

THE STATE

Versus

JAISON CHAVHUNDUKA

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
GWERU HIGH COURT CIRCUIT 1, 2 AND 3 FEBRUARY 2012

Mrs R. Takuva state counsel
B. Dube defence counsel

Criminal Trial – Ex Tempore

KAMOCHA J: The 24 years old accused was charged firstly with the crime of attempted murder. The allegation being that on 3 September 2010 at Moses' village under Chief Njelele in Gokwe South, in the Midlands Province he did unlawfully with intent to kill struck his wife Nomsa Mawana aged 22 years old, once on the head with an axe causing her to sustain a depressed skull fracture of the right temporal region.

Secondly, the accused was charged with the crime of murder. It being alleged that on 5 September 2010 at Nyambira village, Chief Njelele, Gokwe South, he did unlawfully with intent to kill strike his sister-in-law Sibekezeli Tshuma aged 31 years twice on the head with an axe thereby causing her death.

When the charges were put to him he tendered pleas of not guilty to both counts.

The state outline was read and produced as exhibit number 1 while the accused's defence outline was also read and produced as exhibit 2. His confirmed extra curial statements were also read and produced as exhibits 3 and 4 respectively. I propose to read the statement in respect of count 2 which reads:-

"I have understood the caution, I admit to the charges. I struck the deceased twice upon her head with an axe which I got from our home.

I struck Sibekezeli Tshuma because she influenced my wife to engage into prostitution."

The statement was made on 27 September 2010 when matters were still fresh in his mind and was confirmed by a magistrate at Gokwe Magistrates' Court.

There is no need to read the statement in respect of count 1 since the accused's legal representative conceded that the accused was clearly guilty of attempted murder as charged. The concession was, in my view, properly made.

The fifth exhibit was a medical report in respect of the complainant in count one which should be read with exhibit 9. The medical report reveals that the complainant suffered a depressed skull fracture and was referred to a neuro-surgeon.

The CT Scan of the brain, exhibit 9, revealed the following:

“Findings

There is a depressed right temporal parietal fracture. There is a scalp haematoma with a focal area of hypo-density raising the possibility of developing scalp abscess. There are also foreign bodies in the scalp soft tissue and a foreign body protruding into the brain parenchyma in the right parietal region. There is focal area of heterogeneous abnormal density in the right temporal parietal region with some hypo-dense areas. There is swelling of the right cerebral hemisphere with mass effect indicated by the bowing of the midline to the left. There is abnormality shown in the left cerebral hemisphere, brain stem structures, basal cisterns and cerebellum.

Comment

- Complex right temporal parietal fracture extending to involve the anterior aspect of the right mastoid air cells.
- The fracture has a depressed component and is comminuted.
- There are foreign bodies in the scalp soft tissues and adjacent right parietal brain parenchyma.
- There is swelling of the brain with effacement of the cortical sulci.
- There is contusion/infarction in the right temporal parietal region.
- No significant subdural or epidural haemorrhage seen.”

The post mortem in respect of count 2 was produced as exhibit number 6. The doctor observed and noted the following:-

“A deep laceration on the left parietal- temporal region of the scalp about 9cm not involving the skull. Another very deep laceration in the right side about 20cm and 12cm deep, involving the skull on the occiput, brain tissue exposed. Bleeding per right ear and clothes soiled with blood.”

The 7th exhibit was the axe that the accused used to chop the complainant in count 1. Its dimensions were as follows:

Length of handle	-	57cm
Length of blade	-	20cm
Width of blade	-	7.5cm
Diameter of handle	-	3cm
Weight	-	2.875kg

The axe is home made. The blade seems to have been made from a spring of a heavy vehicle like a lorry. It is heavy and difficult to lift and wield with one hand. The blade is very sharp.

