

THE STATE  
versus  
GODKNOWS MANDIZVIDZA

HIGH COURT OF ZIMBABWE  
MAWADZE J  
HARARE, 9, 10, 11 March and 7 August 2015

Assessors: 1. Mr Chakuvinga  
2. Mr Chidyausiku

### **Criminal Trial**

*A Manhomo*, for the State  
*Advocate R Bwanali*, for the accused

MAWADZE J: The accused is facing a charge of murder as defined in s 47 (1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

The charge is that on a date unknown to the prosecutor but in November 2007 at Mafura Village, Chief Magonde, the accused unlawfully caused the death of Spiwe Mafura by striking her with a wooden log on the head causing injuries from which she died.

The now deceased who was 53 years old and the accused were neighbours in the same village. The now deceased was staying with a 2 year old child at her homestead and the accused would at times help her with some chores of fetching firewood or looking after her cattle and donkeys.

The background facts of this matter are as follows;

On 11 November 2007 a fellow villager Tamali Hwangwa passed through the now deceased's homestead and saw flies coming out of the now deceased's bedroom. She also felt an unpleasant smell emanating from the same bedroom. As a result she informed fellow villagers including the village head. Fellow villagers discovered the now deceased's decomposing body in her bedroom and made a report to the police. The accused was initially arrested by the police but they released him for lack of evidence. The accused was later

linked to the offence after the now deceased's property was later found at one Erick Maseva's house. Erick Maseva indicated that it is the accused who had brought this property to his house.

The accused denied the charge and as per Annexure 'B' stated that he too learnt of the now deceased's death from fellow villagers. The accused states that he was never found at the now deceased's homestead. Apparently the accused did not in his defence outline address the question of how he is linked to this case with the property found at Erick Maseva's homestead.

In support of its case the State called the following witnesses;

Tamali Hwangwa, Gilbert Karonga Banda, Enock Mafura, Erick Maseva, Esna Hove and Detective Sergeant Collen Zimbudzi. The accused gave evidence and did not call any witnesses.

The following exhibits were produced by consent, and we shall briefly comment on each exhibit.

Exh 1:

Is a sack which the State alleges contained the grocery belonging to the now deceased. It was found at Erick Maseva's house and Erick Maseva alleged that it was brought by the accused. Exhibit 1 is inscribed with the following information.

“Aleck Mvura. E. Officer passport office, 2<sup>nd</sup> floor, 011 443 125.”

It has not been disputed that that Aleck Mamvura is the now deceased's brother who worked in Chinhoyi. It was identified by the now deceased's son Enock Mafura as the now deceased's property and was found in Erick Maseva's house.

Exh 2:

Is a pink and black blanket. It has not been disputed that it belongs to the now deceased. Again it was identified by Enock Mafura in Erick Maseva's house. Erick Maseva alleges it was brought by the accused. Exhibit 1 and exh 2 is part of the property the State alleges links the accused to this offence.

Exh 3:

Is the post mortem report done by the doctor on 15 November 2007. The doctor noted the following:

- i) that the now deceased's body was decomposing and her clothes were covered in blood
- ii) the now deceased had multiple bruises on the lower limbs
- iii) the now deceased had a depressed skull fracture on the right front temporal bone
- iv) the now deceased had a 2cm cut on the anterior neck with section on the trachea possibly caused by a sharp object
- v) that the cause of the now deceased was the depressed skull fracture.

The cause of the now deceased's death is not in issue. It is our finding therefore that the now deceased did not die due to natural causes but was assaulted causing the skull fracture.

We now proceed to summarise the material aspects of the testimony of each witness and comment on their demeanour.

Tamali Hwangwa

The evidence of Tamali Hwangwa (Tamali) was admitted in terms of s 314 of the Criminal Procedure and Evidence Act [*Chapter 9:07*]. It is not disputed.

Tamali stayed in the same village with the now deceased and the accused. She is the one who noticed on 10 November 2007 that something was amiss at the now deceased's home when she passed through and saw flies coming out of the now deceased's bedroom and felt a bad smell from the same bedroom. She advised Esna Hove a fellow villager and they both advised the village head Gwenya Maganga. The three of them proceeded to now deceased's homestead and discovered the now deceased's decomposing body which culminated in the report to the police.

