THE STATE

versus

EDWARD MUROMBEDZI

HIGH COURT OF ZIMBABWE

BHUNU J

HARARE, 4, 5 & 6 July 2011 and 25 & 30 November 2011

 and 6 December 2011 and 9 November 2012

Assessors:

1. Mr. Mhandu.

2. Mr. Chidyausiku

**Criminal Trial**

*B Murevanhema,* for the State

*V*. *Zobgo*, for the Defence

BHUNU J: Unsubstantiated rumour mongering had terrible fatal consequences in this case. The accused is alleged to have spread rumours to the effect that the deceased and two others Ranganai Sola and Simon Gideon had stolen a beast from one Revai Sylvester Mushayandebvu.

On 6 April 2008, at around 9 pm after the deceased and his said companions accosted the accused at his home as he was about to retire to bed. They were coming from a beer drink at Brickleighvale farm, Banket compound. The trio intended to confront the accused about the rumours. They however failed to find the accused at his homestead as he had escaped into the maize field intending to take refugee at his neighbour’s house.

Upon arrival at the accused’s home the deceased and his companions started shouting at his wife demanding the whereabouts of the accused. They harassed his wife and poked her sister one Nancy Mususa on the chest with a finger.

While the deceased were busy causing havoc at the accused’s home stead in a drunken brawl and generally terrorising the occupants of the homestead, the accused emerged from the maize field where he had been hiding and attacked Simon Gideon with clenched fists in defence of his wife and sister in law. As the accused was armed with a homemade knife, the deceased and his two companions fled with the accused in hot pursuit. He caught up with Ranganai Sola and stabbed him on the upper part of the back causing serious injuries. He then went for the deceased whom he stabbed in the chest killing him instantly.

On those facts the accused was charged with attempted murder as defined in s 189 of the Criminal Law (Codification and Reform) Act [*Cap 9:23*] and murder as defined in s 47 of the Act.

The accused’s defence is that of self defence and defence of a third party. It was his testimony that on that day as he had already retired to bed at around 9 pm he heard the accused and his companions approaching his homestead. They were making a lot of noise threatening to deal with him severely. He then decided to go and take refuge at his neighbour Mr. Gwande’s nearby homestead.

Before he had reached Mr. Gwande’s homestead he realised that the accused and his companions were now causing havoc and generally terrorising his family. He then decided to return and deal with the situation.

Upon his return he confronted the three intruders whom he recognised as Ranganai Sola, the deceased and Simon Gideon. It was his testimony that the three intruders were armed with a stick and two stones. He observed that Simon Gideon was standing by the door beating up his sister in law one Nancy Mususa who was a guest at his house. The deceased and Ranganai were also standing by the door with a stick and two stones. He confronted them asking Simon Gideon what the matter was. Simon responded by attacking him. He blocked the blow and got the better of him and knocked him to the flow with a fist. Ranganai joined in the fight using the stick.

 During the melee the deceased produced a knife intending to stab him. He kicked the deceased on the elbow thereby sending the knife flying to the ground all the three of them scrambled for the knife but he managed to get hold of the knife first and he started fighting his adversaries. The deceased and one of his companions Ranganai Sola were then stabbed in the process.

There is a dispute as to who was the owner of the knife. It might however not be necessary to determine that issue as the bottom line is whether or not the accused was acting in self defence when he stabbed the two.

The requirements for the defence of self defence and or defence of a third party to be sustained are well known. These were concisely articulated by professor Feltoe in his handbook, *A Guide to Zimbabwean Criminal Law 1991* at p 32 as follows:

“1. Unlawful attack.

2. Upon accused or upon a third party where accused intervenes to protect that third party.

3. Attack must have commenced or be imminent.

4. Action taken must be necessary to avert attack.

5. Means used to avert attack must be reasonable.”

Having outlined the essential elements of the two defences the learned author proceeded to caution the courts and judicial officers against adopting an armchair approach. His comments in this regard are instructive at p 33 where he says:

“The courts do not adopt an armchair approach to situations of self defence. The courts will take into account the invidious circumstances of the accused who was under attack and ask the question, what would the reasonable man have done in the circumstances? They would thus take heed that of the fact that the accused will not have had the time to decide carefully upon what weapon and method of defence he would use. The question is, where the means used necessary to ward off the attack, and were they reasonable in the circumstances? Thus it may be that an accused attacked by a mob armed with sticks and stones may be justified in using a fire-arm to defend himself.”

The facts and the law as articulated by the learned professor fit snugly with the facts

of this case. Not much turns to be determined on the credibility of witnesses as they generally told the same story with the exception of minor contradictions. The accused however told a consistent and probable story having regard to the undisputed aspects of the case.

 The accused had retired to bed. He heard the deceased and his compatriots

approaching his home issuing threats of violence against him. He decided to escape and take refugee at his neighbour’s homestead. While he was in the process of escaping through a maize field he looked back to see his wife and her sister being attacked by the marauding drunken trio of the deceased and his companions. They were armed with a stick and two stones.

It is often said that a man’s home is his castle he thus decided to return and defend his

castle. He was however, hopelessly out numbered and had to use every means at his disposal to defend himself, his family and guests under his roof. As head of the family, he had a moral and legal obligation to defend himself and all those within the confines of his home and care. This was at night he therefore, had little opportunity to ascertain the assortment of weapons his adversaries had in their possession. He was the first and last line of defence; he therefore had to fight to the finish regardless of whether or not he was the owner of the knife he was wielding to ward of the attack on his fort.

In the circumstance of this case the accused cannot be faulted for the manner in which

he defended his home and family for to do so will be to adopt an armchair approach. Members of the public must be warned against attacking anyone at his home and taking the law into their own hands. People must resort to peaceful resolution of disputes using well known lawful structures which abound in our society.

We therefore come to the conclusion that the accused committed the acts charged

while acting in self-defence and defence of a third party. He is accordingly found not guilty and acquitted.

*The Attorney General’s Office,* the State’s legal practitioners

*Zvobgo, Ngarava. Meso & Chikono,* the accused’s legal practitioners