

THE STATE
versus
CHRISPEN TIYAVO

HIGH COURT OF ZIMBABWE
BERE J
MASVINGO, 7 – 8 & 10 October 2014

Assessors: 1. P N Dauramanzi
2. J Mushuku

Criminal Trial

Ms T Matenga, for the State
J Terera, for the Accused

BERE J: The accused has been charged with the murder of his wife, Mashudu Chisikau (the deceased) of South African origin whom he had brought into this country in February 2013. The murder took place at Sungai Village, Chief Nhema, Zaka on 9 July 2013.

The facts of this case are that on 7 July 2013 the deceased unceremoniously left her mother in law's homestead to seek shelter at another villager's homestead. The homestead belonged to a police constabulary who happened not to have been at his home at the time. The deceased was left in the custody of Cresenzia Chihangasale, the police constabulary's wife.

On the following day, the accused collected the deceased from Cresenzia's place and took her to his homestead.

On 9 of July 2013, the accused left home with the deceased for the accused's grandmother's place. This was the last date the deceased was seen alive. The deceased's remains were fortuitously discovered but in advanced stage of decomposition.

The State alleges that the accused severely assaulted the deceased leading to her death. Doctor Zimbwa who conducted the post mortem examination on the deceased's remains concluded the deceased died of head injury.

In denying the charge the accused raised the defence of an alibi. He stated that he left this country on 2 July 2013 for South Africa to work at an orange plantation and returned to Zimbabwe on 12 July 2013 only to find that the deceased was missing from his homestead.

The accused further said that on 13 July 2013 he was arrested and severely assaulted by the police who forced him to admit to the murder of the deceased.

The State case centred around the viva voce evidence of Tendai Murambi and Cresenzia Chihangasale as well as the evidence of Wellington Chiveya and Doctor Zimbwa, which evidence was admitted into the record of proceedings in terms of s 314 of the Code. The post mortem report was produced as exhibit by consent.

Before the accused closed his case, he had expressed the need to call his aunt Margrete Tiyavo as his witness.

On the day Margrete was supposed to give evidence for the accused the accused chickened out leaving the court to call Margrete as a witness for the court in terms of s 232 of the code.

Our decision to call Margrete was informed by our appreciation of the accused's position who throughout the conduct of his defence had expressed the wish to call this witness. We felt that her testimony would assist the court in having a broader appreciation of the issues involved.

Tendai Murambi who gave evidence for the State ripped into the accused's defence of alibi by testifying that on 7 July 2013 he had briefly accommodated the deceased at her place who appeared to have some challenges with her mother in law concerning the clothes that had been donated to her by one of the women in the village who appeared to be sympathetic with the deceased in that she shared venda language with her.

The most important and relevant part of her evidence was that on this day, and contrary to the impression created by the accused that he was in South Africa, she had in fact seen the accused and her aunt around 7pm looking for the deceased whom she hid away from the two. The truthfulness of this witness's version found confirmation from Margrete Tiyavo and Cresenzia Chihangasale who confirmed that she saw the accused in Zimbabwe on 8 July 2013, when he came to collect the deceased from her place against her advice.

Cresenzia Chihangasale did further damage to the accused's defence by also confirming the presence of the accused in Zimbabwe on 8 July 2013. This witness did not only see the accused in Zimbabwe but she did witness the accused viciously assaulting the deceased at her place after he decided to take the deceased from her place against her advice.

Cresenzia witnessed the accused assaulting the deceased with open hands and booted feet whilst wearing safety shoes. She said when the deceased fell down as a result of indiscriminate assault on her the accused then held her by the leg and dragged her for a considerable distance. She estimated that the deceased may have been dragged for a distance of about 80 metres.

The witness went further to say that in her full view the accused attempted to strike the deceased with a stone whose size she equated to a 5 litre kettle in court but said the man in the company of the accused succeeded in deflecting that stone away. The last she saw the deceased was when she was held by the accused by the back of the neck being forced to run towards the general direction of the accused's place of residence.

The evidence of Cresenzia in confirming the presence of the accused in the jurisdiction of this country found firm support from Margrete Tiyavo who confirmed that on the day that followed the bringing of the deceased home with the accused, the accused woke up early in the morning around 0500 am and advised her that he had decided to pay a visit with the deceased at the witness's mother, (accused's grandmother's place). This was the last Margrete saw the deceased alive.

We conducted a trial within a trial in this case and determined that the accused's confirmed warned and cautioned statement was admissible and it is important to restate what the accused stated in that admitted statement. The accused wrote:-

"I admit to the charge. I assaulted her with switches on the left ear, on the back and chest. I got angry after I discovered that my wife had a Sexually Transmitted Disease which she had."

There can be no doubt that the accused caused the death of the deceased through assault and that his defence of alibi was hopelessly manufactured to poison the mind of the court. That defence is not sustainable.

The deceased's post mortem report gives us an insight into the nature of assault to which the deceased was subjected to by the accused. That report speaks to "Multiple whip lash injuries on upper limbs, trunk and lower limbs, lacerations on forehead and swelling on upper and lower left jaws."

There is no doubt that from the post mortem report we can easily infer that the accused assaulted the deceased with reckless abandon.

It is difficult for this court, in the absence of direct evidence on the assault itself to easily infer the intention of the accused when he assaulted the deceased in the manner he did.

However, we find it easier to infer from the evidence of Cresenzia and the post mortem report itself that the accused, by assaulting the deceased in the manner that he did must have subjectively foreseen that his conduct would result in the death of the deceased and that he was reckless in continuing to assault the deceased and secretly burying her remains.

Verdict

Murder with constructive intent.

Sentence

We do accept that the accused is a fairly younger first offender. He has been in custody awaiting the conclusion of this case for the past 1 year and three months. That is punishment on its own. That the accused caused the death of someone who ought to have been dear to her and that this misfortune is likely to haunt him for a considerable length of time.

It is the pride of every man to feel that his wife is morally upright. We do accept that the accused must have been annoyed or hurt by discovering that his wife had contracted a sexually transmitted disease. To this end the accused must have felt both insecure and vulnerable by the invasion of his conjugal entitlement.

In aggravation, we accept that the accused killed this defenceless woman who regarded the accused as his only pillar of strength in a foreign country. He had taken the deceased from afar and across the border and the deceased died a painful life.

The persistent lies told about by the accused, starting with lying against the police and openly lying in this court are not consistent with a remorseful individual.

The secretive burial of the deceased's remains in our view demonstrate a resolve to conceal the evil done by the accused person.

The accused cruelly cut short the life of the deceased in its prime age.

We unanimously agreed that the following sentence is appropriate.

Sentence - 22 years imprisonment.