We now turn to state witnesses who gave *viva voce* evidence.

Esna Hove

Esna Hove (Esna) knew both the accused and the now deceased as fellow villagers.

Her evidence was that a day before the discovery of the now deceased's body she was at her fields when a 2 year old child who stayed with now deceased approached her towards sunset alone. She said the child said she had been brought to her fields by the accused and that the accused had disappeared. She did not see the accused. Esna inquired from the child

where the now deceased was and the child said she had gone to look for cattle. The now deceased did not come to collect the child and she spent the night with the child. The next day, Tamali then approached her explaining that something was amiss at the now deceased's homestead which culminated in the discovery of the now deceased's decomposing body.

While the defence initially denied that it is accused who had brought the 2 year old to Esna the defence did not dispute this in cross-examination. In fact the accused admitted in his evidence that he is the one who took the child to Esna but did not hand over the child to Esna. No other useful questions were put to Esna and her evidence is unchallenged. We therefore accept it in *toto*.

### Enock Mafura

Enock Mafura is the now deceased's son (Enock). He knew the accused as his neighbour. At the material time in November 2007 Enock was staying in Harare. He received the news of the death of his mother on 12 November 2007 and proceeded home to bury her after the post mortem report had been done. He had no clue then as who had killed his mother.

Enock testified that a week after burial of his mother he was approached by a fellow villager one Gilbert Karonga Banda who advised him of some property which had been left at Erick Maseva's house allegedly by the accused at Runene Primary School where Erick Maseva was a teacher. Gilbert Karonga Banda had seen the property and was referred to Enock's homestead.

Enock said he proceeded to Runene primary School in the company of Gilbert Karonga Banda and one Chapfura a member of the neighbourhood watch committee (NWC) to see the property. At Erick Maseva's house at Runene Primary School he was shown the property which included exh 1, exh 2, and groceries including 2kg sugar, 2 litres cooking oil, some 2 chickens and two buckets of shelled maize. He was able to identify the sack exh 1 and the blanket exh 2 as the property belonging to his mother the now deceased. He was able to identify the sack exh 1 inscribed with the names of his uncle (the now deceased's brother Aleck Mvura) and used to see the blanket exh 2 with the now deceased. The groceries were contained in the sack. They took the property home and decided to approach the accused who had allegedly left the property with Erick Maseva.

Enock said when they approached the accused at his homestead and advised accused's relatives about their mission, accused asked to wear his shoes and bid farewell to his grandmother but instead he fled into darkness.

Under cross-examination Enock denied that they tried to assault the accused and caused him to flee. Enock insisted that exh 2 the blanket belonged to the now deceased.

In our view Enock's evidence is largely not in dispute. He gave his evidence very well. We do not doubt that he properly identified exh 1 and exh 2. The accused later confirmed in his case that Enock and others did not try to assault the accused. We find Enock to be a credible witness.

### Gilbert Karonga Banda

Gilbert Karonga Banda (Gilbert) stayed in the same village with the now deceased and the accused. His evidence relates to how the now deceased's property was identified at Erick Maseva's house.

Gilbert said on a day in November 2007 he went at Runene School when Erick Maseva a teacher at the school asked him if the accused was at the village as accused had left some property including exh 1 and exh 2 at Erick Maseva's house. He said amongst the property he identified the sack inscribed "Aleck Mvura" and decided to inquire from accused's homestead. At accused's home he inquired if any of the person there knew of the property at Erick Maseva's house. He was referred to the now deceased's homestead as the said exh 1 had the now deceased's maiden name "Mvura". Gilbert said they went to the now deceased's homestead where they were told there the property in issue belonged for the now deceased. This prompted Gilbert to accompany Enock Mafura and a member of NWC to Erick Maseva's house at Runene Primary School. He said Erick Maseva confirmed that the property had been brought by the accused and they took the property. Gilbert said they proceeded to accused's house with Enock and member of NWC but accused pretended to be wearing his shoes and fled. Gilbert said the report Erick Maseva gave them was that the accused had brought the property including chickens using donkeys and that Erick Maseva was worried as he had heard of accused's initial arrest in connection with the now deceased's death.

In our view no useful questions were put to Gilbert in cross examination and we found him to be a credible witness.

