

THE SATATE
versus
FANUEL NDAPOTA

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 19 June 2025

CRIMINAL TRIAL

Mr *M Musarurwa*, for the State
Ms *D mutungura*, for the Defence

MUZENDA J: On 13 August 2024 at Mbezuma homestead Mukomba Village, Chief Musikavanhu, Chipinge, William Sithole was at the scene with two other children around 2100 hours when he heard a sound of someone groaning. He perceived accused peeping through the glass of the dining door. He further saw accused opening the dining room door whilst holding a steel object advancing towards the witness. William Sithole escaped into the spare bedroom and locked the door from inside. He later heard footsteps of the accused running away.

After the departure of the accused William Sithole courageously ventured into dining room used by now deceased as a bedroom and saw her lying facing upwards on her bed sheet breathing heavily while bleeding from the right ear and mouth. William also noticed that deceased's pair of black jean trousers and pants were pulled down to knee level. William screamed for help. He then informed other locals. Deceased succumbed to the head injuries and the pathologist concluded that the cause of death was due to subarachnoid hemorrhage and head trauma/. The attacker left a grey dust coat on the sofa and a pair of pink sandals was left besides now deceased's body. Accused was arrested near Save River and led the police for indications as well as recovery of a bicycle axle weighing half a kilogram and an Itel A56 cellphone. His indications aided the police details to prepare a sketch plan. The condition of the now deceased's clothes led police detective to infer that the now deceased was sexually abused either before, or during or after the attack. The events stuck out prominently as largely common cause and from them accused was charged with Murder as defined in s 47(1)(a) or (b) of the Criminal Law (Codification and Reform) Act [*Chapter 9 :23*].

The accused pleaded not guilty to the charge of Murder and tendered a plea of guilty to Culpable Homicide, s 49 of the same Act. He explained to court that he did not intend to kill the now deceased. He admits using the bicycle crank arm axle but denies intentionally causing the death of the now deceased.

The facts crisply outlined hereinabove are not disputed by the defence. **The issues for determination are that (i) whether or not the killing of the now deceased was intentional. (ii) whether the offence was committed in aggravating circumstances as provided by the statutes.**

The appellant's defence is that he erroneously struck the deceased on the head when he intended to strike her on her back but due to her movements, he ended up striking her head. The requirements for a court finding a person guilty of murder were set out in the case of *Dube v The State* SC 83/22 at p 8 of the following excerpt appears.

"It is trite that there are four basic essential elements that must be proven to sustain a conviction of murder. These are: (i) causing death of (ii) another human being (iii) unlawfully; and (iv) intentionally."

In *S v Mugwanda* 2002 (1) ZLR 574 at 581 D-E the late CHIDYAUZIKU CJ held on the question of intent in a murder case:

"On the basis of the above authorities, it follows that for a trial to return a verdict of murder with actual intent it must be satisfied beyond a reasonable doubt that:

- a) Either the accused desired to bring about the death of the victim and succeeded in completing this purpose; or*
- b) While pursuing another objective foresees the death of his victim as a substantially certain result of that activity and proceeds regardless"*

(See also *Peter Nyathi v The State* SC 44/23)

The accused attacked now deceased with a heavy metal several times on the head aiming on the head. The idea of accused aiming at the back of the deceased is highly improbable in these circumstances because accused struck deceased's head more than once. We totally reject accused's version that he intended to strike the back of he deceased. Witnesses saw deceased groaning bleeding from the ear and mouth. The postmortem report reflects that now deceased was viciously attacked and had a head trauma and she died of hemorrhage. The nature of injuries on the now deceased show a deliberate and calculated attack of now deceased on a vulnerable part of the body. This was a vicious, callous and brutal attack on defenceless woman. It is therefore our finding that from the totality of all the

evidence placed before us by the state there was clear intention to cause now deceased's death. Immediately after fatally assaulting now deceased accused fled from the scene after he had achieved his target.

Accused sexually molested the now deceased given the conditions of her attire. They were withdrawn up to the knee level exposing her private parts. That condition shows that the sexual conduct of the accused was not consensual. As a result it is our finding that the murder was committed in aggravating circumstances as provided for in terms of s 47(2)(ii).

Verdict: Guilty as charged.

Sentence

In arriving at an appropriate sentence I will consider all that had been submitted by the counsel representing the accused and the aggravatory factors advanced on behalf of the state. This is a very serious case of murder committed in aggravating circumstances where deceased was sexually ravaged. It was also committed during domestic violence against a defenceless woman. Her nakedness was seen by people of all ages as well as male police details. I am aware that accused offered a plea of guilty off culpable homicide but he had no option due to overwhelming evidence against him. The aggravatory factors far outweigh the mitigatory features. The only appropriate sentence is custodial.

Accordingly you are sentenced as follows:

Life Imprisonment.

Disposal Order:

Bicycle axle, slippers and grey dust coat to be released to the accused. The ITEL A56 to be released to Ms Lilian Mlambo.