

THE STATE
versus
SHEPHERD TAPIWA MANJERU

HIGH COURT OF ZIMBABWE
MAWADZE J
HARARE, 18, 19 September & 29 November 2017

Assessors:

1. Mr Gweru
2. Mr Dauramanzi

Criminal Trial

Mr B.E. Mathose, for the State
Mr M. Mureri for the accused

MAWADZE J: The accused was arraigned before the court for contravening section 47(1) of the Criminal Law (Codification and Reform Act [*Cap 9:23*] which relates to murder.

The charge is that on 6 December 2016 at Manyama Business Centre, Chief Charumbira, Masvingo the accused stabbed the now deceased Witness Mutobvu with an unknown object around the left shoulder penetrating the thorax resulting in the now deceased's death.

The events of the fateful day are largely common cause. On the day in question 6 December 2016 the accused, the now deceased and others were in Chawatama bottle store at the said business centre around 19.30 hrs playing the game of snooker. An altercation ensued between accused and the now deceased over some missing snooker token as the now deceased alleged the accused had stolen it. During that altercation accused and the now deceased pushed each other until they were out of the bottle store.

The state alleges that the accused then stabbed the now deceased with what is believed to be a knife at the back of the left shoulder and fled from the scene. The now deceased was ferried to Masvingo General Hospital where he was pronounced dead on arrival. The accused was only arrested 13 days later at Ngundu.

In his defence outline the accused denied stabbing the now deceased but alluded the now deceased's injury to being pricked by some unknown object which was in the flower bed where the now deceased fell after accused pushed him during the altercation. The accused said the now deceased and his two friends were attacking him over some missing snooker token and in a bid to flee from the attack he pushed away the now deceased.

In his confirmed warned and cautioned statement Exhibit 1 accused gave a somewhat different explanation. The accused simply said he was fighting with the now deceased and did not involve deceased's two friends. Further, the accused seemed uncertain on how the now deceased was injured but simply suspected he could have been pricked by an unknown object on the spot he fell on. This is different from what accused said in both his defence outline and evidence in court in which accused was now certain on how the now deceased was injured.

The cause of the now deceased's death is not in issue. As per the post mortem report Exhibit 2 compiled by Dr Zihove whose evidence was not contested the cause of death was a stab wound on the left thorax. The said stab wound was 4 cm deep into the thorax.

Dr Zihove testified that the entry point of the stab wound was on the left side of the chest and that it was caused by a sharp object. The wound penetrated into the chest cavity hence bringing the air into the chest cavity. This air would cause contraction or compression of internal organs like the lungs and heart which in turn would adversely affect the flow of the blood leading to death. According to the Doctor moderate to severe force was used to inflict those injuries. The doctor could however not tell if it was a stab wound or the now deceased fell on to a sharp object. The inference we can draw is that whoever inflicted such injuries intended to kill the now deceased or did foresee that death may result from such an attack but nonetheless went on to inflict such injuries.

It is not in dispute that soon after the now deceased's injury the accused fled from the scene leaving his maroon shirt Exhibit 3.

The evidence of Regis Chiomberwa who owns a shop at the said business centre and Stephen Mafundikwa a member of the Neighbourhood Watch Committee was admitted in terms of s 314 of the Criminal Procedure and Evidence Act [*Cap 9:07*].

Regis Chiomberwa is the one who ferried the injured deceased to the hospital where the now deceased was pronounced dead on arrival.

Stephen Mufundikwa who was at the said business centre on the night in question is the one who received the report that the now deceased had been injured. He then caused the now deceased to be ferried to hospital.

The evidence of Insp. Alex Mutsindikwa (Insp. Mutsindikwa) the Investigating Officer is largely unchallenged. When he attended the scene he was given accused's shirt Exhibit 3 which had been left at the scene. He was also shown the place where the now deceased had fallen after being fatal injured and noted it was about 5m from the fence. This was contrary to indications accused later made after his arrest that the now deceased had fallen on to the fence. He confirmed that accused was arrested after about 2 weeks at Ngundu. Further the accused advised him that accused was unsure as to how the now deceased had been injured. He insisted during cross examination that the surface on which the now deceased fell on had no objects which could have possibly pricked the now deceased. The accused told him that he had fled as accused had panicked. Insp. Mufundikwa said accused never alleged that he was fighting with any other persons except the now deceased and did not implicate the now deceased's colleagues.

The now deceased's colleagues also gave evidence on what happened that fateful night and they are Owen Mavenga (Owen), Knowledge Masase (Knowledge) and Effort Masasi (Effort). They all did not support the accused's version of events on how the now deceased was injured.

Owen said when the misunderstanding between accused and the now deceased arose over snooker token he heard other patrons shouting that the now deceased had been stabbed. He rushed to the scene where the now deceased was lying on open ground with no objects in sight. The flower bed was about 5 m away. He noticed that the now deceased was bleeding from the back of the shoulder. By then accused had fled.

Owen said he and his colleagues were all sober as none was drinking beer. He disputed that Effort and Knowledge fought the accused.

Knowledge said when the accused and the now deceased quarrelled pushing each other out of the shop they were holding each other. He then heard the now deceased shouting that he, the now deceased had been stabbed by accused. He reacted by rushing to the scene to apprehend the accused but was dissuaded by other people who shouted that accused had a knife and could also stab Knowledge. The now deceased was holding on to the accused's shirt Exhibit 3 but accused slipped out of the shirt as it were and fled leaving the now deceased with the shirt. At that stage the now deceased immediately, collapsed on to some clear surface and there were no objects on that ground or surface.

