

THE STATE
versus
BRENTON DENGWANI GURI

HIGH COURT OF ZIMBABWE
MWAYERA J
MUTARE, 3 June 2021 and 13 September 2021

Criminal Trial

ASSESORS: 1. Mr Chagonda
2. Mr Magorokosho

M Musarurwa, for the State
Mrs C Kanengoni, for the accused

MWAYERA J: On 31 October 2019 at Chawa Village, Chief Makoni, Maparura, Mayo the deceased a 2 month old baby lost its life due to poison ingestion. It is alleged that on 31 October 2019 the accused unlawfully caused the death of Panashe Dengwani by administering diazon pesticide into his mouth with a syringe intending to kill him or realising that there was an real risk or possibility that his conduct might cause death and continued to engage in that conduct despite the risk or possibility resulting in injuries from which the said Panashe Dengwani died. The accused pleaded not guilty to the charge.

The brief allegations are that the accused and deceased are related as father and son respectively. On 31 October 2019 at around 0600hours the accused assaulted the deceased by administering diazon pesticide poison into his mouth with a syringe. The deceased died on the spot. The body was ferried to Rusape General Hospital where Dr Karemba conducted a post mortem and compiled a report concluding that cause of death was poisoning.

The State Evidence

Laiza Guru the mother of the deceased gave oral evidence to the effect that the accused is her son and the deceased her grandson. The witness narrated to the court that accused and his wife Jane Chimedza the mother of deceased initially stayed well together but later their relationship turned sour. The accused disclosed to her that he was no longer interested in the relationship since he was still young and unable to take care of the family.

On the fateful day the accused followed her at the well where she had gone to fetch water. She noticed accused was ruffled and appeared as if he wanted to cry. She inquired if all was well and asked if accused had beaten his wife to which accused did not reply. She then proceeded home where she then saw the deceased's mother crying while holding the deceased in her arms. The witness observed the motionless and lifeless body of the deceased and could smell a strange smell of substance. The witness gave evidence well pointing out the accused was 17 at the time of commission of the offence. Her evidence of detecting a strange smell around the deceased was confirmed by all other state witnesses including the mother of the deceased Jane Chimedza. The latter's evidence was formerly admitted. It was essentially that the deceased was well on 31 October 2019 when the witness breast fed the baby and left it sleeping on a mattress. She proceeded to fetch water and upon her return after being alerted by Moment Dengwa, she observed the deceased lying on the mattress frothing and there was a strange smell in the room. She took the deceased in her arms until her mother-in-law Laiza Guri confirmed the child dead. The witness's evidence was also to the effect that accused led the police to the fowl run from which the syringe used to administer poison was recovered.

Also admitted in evidence is the evidence of Jairos Guri who gave per request diazon pesticide for domestic use to accused. He gave 200ml container of diazon pesticide and a syringe on 29 October 2019. The rest of the witnesses' evidence including the investigating teams' evidence was on common cause aspects. The deceased ingested poison administered into his mouth by accused using a syringe. The police recovered the almost empty container of diazon and the syringe through accused's indications. The state further admitted in evidence documentary exh 1. The Post Mortem Report was tendered as exh 1 by consent. Of interest is the fact that Dr Karemba observed that deceased had supine fluids flowing from his mouth and the doctor picked smell of poison from the stomach contents. The doctor determined cause of death as poisoning.

Also tendered in evidence as exh 2 is a confirmed warned and cautioned statement by the accused person. The import of the statement is to the effect that the accused caused the deceased to ingest the poisonous pesticide. An empty 200ml container of diazon pesticide and a syringe (with little remains of the diazon pesticide) were tendered as exh 4 and 5 respectively. Also adduced in evidence is exh 3 a sketch plan depicting the scene of crime per indications from the accused and state witnesses.

Accused's Evidence

The accused denied the charge pointing out that at the time of commission of offence he was cohabiting with the deceased's mother. He was embroiled in domestic dispute with the deceased's mother due to frustrations of unemployment and poverty. The deceased's mother threatened to abandon the deceased. He requested for the pesticide from the state witness Jairos Guri intending to use it in his garden to kill termites. However the domestic strife between him and the deceased's mother continued and on the fateful day after the mother of the child went to the river he poisoned the deceased. He wanted to commit suicide thereafter but was unable to do so because his neighbours gathered before he had chance to ingest the poison. As a witness the accused could not dispute the common cause aspects that he administered the poison into the 2 month old child. The accused waited for the opportune time when the child was alone. His assertion that he wanted to commit suicide was rendered hollow when viewed with the circumstances of this matter. The accused had kept the poison hidden away for 3 days. When his mother and wife left the homestead he went to fetch the pesticide and syringe. He then administered it after which he proceeded to hide the syringe in the fowl run and walked away following his mother. He left a small quantity in the syringe but did not attempt to ingest it. He walked alone to meet his mother and there was no one to block him if he wanted to commit suicide. The version of intending to commit suicide appears to have been raised to minimise the blame on causing the death of the deceased.

