

THE STATE

Versus

SAMSON NCUBE

IN THE HIGH COURT OF ZIMBABWE
MOYO J with Assessors Mr P. Damba & Mr E. Mashingaidze
BULAWAYO 21 & 22 SEPTEMBER 2021

Criminal Trial

K. Jaravaza for the state
N. Sibanda for the accused

MOYO J: The accused person in this matter faces a charge of murder it being alleged that on the 4th of May 2020 and at Douglasdale in Bulawayo, he struck the deceased Andrea Moyo on the head with an axe and thereby caused his death.

The accused person pleaded not guilty to the charge. The following exhibits were tendered into the court record.

- The state summary
- The accused's defence outline
- The accused's warned and cautioned statement
- The post mortem report
- The 4 stones allegedly thrown at the cabin
- The axe that was allegedly used to strike the deceased.

They were all duly marked. The state led viva voce evidence from 3 witnesses, Tarisai Mpofu, Future Moyo and Rodrick Musonza. The accused gave evidence for the defence.

The evidence of the following witnesses was admitted into the court record as it appears in the state summary:

- Lawrence Nkomazana
- Dorothy Garikayi
- Tsungisani Ndlovu
- Fanuel Nyoni
- Valerie Moyo

The state case is that the accused, deceased and the witnesses worked for a mine in Douglasdale and on the fateful day they were drinking beer at Siphilanzima Shops whereafter deceased and the 2nd state witness Future Moyo retired to where they lived.

The 1st state witness Tarisai Mpofo and the other fellow miners later followed which the accused. Accused left Tarisai Mpofo and others closing a gate and he went ahead. Future Moyo told the court that when deceased and himself got to where they lived they cooked food, ate and then retired to bed inside the metal cabin. He then heard stones being thrown into the cabin. Accused then came, and struck deceased who was seated on his blanket, with an axe on the head. Future Moyo then tried to restrain the accused who uttered words to the effect that he wanted to finish the deceased. Accused then left. Deceased died as a result of the injuries inflicted by the accused. Tarisai Mpofo also told the court that as he got to the cabin where they lived he heard accused saying words to the effect that he wanted to finish off the deceased. That is the state case.

The accused told the court through his defence outline and evidence in chief that he had been drinking beer with the others as alleged and that he went to deceased to ask for his US\$30 that deceased owed him. That deceased then threatened him with a machete which was under the pillow. He was in the process of standing up to reach for the machete when accused got an axe near the door and struck him. In his warned and cautioned statement accused stated that he struck deceased with an axe defending himself as deceased was a criminal. The accused says he struck deceased as deceased was trying to stand up and reach for his machete which was under the pillow. Accused was by the doorway and he could have fled since deceased was still down while he was standing. The state witnesses disputed that the deceased had a machete on the day in question or that accused even asked for his US\$30 with deceased threatening to strike him with a machete. Clearly, the accused struck deceased before deceased could even get up. This is consistent with Future Moyo's testimony that accused struck the deceased while he sat on his blankets after having been disturbed by the throwing of the stones into the cabin. Accused would not have been under a threat of an imminent unlawful attack when deceased was seated in his blankets and accused was standing by the doorway. Clearly, accused must have attacked the deceased while he sat on his blankets as alleged by Future Moyo. For, if accused's version is true, he either had no reason to strike an unarmed man who was yet to reach for a weapon or he had no reason to strike deceased who was seated and trying to get up yet he could have simply fled. The only logical sequence of events is that given by Future Moyo.

What then is accused guilty of? It would be difficult for this court to make a finding as a matter of fact that accused desired death and that death was his main aim and object because clearly, the accused's motive has not been shown by the state case. Accused's motive remains unknown. It could have been revenge or it could have been some senseless attack or it could have been for some other reason but this court does not have facts that point to the fact that accused desired death. The only logical conclusion is that accused struck deceased on the head, a vulnerable part of the body, with an axe which is in itself a lethal weapon. It also works in accused's favour that he only struck deceased once. This court finds that he must have foreseen death as a real consequence of his actions but was reckless. The appropriate verdict would then be murder with constructive intent. It is for these reasons that accused is found guilty of murder with constructive intent.

Sentence

The accused person is convicted of murder. He is a first offender. He is a family man. He has spent 1 year in prison. A precious life was unnecessarily lost at accused's unbecoming conduct. These courts frown at the loss of life through violent means. People must learn to co-exist peacefully and to treat life as sacred. Artisanal miners especially have become a violent lot, and a message must be sent out there that they must stick to gold digging and not live violently. They must respect life in their gold-seeking endeavours. An appropriate sentence would have been 18 years imprisonment but because he has spent slightly over a year in pre-trial incarceration, I will knock off a year from the appropriate sentence.

The accused person is accordingly sentenced to 17 years imprisonment.

National Prosecuting Authority, state's legal practitioners
Tanaka Law Chambers, accused's legal practitioners