

**THE STATE**

**Versus**

**MIRIAM KUDZAI LOVENESS TINARWO**

IN THE HIGH COURT OF ZIMBABWE  
KAMOCHA J  
GWERU HIGH COURT CIRCUIT 30, 31 JANUARY & 1 FEBRUARY 2012

*Mrs R. Takuva* state counsel

*Mrs L. Mavhondo* defence counsel

Criminal Trial –Ex Tempore

**KAMOCHA J:** The 29 years old accused was charged with the crime of murder. It being alleged that on 1 April 2011 at Sample Tech Company in Gweru she did unlawfully and with intent to kill and murder strike, her husband Pascah Banda aged 31 years, 3 times on the head with an axe thereby inflicting injuries which caused his death.

When the charge was read to her she admitted striking her husband 3 times on the head with an axe but had no intention to kill him. The court then entered a plea of not guilty.

The state outline was read and produced as exhibit one while the defence outline was read and produced as exhibit two. I do not propose to read these. I shall however read the accused's confirmed extra curial statement she made two days after the alleged murder when matters were still very fresh on her mind. It reads as follows:

"I do admit to the allegations leveled against me. This deceased was in the habit of insulting, assaulting me and also used to be away from home leaving myself and children without adequate food. On the day when I killed this Pascah Banda he arrived at around 8pm and assaulted me indicating that I had given him cold sadza and he accused me to cause (sic) him to wallow in poverty. We then slept but I was angry. I woke up at dawn, I do not know what had got into me, I then took an axe and struck the deceased who was fast asleep. I no longer remember how many times I struck him. I pulled him from the blankets. I took again that axe and struck him once on the neck and also on his back. I dragged him outside. I took a wheel barrow and put him inside and left him far away from the house. I then pushed the wheelbarrow and hid it in the grass and then returned home."

The post mortem report was produced as exhibit 4. The doctor who examined the remains of the deceased observed and noted the following:

The marks of violence he noted were a deep wound on the neck right lateral region severing the jugular artery and coronary. He also noted 3 superficial wounds on the neck and head. The jugular and coronary artery were severed.

He remarked that his findings were consistent with multiple wounds and one deep wound on the neck with cutting of the jugular and coronary artery.

He concluded that the cause of death was due to the following:

- a) External haemorrhage; (b) section of jugular and coronary artery; (c) cut on the neck caused by an axe during the assault.

The exhibit is the axe the accused used to inflict the fatal injuries on the deceased.

Its dimensions are these:-

Length of handle	-	75cm
Length of blade	-	22cm
Width of blade	-	8cm
Its weight	-	2.371kg

The handle is a homemade one. The blade is very sharp. It is heavy and difficult to lift and wield with one hand.

Exhibit 6 are 8 photographs showing injuries on the body of the deceased, a wheel barrow accused used to ferry the deceased from the warehouse to the spot where she deposited the body 62 metres away. One of the photos shows the place where accused had hidden the clothes the deceased was wearing when she attacked him. She, in one of the photos, indicates the spot on which deceased lay when she struck him with the axe.

The court observed a very deep and wide cut on the base of the neck which is the one the doctor said severed the jugular and coronary artery. There was also a very deep and wide cut on the back below the scapula. Another deep and wide cut was on the cheek and there was a cut on the parietal region and on upper part of the head.

The evidence of the following witnesses was admitted in evidence as it appears in the state outline by consent by the defence in terms of section 314 of the Code:

Rabson Chauruka, Friday Navaya, Jealous Munyathi, Weston Mavhudzi, Fredrick Chiokoyo and Dr A. R. Casteinos.

*Viva voce* evidence was adduced from detective Constable Sonny Ndahwi. He has been in the police force for six years and is now stationed at CID Gweru. He only knows the accused in connection with this case and did not know the deceased during his life time.

On 1 April 2011 he received a report of a murder case from ZRP Mkoba. He and other detectives proceeded to Mkoba ZRP where they found the informant who was the accused.

Following a report from her she led them to the scene. Her report was that her husband had been murdered by some unknown assailants at his place of work. She explained that her husband who had been employed as a guard at his place of employment had heard people outside the premises he was guarding. He went out of the premises to investigate. She remained inside. Because her husband had been away for a long time she got worried and went to find out where he could be. She then found him having been brutally murdered some 62 metres away from the warehouse he was guarding. At day break she went to make a report at Mkoba police station.

When they arrived at the scene the officer made certain observations which appeared to belie the accused's story. He observed some blood on the place which the accused and the deceased used as bedding. There was a lot of blood there. He also noticed some blood on the inside of the door. Her skirt had some blood stains. She also had blood on clothes in the region of her breasts.

He asked her about all this blood but she said that she was menstruating. When he said the blood was too much for menstruation she insisted that it was. But the witness noticed that someone had tried to remove the blood by trying to mop it up. He saw some clothes in a bucket which also had blood stains.

The witness ended up treating her as a suspect and she was conveyed to the station where she finally confessed.

She then assisted the police with their investigations by leading them to where she had hidden the wheelbarrow that she had used to ferry the deceased from the warehouse to a spot 62 metres away. She also indicated the place where she had hidden the clothes deceased was wearing when she attacked him and the blankets on which he lay as she struck him. Thereafter she led the police to Southview to Albertina Chamboko where she had borrowed the axe exhibit 5.

The witness told the court that the accused had not shown any sign of remorse when she was trying to mislead the police.

The witness denied ever assaulting the accused in order to extract a confession from her.

The accused made a warned and cautioned statement to another team of police officers wherein she confessed and detailed what she had done. When the statement was confirmed by the magistrate she supported the Detective Constable that she was not assaulted at all and that her statement was a true reflection of what had happened.

This witness gave his evidence well and in a very clear manner. He is worth to be believed.

Albertina Chamboko confirmed that the accused had borrowed the axe from her the previous day saying she would return it that same day but she did not. It was her first time to borrow an axe from her.

The accused did not have any witness to call but gave evidence herself wherein she sought to depart from her confirmed extra curial statement. She told the court that she lied during confirmation proceedings that that statement was hers. She said all that she told the magistrate was not true. Her explanation for that was that she thought if she told the truth that the statement was not made freely and voluntarily she would be returned to the police to be further assaulted. She was clearly being untruthful to this court.

She admitted being untruthful to the police initially by telling them a false story.

The accused is not worth to be believed. She is very unreliable. She now wants the court to believe that she was acting in self defence after disarming the deceased of the axe and using it on him. Had that been the case she would have readily told the police and everybody that the deceased who had been worrying her during all her marriage life had tried to chop her with an axe but, that she had snatched it and chopped him instead. This version of her story is clearly an afterthought and must be rejected. The truth of what happened is found in her confirmed extra curial statement.

The court called Mrs Tendayi Dzukwa but it turned out she had been sitting in court during the proceedings. She is the accused's paternal aunt. She said accused and deceased did not have a happy marriage. They always quarreled and fought. She confirmed that deceased did not seem to care about his family although they had a civil marriage. She once allowed them to come and live with her for a period of six months.

Of late deceased had become a church fanatic to the extent of ignoring his own family. There seems to be some truth in the suggestion that accused had a miserable marriage life which explains why she did what she did.

The murder was clearly planned. She went to borrow the axe for the occasion. After the quarrel in the evening she waited until he went into a deep sleep. She then delivered, her blows while he lay in his sleep, at the head striking him 3 times. She pulled him from the blankets after incapacitating him and struck him on the neck severing the vital arteries. She further struck him on the back.

Her intention was to kill him. She is therefore guilty of murder with actual intent.