Analysis of the Evidence and Application of the Law

In this case after aducement of all evidence the facts of the matter are largely common cause. The accused and deceased's mother were living as husband and wife. Further it is common cause the accused secured diazon pesticide from his grandfather Jairos Guri under the pretext that he wanted to use it in his garden. It is common cause that the accused hid the pesticide in the cattle pen from 29 October until 31 October 2019. That on 31 October 2019 when the deceased was alone the accused retrieved the pesticide and syringe and administered it into the deceased's mouth is not in contention. Also not in dispute is the fact that the deceased died immediately as a result of ingestion of the poison. The only issue that this court has to determine is whether or not when the accused administered diazon pesticide into the deceased's mouth he had the intention, actual or legal to cause the death of the deceased.

It is settled that when one sets out with an aim or desire to kill another and they proceed to do so murder with actual intention ascribes. On the other hand if one engages certain conduct with the realisation that such conduct may cause death but despite the realisation and possibility of the risk proceeded with the conduct then legal intention to murder can easily be ascribed. See *S v Moyo* HMA 16/17, *S v Mugwanda* SC 19/2002.

Murder as defined in s 47 of the Criminal Law (Codification and Reform) Act consists of both the *actus* and *mens rea*.

The state of criminal mind is clearly covered under part III of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. Section 15 and s 16 deal with realisation of real risk or possibility and negligence respectively. Considering the circumstances of this case s 15 and 16 are not relevant on the criminal mind evinced by the evidence but rather s 13(1) is instructive. It states:

- “(1) Where intention is an element of any crime, the test is subjective and is whether or not the person whose conduct is in issue intended to engage in the conduct or produce the consequence he or she did.
- (2) Except as may be expressly provided in this Code or in the enactment concerned, the motive or underlying reason for a person’s doing or omitting to do anything, or forming any intention, is immaterial to that person’s criminal liability in terms of this Code or any other enactment.” (underlining my emphasis)

In this case the accused set out to dig out hidden poison at the most opportune time when the baby now deceased was alone. He drew the poisonous diazon pesticide into a syringe and poured it into the mouth of a two months old baby. He administered the poison into the mouth causing the child to ingest it. There is clear evidence of pre-planning on the part of the accused as he sought the poison way in advance for purposes of killing the child and himself (confirmed warned and cautioned statement exh 2). When he drew the poison and administered it into the mouth of the 2 month old baby the desire and aim was to kill the deceased.

The accused formulated the intention to kill and proceeded to kill in circumstances clearly displaying actual intention to cause death. As clearly spelt out in s 13(2) of the Criminal law (Codification and Reform) Act the underlying reasons or motive in formulating the intention to kill is immaterial. Even if it were to be accepted that the accused killed the child because of hardship poverty unemployment and marriage at a tender age such do not constitute a defence to the criminal mind displayed.

The accused set out with an aim to kill the deceased and accomplished his mission by administering diazon pesticide into the 2 month old child thereby poisoning the child to death.

Accordingly accused is found guilty of murder with actual intention as defined in s 47(1)(a) of the Criminal Law (Codification and Reform) Act [*Chapter 23:07*].

Sentence

In an endeavour to pass an appropriate sentence we have considered all mitigatory and aggravatory factors submitted by the defence and state counsel respectively. We have also considered the circumstances of this matter that is circumstances surrounding the commission of the offence. The accused is a 19 year old youthful offender who committed the offence at a tender age of 17. As highlighted by defence counsel Mrs *Kanengoni*, youthfulness is mitigatory. It cannot be in contention that immaturity can influence in making wrong decisions based on poor judgment. Youths are prone to act on whims and are susceptible to external factors and peer pressure. Also in mitigation is the factor that the accused has endured pre-trial incarceration for over a year. He has been waiting anxiously for a serious charge to be finalised. Considering the manner the offence occurred and surfaced the accused did not seek to evade justice. He cooperated with the (police) law enforcement agents leading to recovery of the relevant exhibits. Accused regrets the offence.

However in aggravation there are outstanding factors as highlighted by the state counsel Mr *Musarurwa*. The accused instead of protecting his 2 month old baby turned villain and in a cruel brutal and heartless man administered the deadly poison to a defenceless baby. Domestic violence related murders are serious offences for which the courts should express displeasure by passing appropriate sentences. The accused ventured into married life at a tender age and sought to visit an innocent child with punishment as a way of solace to himself. Precious human life was unnecessarily lost. The accused had exist avenues if he did not wish to be part and parcel of support to the deceased. What further aggravates the offence is the fact that the murder was premeditated in advance and indeed when the opportune time arose the accused took advantage and executed the plan. The accused has been convicted of murder with actual intent in circumstances, calling for life imprisonment. However considering his youthfulness at the time of commission of the offence and even at time of sentence it is our considered view that a fairly long imprisonment will meet the justice of the case.

Sentence as follows:

20 years imprisonment.

National Prosecuting Authority, state's legal practitioners
Matsika Legal Practitioners, accused's legal practitioners