

THE STATE

Versus

ANTHER PRINCE ZULU

IN THE HIGH COURT OF ZIMBABWE
KAMOCHA J
BULAWAYO 16 & 17 OCTOBER AND 1 NOVEMBER 2012

Ms A. Munyeriwa state counsel
S. Mguni defence counsel

Criminal Trial

KAMOCHA J: The 23 year old accused was charged with the crime of murder. It being alleged that on 11 June 2011 he did wrongfully, unlawfully and intentionally kill and murder Brian Chinanga, a male adult in his life time there being. He pleaded not guilty when the charge was put to him.

The state outline was read and produced as exhibit 1 while the defence outline which was also read for the record was produced as exhibit two. Exhibit 3 was the knife the accused used to stab the deceased with. It is a big kitchen knife. Its cutting edge is very sharp and so is its tip. The length of the blade is 17cm with a handle of 12cm giving it a total length of 29cm. The width of the blade is 3.4cm at its widest point. It weighs 110 grams.

The 4th exhibit was the accused's confirmed extra curial statement wherein the accused had this to say –

“I admit the charge of stabbing and killing Brian Chinanga. I stabbed him because he had assaulted me for something I did not know about. In stabbing him I wanted him to also feel the pain but it was not my intention to kill him. Also in stabbing him I was doing this to stop him from troubling me.”

The statement was recorded on 7 July 2011 and confirmed by a magistrate on 12 July 2011 when events of what happened were still fresh on his mind. Exhibit 5 was an affidavit by Constable Pascal Max Ndlovu who identified the body of the deceased to Doctor Sanganaï Pesanaï at United Bulawayo Hospitals mortuary who performed a post mortem on the remains of the deceased and compiled a post mortem report exhibit 6.

The doctor observed a stab wound on the left chest which was (1 x 1cm) sutured. He opined that death was due to (a) septicaemia (b) empyema following (c) a stab wound.

The evidence of the following witnesses was admitted as it appears in the defence outline by consent in terms of the provisions of section 314 of the Criminal Procedure and Evidence Act [Chapter 9:07].

Ndumiso Dlamini, Themba Moyo, Saveson Mudenda, Fradreck Mutembwa, Assistant Inspector Churira, Pascal max Ndlovu and Doctor Sangana Pesanai.

The evidence of Ndumiso Dlamini and that of Themba Moyo which was admitted by consent was to the effect that the two were employed by Ingwebu Security Department as security guards. On the fateful day they were on duty at Happy Valley Tavern when they heard people shouting that someone had been stabbed. They quickly rushed to the scene. On arrival they found accused and deceased holding each other as they stood. The accused was holding a knife exhibit 3 in his hand. Deceased and the accused fell to the ground with deceased on top. Ndumiso Dlamini pulled the knife from the accused's hand and observed that the knife was blood stained. He and his colleague arrested the accused. He noticed that the deceased was bleeding from the left side of his chest.

What comes out of these two security guards' evidence is that when they got to the scene the deceased had already been stabbed but both accused and deceased were still on their feet and only fell to the ground thereafter.

Viva voce evidence was led from two witnesses namely Tawanda Sithole and his girlfriend Pamela Lungu.

Tawanda Sithole knew the accused from childhood as they grew up and attended school together. On the fateful day he started drinking beer at Happy Valley with his girlfriend Pamela Lungu and Nkululeko Mntungwa. They were later joined by the deceased. They drank spirits or strong stuff as they referred to it as they sat on garden chairs outside.

When there was a power cut they moved inside because it had got dark. As they continued drinking certain people would get to where they were and join in partaking in their drink but when the drink ran out the people would go away. Contributions were made to buy more drink but the people would not join in the contributions. A decision was then taken that anyone who had not contributed would not partake in the drinking.

Contributions were made and more drink was bought. There then came one young man called Morgen who had not contributed but wanted to help himself to the drink and was told not to do so and should go away. He went away.

The accused who had two pints of beer in his hands then came and wanted to drink when he also had not contributed. The deceased stopped him from doing so. Whereupon the accused said he was not interested in that drink as he had his own beer at home. He was

talking in a showing off fashion in his response. The way accused responded did not go down well with the deceased who began to tell the accused that he was just a boy and should not answer him like that. When the accused answered back by saying he was not accused's boy the deceased struck him 3 times with an open hand. Although it had become dark the witness said he could hear the sound of blows with an open hand but did not see where the blows landed. The witness and other people stood up to intervene. During the process the accused slipped out of his jacket. His two pints of beer broke during the scuffle. The accused's jacket had dropped on the ground when he slipped out of it and the witness picked it up. The accused went away.

