

THE STATE
versus
EUNICE CHIMHAU

HIGH COURT OF ZIMBABWE
ZHOU J
HARARE, 13, 14, 17, 19 and 20 October 2016, 28 August 2017
and 7 September 2017

Assessors: 1. Mr Mhandu

Criminal Trial

A. Muzivi, for the State
B. Ngwenya, for the Accused

ZHOU 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 allegations against her are that on 4 April 2013 and at House Number 2369 New Stands, Mutoko Hospital, Mutoko, the accused, with intent to kill or realising that there was a real risk or possibility that her conduct might cause death, persisted in her conduct which caused the death of the now deceased Taurayi Zekiya Mukarakate by stabbing him once on the left side of his chest with a knife. The deceased died as a consequence of the wounds inflicted by the accused person. The accused pleaded not guilty to the charge and tendered a defence outline which was produced in this court.

From the evidence led, the following facts are common cause. On the day in question the accused and deceased were engaged in a fight when they were inside a room which they rented at the property described earlier on. The fight took them outside the room as the accused sought to run away from the deceased. Wilson Sesa tried without success to stop the fight. At some point during the fight both the deceased and accused armed themselves with bricks. The accused ran into a room, with the deceased following her. In that room the accused picked a knife which she used to stab the deceased on the chest. The deceased died as a consequence of the wound inflicted by the accused person when she stabbed him.

The prosecution led evidence from four witnesses. The first witness, Doctor Fungai Chatukuta, is the medical doctor who conducted a post-mortem examination on the remains of the deceased. Pursuant to that examination he prepared a post-mortem report which was produced in evidence as exh 1. Among the observations reported in the report is the fact that the wound inflicted was 2 centimetres in diameter and 8 centimetres in depth. In his evidence in this court Dr Fungai Chatukuta stated that the wound showed that a lot of force was involved. Whether that force could be described as severe would depend, according to him, on whether or not the deceased himself was moving. He opined that as the stab was on the front part of the body it would suggest in this case that severe force was used.

The second witness, Noris Sangare, was the attending police detail. He recovered the knife used by the accused to stab the deceased. He is the one who arrested the accused person. He also witnessed the indications made by the accused at the scene.

The third witness, Wison Sesa, turned hostile and the State was given leave of the court to cross-examine him. He was present when the accused and deceased got out of their room fighting. He tried to restrain them without success. The accused moved into a room, with the deceased following. The witness followed. When he got into that room he found that the deceased had been stabbed using a knife. In his presence the accused removed the knife from the deceased's chest and attempted to stab the deceased again. The witness got hold of the accused's hand and managed to dispossess her of the knife. He stated that when the stabbing took place he had gone out of the room to throw away the bricks which he had taken away from the two fighting parties.

Boniface Mucharwa was the investigating officer in the matter. He took the deceased's body for a post-mortem examination. He also recorded a warned and cautioned statement from the accused, as well as witness's statements. He prepared a sketch map pursuant to the indication made by the accused person and the witnesses.

The accused gave evidence herself. She explained how the fight between her and the deceased started when the deceased assaulted her. In her evidence Wison Sesa tried without success to restrain the deceased from continuing to assault her. She ran into the dining room with the intention to get out of the house. The deceased caught up with her and continued to assault her as he pulled her towards a knife. She managed to get hold of the knife first and stabbed him. Because she was under attack and feared for her life she did not take note of where she was stabbing the deceased.

While the evidence led would not prove the charge of murder, the court is convinced that the evidence proves the offence of culpable homicide as defined in s 49 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. That offence is committed if an accused person negligently causes the death of another person.

On her own evidence when she stabbed the deceased she did not check as to the part of the deceased's body to which she directed the knife. At the time that she stabbed the deceased he was not armed. There was therefore no threat to her life at that stage that would have prevented a reasonable person from consciously deciding where to stab the deceased. A reasonable person would therefore have foreseen that in the scuffle the knife would strike the upper part of the deceased's body thereby causing death. The court therefore finds that the accused acted negligently when she failed to foresee the possibility that her indiscriminate stabbing of the deceased could cause death. Equally, a reasonable person would have prevented death by stabbing the deceased on the lower part of his body such as the leg if all that the accused person intended was to extricate herself from the deceased's grip and escape from his attacks. Thus the accused person's action in the instant case was grossly disproportionate to the harm which the accused was exposed to in the fight with the deceased at the time that she stabbed the deceased. The extremely disproportionate response of stabbing the deceased in the chest excludes the defence of self-defence which the accused pleaded. See J Burchell, *Principle of Criminal Law* 5th Ed, pp 125-139; and s 253 of the Criminal Law (Codification and Reform) Act. Also, evidence showed that before the stabbing of the deceased both the accused and deceased were armed with bricks. There is nothing to suggest that at the time that she picked bricks she should not have run away, a clear indication that she did not consider that her life was really in danger. Her reaction shows that she was convinced that she could manage the conduct of the accused person on her own.

Even the amount of force used shows negligence on the part of the accused. The doctor's evidence shows that the wound was 8 centimetres deep, and got to the heart through the ribs. That shows that severe force was applied. The accused did not suggest that the deceased was charging towards her when she stabbed him.

In the circumstances, from the evidence which is common cause or is admitted by the accused person, the court finds that the accused negligently caused the death of the deceased by stabbing him in the chest with a knife.

In the result, the accused person is found guilty of culpable homicide as defined in s 49 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

National Prosecuting Authority, State's legal practitioners
Chinawa Law Chambera, accused's legal practitioners