Knowledge denied that he got involved in the brawl with the accused but was about 3 to 4 m away when the now deceased shouted that he had been stabbed. He said the surface on which the now deceased fell on was lit by a torch and there were no objects which could have injured the now deceased further. Knowledge dismissed as false that the now deceased fell on to a flower bed.

Effort's evidence is that when accused and the now deceased pushed each other out of the shop the now deceased cried out that he had been stabbed by the accused. All people present could not advance to apprehend accused for fear of being harmed. He said the now deceased remained holding accused's shirt as accused fled and immediately collapsed. Effort said the now deceased only fell down after the accused had wriggled free from the now deceased's grip leaving the now deceased holding on to accused's shirt and then fell down. He also said there were no objects on the surface the now deceased fell on. Effort denied that he fought the accused or joined in any manner in the brawl between accused and the now deceased.

The accused's evidence is that as the now deceased pushed him out of the shop Knowledge and Effort joined in and all the three of them started to attack the accused. The accused said the now deceased held on to accused shirt and in a bid to free himself accused said he wriggled out of the shirt after pushing away the now deceased and fled. He said the now deceased fell on to a flower bed. Accused said he went home but fled to Ngundu the next day when he learnt of the now deceased's death where he was subsequently arrested. He denied stabbing the now deceased.

Under cross examination accused said he has no birth certificate and was employed as an artisanal miner at the material time. Accused remained adamant that the now deceased's friends joined in attacking him but could not explain why he did not include that in his confirmed warned and cautioned statement. The accused however conceded that he was merely speculating that a sharp object had fatally injured the now deceased as he did not see the said object.

The accused's mother Samukile Musasa was called to testify on two issues. The first one relates to accused's age and the other one to compensation paid to the now deceased's family by accused's family.

In respect of accused's age, she said although accused had no birth certificate he was born on 24 September 1999 which means accused is now 18 years old and was 17 years old at the material time in December 2016. However, both counsel agreed that the accused be examined by a dentist to ascertain his real age. An affidavit by the dentist states that accused is now 19 years old which means at the material time he was 18 years old. We are inclined to accept the dentists evidence in that regard.

In relation to compensation accused's mother said the now deceased's family demanded 15 herd of cattle and burial costs. She however said accused's family only managed to pay US\$350 towards burial costs and 20 goats as compensation.

In our assessment the narrow issue to be resolved by this court is how the now deceased was fatally injured.

The state witnesses gave their evidence very well. They materially corroborated each other that no one joined in the brawl between accused and the now deceased. This finds favour with accused's own confirmed warned and cautioned statement in which accused does not implicate any of the now deceased's colleagues. In any event accused merely speculates that an object pricked the now deceased although later in his defence outline and evidence in chief he now seemed certain.

The truth of the matter is that accused is simply lying on how the now deceased was fatally injured. It is the accused who fatally stabbed the now deceased. This explains why the accused fled from the scene leaving his shirt Exhibit 3. It explains why accused even fled from his residence and was hiding in Ngundu. In any case all state witnesses heard the now

deceased crying out that he had been stabbed by the accused as he held on to accused. Further all witnesses were clear that the surface on which the now deceased fell had no objects which could have harmed him.

It is our finding that accused used moderate to severe force in inflicting the fatal injury. No wonder why accused's counsel in his closing written submissions offered a lesser plea of culpable homicide. This in an admission that accused's version of how the now deceased was injured cannot possibly be true. We however believe that in inflicting such an injury the accused realised that death would result. In the result accused should be found guilty of murder with constructive intent.

VERDICT: Guilty of murder as defined in s 47(1)(b) of the Criminal Law (Codification and Reform Act) [*Cap 9:23*] – murder with constructive intent.

SENTENCE

This court is alarmed by the prevalence of murder cases in Masvingo. What is saddening is that these cases are committed by very young people. What really has gone wrong with our young people? Why do they readily resort to violence using lethal weapons like knives or axes, especially over minor disputes. There is now complete lack of respect of human life.

The court has the duty to ensure that human life is valued, preserved and respected. The offence of murder is inherently a very serious offence which any right thinking person should frown upon. Once life has been lost it cannot be replaced.

In this case the now deceased lost his life over a minor dispute involving a 25 cent snooker coupon. Life can never be that cheap. The accused used a lethal weapon, a knife to settle such a minor dispute. Severe force was used on the most vulnerable part of now deceased's body and the now deceased died instantly. The accused is not contrite at all. He was clearly unwilling to take responsibility of his barbaric conduct.

In mitigation the court considers that the accused is a youthful first offender. He was 18 years at the time of commission of the offence and is now 19 years. Maybe youthfulness explains to some extent accused's conduct as he may not have fully appreciated the consequences of his conduct.

The accused is a barely literate rural young man who irked a living through gold panning. The accused only did Form 2 and has no means at all. The court should therefore exercise some measure of leniency.

It is in accused's favour that his family paid compensation to now deceased's family of US\$350 and 20 goats. While this may not bring back the now deceased it is positive aspect of our African custom.

After weighing both the mitigatory and aggravatory factors the accused is sentenced to 10 years imprisonment.

SENTENCE: 10 years imprisonment.

National Prosecuting Authority, counsel for the state

Matutu & Mureri, pro deo counsel for the accused