Erick Maseva

In our view Erick Maseva (Maseva) is a crucial witness in this case. In 2006 he was a teacher at Kanjanda Primary School in accused's area and he got to know the accused, the deceased and other villagers. At the material time in November 2007 he had transferred to Runene Primary School. His testimony is that the accused is the one who brought property exh 1 and exh 2 together with chickens and groceries to his house in November 2007.

Maseva said on a day he could not recall but in November 2007 accused came with 3 donkeys at about 0500hours at his house and Runene Primary School with this property in issue.

He said accused said he wanted to engage in gold panning in that area and asked to leave the property with him as accused wanted to first attend to a wedding at the nearby business centre the next day and to also collect tools to use for gold panning. He allowed the accused to leave his property which included exh 1, exh 2, some shelled maize, chicken and groceries. Accused told him to slaughter the other chicken which he did the next day a Sunday after which Maseva also attended the wedding at the local business centre where accused was also present. While at the wedding at about 2pm they received word that the now deceased had been found dead in her bedroom. The accused advised him that he, accused, was now going with other villagers to attend to the now deceased's funeral and would return later. He ate the chicken with the accused after which the accused left.

Maseva said accused only came back after 4 or 5 days saying he had been picked by the police as a suspect in the now deceased's death and professed his innocence. He said the accused then left saying he was going to his home to collect tools to use for gold panning.

Maseva told the court that the accused took time to return and he got worried about the property accused had left in his house. As a result he alerted Gilbert who in turn later came with Enock Mafura and a member of the NWC and took the property alleging it belonged to the now deceased.

Maseva's evidence from there was very confused as he seemed to be unsure of the sequence of events. He seemed to say that he later learnt that accused had fled but in the same breath he said accused came after this property had been taken and that he advised accused that the property had been taken. He was not able in our view to put these events in sequence despite being probed by both the court and the defence counsel.

Under cross examination Maseva stuck to his story that the accused had brought the property to his house. He maintained that the accused was not his friend but just a person he knew. He insisted that he voluntarily showed the property firstly to Gilbert and later to Enock and a member of the NWC who came with Gilbert to collect the property.

Our assessment is that while Maseva seemed to lack confidence while in the witness stand he nonetheless told this court the truth. His evidence was corroborated by Gilbert in that he is the one who called Gilbert and voluntarily showed him the property in issue. He clearly explained how that property ended up at his house. While we accept that Maseva exhibited some confusion as regards some sequence of events he nonetheless told a coherent story of what happened, we therefore accept his evidence as truthful.

#### COLLEN ZIMBUDZI

Detective Sergeant Collen Zimbudzi (Detective Sergeant Zimbudzi) is the Investigating Officer in this matter. He told the court that after the discovery of the deceased's body he attended the scene of crime on 12 November 2007. He found the now deceased lying on the floor besides the bed covered with a sheet and a blanket. The deceased's body was in an advanced state of decomposition. At that point he had no clue as to what has happened as the now deceased stayed with a 2 year old child who was later found at Esna Hove's homestead.

Detective Sergeant Zimbudzi said he made inquiries and was told that accused used to do some manual work for now deceased and that accused had left the 2 year old child at Esna Hove's place. He picked the accused for questioning but released him after he failed to link the accused to the offence. He had the post mortem report done by the Doctor exh 3.

Detective Sergeant Zimbudzi said after some few days Gilbert came with a member of the local NWC with exh 1 and exh 2 which property they said they had recovered from one Maseva's house at Runene Primary School. He was also advised that Maseva had implicated the accused saying accused had brought the property to Maseva's house before Maseva learnt of deceased's death. He was also advised that accused had fled when Gilbert, Enock and a member of the NWC had approached the accused.

Detective Sergeant Zimbudzi said he started to look for the accused and gathered information that accused was staying with a girlfriend at Sanyati Growth Point. He raided the house and arrested the accused.

Detective Sergeant Zimbudzi said that accused's story was very inconsistent as accused continually changed his version of events. Upon arrest he said accused implicated Claudius Ndlovu, Petros Jongwe and Maseva in deceased's death as his accomplices. He arrested them but released Claudius Ndlovu and Petros Jongwe as there was no evidence linking them to the offence. He said the accused later exonerated Maseva but he nonetheless charged Maseva jointly with accused until the then Attorney General ordered that Maseva be made a state witness. Detective Sergeant Zimbudzi said the accused after the release of the alleged accomplices would deny committing the offence.