He returned armed with the knife exhibit 3 after about 10 minutes. The witness told the court that when he and other people noticed that the accused was armed with a knife they alerted the deceased. As the deceased turned in the direction of the accused he was stabbed by the accused. Then both accused and deceased fell down. The witness said the accused did not say anything before stabbing the deceased who also had not said anything before he was stabbed.

After both had fallen to the ground security guards arrested accused and took the knife from him. The knife was blood stained. He then noticed blood on one of the deceased's sides below the ribs.

It was the witness' evidence that the accused was also his friend that was why he picked up his jacket when he slipped out of it and he related well with him.

Since both accused and deceased were his friends he knew them well. He said both were drunk. He, however, said the accused knew what he was doing.

Under cross examination the witness maintained that accused stabbed the deceased as he was in the process of turning to face him. Both were still standing and only fell down after the stabbing.

When asked why people alerted the deceased when they saw accused approaching armed with a knife he said it was obvious that accused was after the deceased as he had been assaulted by him earlier on.

The witness gave his evidence in a credible manner and was fair. He had no reason to lie against the accused who in fact had been his friend for a long time.

Pamela Lungu's evidence mainly corroborated the evidence of her boyfriend Tawanda Sithole. She knew both accused and deceased as friends of Tawanda Sithole. She said they had started drinking at about 4pm. The type of spirit was called Explorer. To start with she and her boyfriend and another male person drank and finished a 750ml bottle of Explorer. They bought

a second 750ml and were then joined by the deceased at about 6pm. The drinking continued and at some stage a decision was made that anyone who wanted to join them in sharing the Explorer would have to contribute money to buy the drink. Her evidence was almost identical to that of Tawanda Sithole with minor variations.

She was the one who actually alerted the deceased when accused returned armed with the knife exhibit 3. It was her testimony that the deceased did not seem to heed the warning initially as he appeared to ignore it. She noticed accused trying to hide something under his vest and warned the deceased for the second time.

As the deceased was in the process of turning round the accused stabbed him on the left part of his body. Both accused and deceased then fell down. She was emphatic that the stabbing preceded the falling down of the accused and deceased.

The witness was cross examined at some length but she maintained her story which remained as clear as it was initially narrated. She was worth to be believed. She was emphatic that the suggestion that accused stabbed the deceased because he was being over powered by the deceased who had caused him to fall down and was on top of him was false because the accused stabbed the deceased as he tried to turn to face him.

The accused did not have any witnesses to call but gave evidence himself. He spent most of the time telling the court how he had spent the day drinking beer starting as early as 0900 hours. He drank all day long. At around 6 pm he went to Happy Valley Tavern where he found the two state witnesses who gave evidence and the deceased. He denies trying to join in drinking the drink belonging to the witnesses and deceased because he had his own beers.

After he was assaulted by deceased which assault he alleged was with clenched fists. He said he slipped out of his jacket and ran away. But when he got home he realized that his jacket which he left at the Tavern had his wallet containing some money, his mobile phone and identity card. He then decided to return to Happy Valley Tavern to retrieve it.

He then armed himself with the knife exhibit 3 to scare off the deceased if he tried to cause trouble. He returned to the tavern and on arrival proceeded straight to where he had left his jacket. He said as soon as he entered the tavern someone alerted the deceased about his arrival. He alleged that as he was walking straight to where he had left his jacket the deceased, who was at the entrance which accused wanted to use, got hold of him and started pushing him throwing him to the ground. Thereafter deceased allegedly got on top of him, throttled him as he pressed him down. It was at that stage that he stabbed him with the knife which he had hidden at his back.

The accused was deliberately being untruthful. His above story is a hopeless afterthought. All witnesses said he stabbed the deceased while he was in the process of

turning to face him. His entire story relating to the stabbing is completely false. It is not true that he stabbed the deceased because he had over powered him. His true reasons for stabbing deceased are contained in his confirmed extra curial statement. He went home to collect the knife in order to stand him so that he could also feel the pain.

What then is the accused guilty of? The knife the accused used was a lethal weapon. He intended to stab the deceased in revenge. He used the lethal weapon realizing that there was a real risk or possibility his conduct may cause death and nevertheless continued to stab the deceased despite that risk or possibility. He is guilty of murder with constructive intent.