Exhibit 8 is the axe the accused used to chop the deceased in count 2. It is also a home-made axe. The blade seems to have been made from a spring of a light motor vehicle. The blade is very sharp. The axe can be easily lifted and wielded with one hand. Its dimensions are as follows:

Length of handle	-	77cm
Length of blade	-	20cm
Diameter of handle	-	2cm
Width of blade	-	7.3cm
Weight	-	1.935kg

The state counsel applied for the evidence of the following witnesses to be admitted in terms of the provision of section 314 of the Criminal Procedure and Evidence Act [Chapter 9:07] Lisa Mawana; Julius Chavhunduka; Kenias Chavhunduka, Poem Ngabi; Addington Garatiya; Shepherd Muzanembi; Dr Masiya and Dr P T Venge Mafaune.

The application was granted by consent and the evidence was accordingly admitted as it appears in the state outline.

The state led evidence from two witnesses namely complainant in the first count and Stanley Chavhunduka the 8 years old son of the deceased.

Nomsa Mawana told the court *inter alia* that she was married to the accused. The deceased in count 2 was her elder sister who was married to the accused's elder brother.

On one Friday the deceased informed her that their mother had fallen sick and had been taken to Bulawayo. She informed the accused about the message. In the light of that their father had requested them to go and assist with harvesting maize. The accused was agreeable that the witness could go with her sister, the deceased, the following morning. But around 7pm their sister Simbisai arrived to tell them that their mother had returned from Bulawayo. The accused, Simbisai and the witness went to inform the deceased about that. Despite the latest development they would go to their parents' home the next day at 2am. The accused agreed to accompany them to the bus stop but the deceased was to wake them up around that time.

Indeed around that time the deceased went to wake them up. But the accused, for some unknown reasons, had changed his mind. He no longer wanted the complainant to go with the deceased and refused to give the witness bus fare. When she insisted that he should give her money for bus fare and pulled him by his shirt he got angry and said, "What are you discussing with your sister?" With that he turned to the deceased and said she was failing to look after his brother's children and demanded to know what deceased was discussing with the complainant but got no response from the deceased. He then swore at her by her mother's private parts and called her a useless dog.

The deceased had not done anything wrong to deserve such insults. In reply she told the accused that he should not do that as she was just like his mother since she was married to his elder brother. Instead the accused should respect her. With that she left the accused and his wife to put their house in order. The witness told her that she would follow on foot since the accused had refused to give her bus fare.

The accused then suggested that the two should go to his parents to tell them that she was going. They proceeded towards a neighbouring home where accused's parents were at a beer drink for memorial service. Whilst they were on their way they met the accused's mother who, when told about what was happening, started shouting at the witness and then turned to the accused and said, "I told you to part ways with this woman."

The witness told the court that the accused's mother had a natural hatred for her. Shortly thereafter the father of the accused arrived and suggested that they should go and discuss the matter at home. On arrival at home he asked the accused what was happening and was told that complainant wanted to go to her parents. The father then said words to the following effect:

“Jaison I told you that you should part ways with this woman. She always wants to go to her home. Let her go.

Let her go and be promiscuous while at her parents’ home. You are still very young and can get another woman and she is also still very young and can get another man.”

With those words it was suggested that they should go and sleep and the matter would be finalized in the morning.

I pause to observe that the accused’s parents did not like the witness at all. They in fact had each told their son to part ways with the witness.

When the two got to their house the accused threatened to damage all the clothes he claimed to have bought her by cutting them with a knife. She then went to inform the accused’s mother who went to tell them yet again that their matter would be discussed at day break.

At day break the accused’s father went there and asked if the witness still wanted to pack her belongings and go. She was in fact doing just that and she told him that she indeed was going. He again hurled insults at her telling her that he was not going to persuade her. He went on to say she should not think that she was the only person light in complexion. He repeated that Jaison was still young and would get another woman. With that he went out of the house and called both of them and said, “Listen Jaison tomorrow you will accompany your wife to the bus stop. Give her the money to go.”

The next day accused did as he was instructed and accompanied her to the bus stop and she left.

When she got home she narrated her story to her parents and made it clear to them that she was parting ways with accused. After three days she went with one of her sisters to go and collect her property from accused’s home. The accused had told her to return after 3 days. On her return with one of her sisters they found the accused waiting for them at the bus stop.

