

**THE STATE**

**VERSUS**

**SIMANGA LETHA**

IN THE HIGH COURT OF ZIMBABWE  
MATHONSI J  
GWERU 16 SEPTEMBER 2011

*Mr D. Zashura* for the state  
*Mr K. Masasire* for the accused

Criminal Trial

**MATHONSI J:** The accused is charged with murder, the allegations being that on 24 June 2009 at Village Musainwa, Chief Bunina, Lower Gweru, he unlawfully and with intent to kill, assaulted Tsitsi Kwembeya, aged 26 at the time. She was a married woman but was the accused's girlfriend in an adulterous affair.

The state case is that on the fateful day the accused had gone to the deceased's homestead at about 2330 hours and informed her that he had bought her some maize in Gondongwe village which they had to collect. That way he lured the deceased from her home and walked with her towards Mazichisa Hill.

As they approached the hill the accused then interrogated the deceased on why she was being unfaithful to him. Whatever response the deceased gave infuriated the accused who then attacked the deceased resulting in a fight. The deceased is said to have taken to her heels but the accused gave chase dropping his axe in the process.

When he caught up with the deceased, the accused is said to have struck the deceased several times on the head inflicting injuries from which she died. Having fatally struck the deceased, the accused left her body by Mazichisa Hill and returned home.

The body of the deceased was only discovered by one Norah Gondongwe who was searching for her stray cattle on 4 July 2009 which was some 10 days later, leading to the arrest of the accused.

When the police investigated the matter they interviewed accused's wife who revealed that at 0300 hours on the morning of the 25<sup>th</sup> June 2009 the accused had arrived home shirtless and without a jacket which clothing he was putting on when he had left home the previous day. He was observed removing his trousers and throwing it into the fire. He also warmed some water and washed his hands. He had a swollen eye but claimed that he had been beaten up at the shops.

The accused's wife was not called to testify but according to the investigating officer Detective Sergeant Navaya, they used information gathered from her to direct their attention at locating the accused, who had by then absconded from home. He had done so after being interrogated by the headman about the whereabouts of the deceased. Incidentally, the accused himself admitted that the headman had once called him in for a dressing down over his illicit affair with the deceased, but he did not take heed.

Farai Mhere, who was a neighbour of the accused, testified that when her suspicion had been roused by the conversation she had with the accused's wife concerning the accused, she had the occasion to meet the accused after the deceased's disappearance. She observed that the accused had a swollen eye which injury he had not had the last time she had seen him.

The accused told the witness he had been assaulted by Khulisani at Makepesi Shopping Centre which turned out to be a lie as Khulisani later denied having done so. The witness was also aware of the assault perpetrated on accused by Khulisani's brother but that had happened some months earlier and it had nothing to do with accused's latest injuries.

The evidence of accused's panning partner Davison Chizema was partially admitted by the accused. The part which he admitted relates to the recovery of accused's clothes- Jacket and t/shirt- from a disused mine shaft on indications made by the accused. It also relates to the identification of the small axe -exhibit 7- by Chizema. The said axe belonged to the accused and was recovered at the scene of crime.

According to the investigating officer the clothes had been thrown into a shaft full of water, tied to a stone in an effort to conceal them.

The evidence of the state was presented very well and other than the contradiction around the two jackets, we have no reason not to accept it.

The small axe places the accused at the scene of crime and even though he tried desperately to disown it, the recovery of his blood stained clothes in a mine shaft means that he has a lot of explaining to do.

There is also the accused's confirmed warned and cautioned statement given on the 4<sup>th</sup> August 2009. In that statement, he confessed to the crime giving an account of how he committed the offence. His attempt to disown it is as feable as it is unbelievable. Hence his weired story that he was temporarily deaf at its confirmation. The accused's defence is in the form of a bare denial. In his defence outline he stated that he had spent the whole day on 24 June 2009 at his homestead with his wife and son. This alibi is not sustainable because the same wife told the police and Farai that the accused had left home that day only returning home in the early hours of the morning shirtless, to burn his trousers. In any event there was no alibi evidence other than accused's mere say so.

We have no hesitation in rejecting the accused's defence as a lamentable falsehood.

According to the doctor who conducted the autopsy, the deceased's body was moderately decomposed. The marks of violence were:

"Bruises on right shoulder, bruises on left side of thorax, bruises and cut on right head, cut and fracture on the frontal area, multiple bruises on face. Bruises on limbs and arms, laceration on the frontal area brain exposed."

There was also a cut and skull fracture, laceration on the brain and both lungs were haemorrhagic. The cause of death was skull fracture, head and face injuries.

The stones that were produced as exhibits speak for themselves. Clearly the accused had directed his rage at the deceased's head and upper part of the body with sufficient force to cause death.

This was a premeditated killing. The accused lured the deceased with a false promise of maize meal in the middle of the night. He picked his spot in the remote area where he knew the deceased' body would not be easy to find.

After the killing, he went about concealing all the evidence as could lead to his arrest. Even as people were searching for the deceased he did not reveal the truth.

We conclude therefore that the accused desired the death of the deceased and compassed that result.

Accordingly, the accused is found guilty of murder with actual intent.

### **Reasons for sentence**

First and foremost we need to rule on extenuation considering that you have been found guilty of murder with actual intent.

It is accepted in our law that intoxication is a factor in extenuation which tends to reduce an accused person's moral blameworthiness.

Part of the evidence this court has accepted is contained in your warned and cautioned statement where you allude to the fact that you were intoxicated on the day in question.

The state has conceded that fact and in our view the concession is proper. We also consider the fact that you were provoked by the response given by the deceased to the questions you were putting to her that evening, resulting in a fight in which you also sustained injuries.

We therefore find the existence of extenuating circumstances in this matter.

In assessing sentence we have weighed the mitigating factors set out by your lawyer and find that they do not come anywhere near outweighing the aggravation.

You come out as having been a sex athlete who had no respect even for married women. You seem to have prided yourself with having many girlfriends and you told the court yourself that you were famous for your bed hopping.

In the process you preyed on a lonely woman whose husband was away in South Africa. Not content with invading his home, you went further to appropriate to yourself his wife to the extent of arrogating to yourself the power to decide when to terminate her life.

You went about executing the murder with chilling accuracy including covering your tracks very well.

Society looks up to these courts for protection against people like you. There is a pressing need to clear the neighbourhood of people like you and to remind society that women have rights as well and should not be treated as punch bags by man.

**Sentence**

You are accordingly sentenced to life imprisonment.

*Criminal Division, Attorney General's Office, the state's legal practitioners  
Gundu & Dube, accused's legal practitioners*