission to make and in fact admitted that there are serious and material contradictions in accused's explanation of circumstances surrounding the commission of this offence.

The accused in the court's view, deliberately attacked the deceased with an axe, aimed at the back of her head resulting in her death. As stated by Mr *Ndlovu*, the motive is not known and will remain accused's secret.

We are grateful to Mr *Mukuku's* submission and concession that he has nothing meaningful to address the court on with regards to the accused's behaviour. Mr *Ndlovu* for the State has submitted that as there is no meaningful reason for accused's action he should be convicted of murder with actual intent.

We find that accused for, whatever, reason asked the deceased to accompany him to fetch firewood and for whatever reason he intentionally struck the deceased with this lethal weapon, that is, the axe on a vulnerable part of the body resulting in her death.

We find that accused, in striking deceased in such a callous manner intended to achieve death to the deceased and this he successfully did. He, therefore, intended to kill the deceased.

Accused is accordingly found guilty of murder with actual intent.

Criminal Division, Attorney General's Office, the state's legal practitioners Maronedze, Mukuku, Ndove and partners accused's legal practitioners