When they arrived at the homestead the witness and her sister went to inform the headman that the witness had come to collect her belongings and requested him to be present in order to avoid any trouble. He agreed. The witness and her sister went to sleep at the deceased’s place. The next day she collected her belongings and left.

But three days later the accused and his parents followed her. A meeting was held whereat the accused’s father apologized and explained that he had insulted the witness because he was drunk. Which of course was not true because he repeated the insults the

following morning when sober. He offered to pay a goat to the witness for insulting her. The matter came to an end.

When he asked to take the witness with them her father said he should pay two head of cattle as lobola before he could do that. The accused and his parents then went back.

After sometime the accused and the deceased brought one beast and \$150 as part payment of lobola. The deceased discussed with her parents and convinced them that they should again accept the accused as their son-in-law which they did. She at the same time persuaded the witness to forgive the accused and go back to his home. She went with him.

That however, was very short lived because when she was there the accused's mother started causing problems again as she would not accept the witness back. In fact she took the utensils the witness was using. It looks like the accused was put in a very difficult situation. He even suspected his mother could harm their child and suggested that the witness should take their child to her parents' home. The witness returned to her parents' home.

The accused followed her after a few days and was there for two days. On the fateful day the accused woke up at 0300 hours while the complainant was fast asleep after they had made love. He then took the axe exhibit 7 and chopped her once on the head and ran away back to his parents' home walking for 4^{1/2} hours. As already stated earlier the accused's legal practitioner properly conceded that the accused is guilty of attempted murder.

Count 2

This witness told the court that it was not true that the deceased was bent of destroying the accused's marriage. Instead deceased was the one who mediated that the witness should forgive the accused. She was also the one who persuaded the accused's in laws to forgive him and allow him to take his wife back with him.

It was her evidence that the deceased was not in any way bad influence let alone influencing her to engage in prostitution.

I pause to observe that if the accused had been harbouring a belief that the deceased had been teaching his wife to engage in prostitution he would have told her when an opportunity presented itself when she went to wake them up so that she could go home with her. Instead of swearing at her by her mother's private parts and call her useless dog and that she had failed to look after his brother's children, he would have told her that he was not giving his wife bus fare because he did not want her to go for fear that she was going to be taught methods of prostitution.

This witness testified very clearly and in a straight forward manner. She is worth to be believed. Where her story conflicts with that of the accused I prefer hers. For instance I find that the accused's suggestion that the deceased was influencing the witness to engage in prostitution to be false. The suggestion that she was bent on destroying the accused's marriage to be also false.

The child of the deceased, Stanley Chavhunduka, told the court that on the fateful day the accused arrived at their homestead carrying an axe. He found the witness in the kitchen hut and told him to go and call his mother who was sweeping the bedroom. Accused said he wanted to discuss something with the deceased.

The deceased went into the kitchen hut where accused was and spread and sat on a sack. The two were not exchanging any harsh words. The witness' evidence was rather confused on the way accused struck the deceased with the axe exhibit 8. The witness identified the axe as theirs.

Overall the child gave his evidence well considering his age. This court accepts his evidence. He was a truthful witness.

The accused was a very poor witness when giving evidence. He was clearly being untruthful. His story is full of contradictions and falsehoods. For instance he suggested that he had met the deceased who invited him to go to her home when that does not appear in his defence outline and confirmed extra curial statement. That was clearly an after-thought which must be rejected.

He also changed his story and gave different reasons for striking the deceased. He suggested that the deceased hurled insults before he struck her yet in his statement he said he had done so because deceased had influenced his wife to engage in prostitution. His new version was a hopeless after-thought which must be rejected. His story that the deceased had invited him into the hut is also clearly false and must be rejected. The correct position is as testified by Stanley that he sent him to go and call her into the hut and when she went there he chopped her.

What is clear is that the accused took the axe from his home, as stated in his statement, and proceeded to the deceased's home intending to go and chop her with it and kill her and thereafter take his own life. He then carried out what he had intended by striking her with the axe twice on the head inflicting two injuries; one was 9cm long but did not enter the skull; the other one was 20cm long and 12cm deep into the head and exposed brain matter.

He is guilty of murder with actual intent.

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