

THE STATE

Versus

EDMORE GAMBAGAMBA

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
GWERU HIGH COURT CIRCUIT 23, 24 & 25 JANUARY 2012

Ms Msipha for state counsel
Ms D. Shirichena for respondent

Criminal Trial – Ex Tempore

KAMOCHA J: The 36 years old accused pleaded not guilty to the crime of murder. The allegation being that on 15 July 2008 at Chitsunge Village, Chief Chireya, Gokwe North, in the Midlands Province he did unlawfully and with intent to kill stab Nation Nyatsunga a male adult aged 34 with a knife in the neck causing an injury from which he died.

The state outline was read and produced as exhibit one. I do not propose to read it again. I shall however, read the defence outline which was produced as exhibit two which reads:-

“Accused will plead not guilty to the allegations leveled against him and in amplification of the said plea will submit the following:-

Facts

- 1) He will state that on the 15th day of July 2008, he went to Linah Mahanya’s place for a beer drink, whereupon the deceased Nation Nyatsunga approached him and began to assault him, Tongai Nyatsunga and Shandirai Nyatsunga also joined in the scuffle.
- 2) Accused, evaded the deceased who missed accused, fell to the ground and stabbed himself with his own knife in the process, leading to his death. In light of the foregoing, accused prays that he be found not guilty and therefore acquitted.”

In his confirmed extra curial statement the accused had this to say.

“I understand the caution. I do not admit to the charge leveled against me of stabbing Nation Nyatsunga on the throat with a knife. I arrived at Linah Mahanya’s homestead, Nation Nyatsunga came to me and held my throat saying this is the end of me. I told

him that we had discussed the issue and resolved it and he said I must buy him six cups of beer and I told him that I can only afford three cups and he started to assault me with clenched fists while holding my neck with another hand. Shandirai Nyatsunga and Tongai Togara came where we were Tongai with a knobkerrie, Shandirai with a small axe. Nation Nyatsunga withdrew a knife from his right hand trousers pocket on trying to stab me, he missed me and fell to the ground with his knife and stabbed himself in the process.

I ran away leaving him alive. When I was running away Shandirai threw an axe and missed my head. The issue which he was assaulting me for is that they arrived at a beer brew at our homestead the previous year and drank beer which I stopped them and they started assaulting me while others were taking beer in the process.”

The extra curial statement was produced as exhibit 3. Exhibit 4 was a post mortem report by a doctor who examined the remains of the deceased two days after the alleged murder. The doctor observed an approximately 3cm stab wound on the throat from which there was excessive bleeding. Death was due to hemorrhagic shock as a result of the stab wound on the throat.

The evidence of the following state witnesses was admitted by consent in terms of the provisions of section 314 of the Criminal Procedure and Evidence Act [Chapter 9:07] Shandirai Nyatsunga, Jameson Munyaradzi Gwarazimba, Richard Karimudenga, Cst Tisias Chimhari, Cst Norest Maverengo and Doctor B A Maponga.

Viva voce evidence was adduced from Tongai Togara who told the court that he was a brother of the deceased. He knew the accused as he lived in the neighbourhood.

On the fateful day he left his home around 8am to go to the Cotton Seed Company. When he got there he discovered that the officials had not yet arrived. He then decided to go to Linah Mahanya’s homestead where there was a beer drink.

He arrived at the beer drink around 11am and found Richard Karimudenga, Jameson Gwarazimba, Shandirai Nyatsunga and other people. The accused arrived 30 minutes afterwards.

When the deceased saw the accused approaching the homestead he went to meet him saying the accused had taken his cap previously. As the accused entered the homestead the deceased met him and the two immediately grabbed each other by the collars of each other’s shirts. He did not see who grabbed the other first. When they let go of each other the accused had stabbed the deceased with a knife which he threw to the ground after the stabbing. The deceased then turned to go where other people were sitting and said the accused had stabbed

him with a knife. As he walked towards the other people he collapsed and died instantly. The accused picked up his knife and went away.

The deceased was drunk at that time but the accused had not yet taken any beer at that homestead as he had just arrived and had not yet even sat down when the stabbing took place.

The first witness fairly stated that he did not see who between the accused and deceased produced the knife but the accused picked it up after the stabbing and went away. The knife has not been recovered ever since.

The accused would not have taken the knife away and hid it if it was not his. If the deceased had stabbed himself with his own knife when he missed the accused he (accused) would not have taken it away and hid it. He in fact would have told the people present that the deceased had stabbed himself with his own knife and would have handed the knife to those present.

Instead the accused took the knife and moved from the area and went to live in another area.

The witness dismissed the accused's suggestion that he was attacking the accused with a knobkerrie as false and so was the suggestion that Shandirai Nyatsunga approached him with an axe.

The witness told the court that the suggestion by the accused that the deceased fell on his own knife after missing the accused, was clearly false because the deceased only fell down after the two had let go of each other and deceased was trying to walk towards other people saying he had been stabbed with a knife by accused. The deceased fell down only once and died.

The witness gave his evidence fairly and in a straight forward manner. He did not try to hide anything. For instance he said it was the deceased who approached the accused as he was entering the homestead demanding for his cap that had been taken by the accused. The witness is worth to be believed. His evidence is corroborated by that of Shandirai Nyatsunga, Jameson Gwarazimba and Richard Karimudenga which was admitted by consent in terms of section 314 of the Code.

The same cannot be said about the accused's story which was clearly full of falsehoods. The accused sought to alter his story by saying he had not noticed that deceased had been injured during the altercation but only heard later that the deceased had been injured. That is clearly false as it was a departure from what he told the police in his confirmed extra curial statement and what he told his legal representative in his defence outline. He stated that the

deceased missed him as he tried to stab him and fell to the ground and stabbed himself with his own knife in the process, leading to his death.

The accused is not worth to be believed and his story is hereby rejected. This court finds that the accused stabbed the deceased with a knife in the neck with dexterity inflicting a 3cm stab wound on the throat causing excessive bleeding which killed the deceased instantly. It was aimed at a very vulnerable part of the body. Accused clearly foresaw that death would result but did not care whether or not it ensued. He is clearly guilty of murder with constructive intent.