Detective Sergeant Zimbudzi said he treated the death of the now deceased as murder as a result of the findings in the post mortem report exh 3. He further explained that on interrogation accused would admit bringing the property to Maseva alleging that the property like maize had been given to the accused by his grandmother but disowned the blanket exh 2. Detective Sergeant Zimbudzi was extensively cross-examined but nothing turned out of that cross examination. He gave a clear and coherent account of the investigations he carried out and was very consistent in his evidence. We assess him as a credible witness.

#### The accused

The accused in his evidence explained that he used to fetch firewood for the now deceased and also herd her livestock. The accused confirmed that he learnt of the now deceased's death while at wedding at Runene Business Centre and that he was initially arrested as suspect and was released after 2 days.

The accused admitted that he is the one who took the 2 year old child who used to stay with the now deceased to Esna Hove. The accused's version is that he was in love with the mother of the two year old child and that this child was used to the accused. The accused said he was passing by now deceased's homestead when the 2 year old child came running to him and that he called for people at this homestead but there was no response. He said the 2 year old child refused to remain at the homestead and he decided to take it to Esna's place and left child playing with Esna's children. We noted however that this piece of evidence is not part of accused's defence outline and it was not put to any of the state witnesses, especially Esna.

The accused denied committing the offence. He denied leaving any property at Maseva's house. The accused however admitted that he fled when Gilbert, Enock and a member of the NWC approached him but said that there were more than three people who

approached him. The accused said he feared to be harmed by this group of people as his grandfather had allowed these people to take him away at night. The accused said he only confessed to the murder of the now deceased Detective Sergeant Zimbudzi because the police had severely assaulted him. Accused said he had bought a donkey from the now deceased and that he had paid cash.

Under cross-examination accused admitted that he did not leave the 2 year old child with Esna but that he simply allowed the child to run to Esna homestead when he was near the homestead and that he did not talk to Esna. The accused said he had no reason as to why Maseva would falsely implicate him that he brought the property in issue to Maseva. He however said Maseva is trying to exonerate himself as he was found in possession of the property. The accused was taken to task on why he fled from Gilbert, Enock and a member of the NWC. In response the accused said while the group was not violent he simply decided to flee because it was late at night. The accused was probed as to where he went when he fled and he said he went to his mother's place in Sanyati and denied that he was arrested at the Growth Point staying with a girlfriend.

Under cross examination accused admitted that he falsely implicated Claudius Ndlovu and Petros Jongwe. The accused however alleged that this was because the Police were assaulting him. The accused insisted that he did not kill the now deceased.

### Assessment of Evidence

While we have made findings as regards the credibility of the state witnesses, it is clear to us that this matter cannot be resolved on the demeanour of witnesses. The state case is hinged on circumstantial evidence. We now turn to the law as regards circumstantial evidence.

In the celebrated case of *R v Blom* 1939 AD 188 at 202-203 Watermeyer JA refers to the two cardinal principles or rules of logic which govern the use of circumstantial evidence in a criminal matter.

These are:

- (1) That the inference sought to be drawn must be consistent with all the proved facts.  
If not the inference cannot be drawn.
- (2) That the proved facts should be such that they exclude every reasonable inference from them save the one to be drawn. If they do not exclude other reasonable

inferences, then there must be a doubt whether the inference sought to be drawn is correct.

It is therefore clear that circumstantial evidence can only be used to draw an inference if the inference sought to be drawn is the only reasonable one which can be drawn from those facts. As was said to the case of *S v Tambo* 2007 (2) ZLR 33 (H) the inference sought to be drawn must be supported by rational reasoning derived from a proper analysis of the facts proved.

In the case of *S v Marange & Ors* 1991 (1) ZLR 244 (S) at 249 it was stated that circumstantial evidence must be narrowly examined. Korsah JA in making reference to an English case stated as follows:

“Lord Normad observed in *Teper v R* [1952] AC 480 at 489 that:

‘Circumstantial evidence may sometimes be conclusive, but it must always be narrowly examined, if only because evidence of this kind may be fabricated to cast doubt on another ... It is also necessary before drawing the inference of the accused’s guilt from circumstantial evidence to be sure that there are no other co-existing circumstances which would weaken or destroy the inference’.

It is now settled in our law that in a criminal matter the court can convict on wholly circumstantial evidence provided it is sufficient to preclude every reasonable inference of the innocence of the accused see *S v Shonhiwa* 1987 (1) ZLR 215 (S), *S v Vhera* 2003 (1) ZLR 668 (H) at 680C.

We now proceed to apply these principles to the facts of this case.

We have already stated that it has been proved that the now deceased did not die through natural causes as per the post mortem report exh 3. She was hit with a blunt object which fractured the skull.

From the evidence before us it is clear that the motive of killing the now deceased was to take possession of the now deceased’s property. It has been proved that her property which include exh 1, exh 2 shelled maize and groceries were taken and later recovered at one Maseva’s homestead. We have no doubt in our minds that the property belonged to the now deceased.

It has been proved that the accused had access to the now deceased’s homestead. Accused admitted that he used to do some piece jobs for the now deceased and that he was even well known to the 2 year old child who stayed with the now deceased.

It is common cause that it is the accused who took the 2 year old child from the now deceased’s house to Esna. In doing so the accused did not handover the child to Esna but

simply released the child near Esna's fields and disappeared without being seen by Esna or any other person.

The next issue or fact to consider is whether the accused was in possession of now deceased's property. Maseva was clear that it is accused who brought the property in issue to his house. While the accused denied this fact, the evidence show that accused brought the property to Maseva. It is improbable that Maseva is the one who took the property from now deceased's house. We say so because it is Maseva who voluntarily alerted Gilbert that he had such property in his house left by accused when no one had seen that property. If Maseva had taken the property from the now deceased's house and no one had seen him, why would he alert Gilbert and others that he had such property. The logical thing for him to do would have been to hide the property to destroy it. In our view it is the accused who brought the property to Maseva. The question then is how did accused get the property?

It is a fact that when accused was confronted and advised of the recovery of the now deceased's property at Maseva's house the accused fled. The accused admitted that he was not under threat of assault but simply vanished into darkness.

Lastly it is clear to us that he accused was not truthful with the court. Why do we say so.

- (a) In his defence outline that accused deliberately did not proffer any explanation to the allegation that he is linked to the deceased's death by the fact that he took deceased's property to Maseva. There is no plausible explanation for this material omission and we are entitled in terms of s 67 (2) of the Criminal Procedure and Evidence Act [*Chapter 9:07*] to draw an adverse inference.
- (b) The accused in the cross examination of state witnesses implied that he had not taken the 2 year old child to Esna. Why was accused misleading the court only to admit to this fact after Esna testified. The manner in which he left the 2 year old near Esna's fields is consistent with a person who did not want to be seen. Why? One would have expected him to properly hand over this toddler to Esna explaining circumstances how he got the child more so as he claims to have been in love with the toddler's mother.
- (c) The accused was not able to give a plausible explanation why he fled from Gilbert, Enock and a member of the NWC after being told that Maseva was implicating him in leaving deceased's property at Maseva's house. Accused had been approached in the presence of his grandparents and one would think he

would be keen to confront Maseva and clear his name. Instead he fled to Sanyati only to be arrested through police efforts.

- (d) It is clear that upon arrest the accused was not truthful with the police. He implicated other persons and admitted that he was falsely incriminating these persons. We are not persuaded by the allegation accused makes that he did so because of the assault. While the accused's lies would not necessarily prove his guilt, we are satisfied that such lies taken with other evidence point to accused's guilt.

It is our view that the cumulative effect of the various facts we find proved all point to the same conclusion of the guilt of the accused. We are therefore satisfied that having considered all the facts found proved the only reasonable inference we can draw point to accused's guilt beyond reasonable doubt.

We therefore find the accused person guilty of contravening s 47 (1) (a) of the Criminal Code [*Chapter 9:23*] which relates to murder with actual intent.

VERDICT:

Guilty of contravening s 47 (1) (a) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] : Murder with actual intent.

*National Prosecuting Authority, State's legal practitioners  
The Chambers, Harare, pro deo, accused's legal practitioners*