

THE STATE
versus
GODKNOWS NYASHA JIMU

HIGH COURT OF ZIMBABWE
BACHI MZAWAZI J
CHINHOYI, 18 October 2023 to 29 February 2024.

Assessors: *Mr. Chivanda*
Mrs. Mawoneke

Criminal Trial

G. T. Dhamusi, for the State
F. Watungwa, for the Accused

BACHI MZAWAZI J: The allegations are that on the 18th of November 2022 at ZUPCO Bus Terminus, Katanga Business Centre, Norton, the accused Godknows Nyasha Jimu in the company of Petros Murakwani, now on the run, acting in concert and common purpose one or both of them fatally stabbed Priviledge Upenyu Mudzimu with an okapi knife resulting in his death.

Accused was subsequently arrested and brought before this court for the murder trial. The summarized facts are that the accused was seen by two of the State witnesses who attested orally in court arriving at Seaways Night Club, the scene of crime. The first witness Josephine Danken, the then bar tender testified that when the accused arrived at the joint in the early hours of the morning, he and his colleagues caused a pandemonium in the bar. They forcibly retrieved a US\$5.00 note from the bar lady after demanding free beer from the patrons. They then started assaulting the other patrons in the bar including the deceased. As this lady was busy with her chores, she only noticed the deceased running out of the bar with the accused and his friends in hot pursuit. This witness did not see the manner the deceased was assaulted. She could not

conclusively say whether the accused did assault the deceased or specify the role he played other than snatching the US dollar note.

It was evident that the first witness Josephine Danken struggled to recall the events which had happened close to a year later. She mentioned accused going to the toilet but under cross examination conceded that it was a very busy morning therefore she did not perceive that movement.

The second State witness, Logan Garapo from the statement he gave to the police, he did not allude to seeing accused and the deceased chasing each other into the male toilets. This came up in court a year after the incident. He also stated that he saw the deceased leaving the toilet bleeding from the back, information he did not reveal to the police at the time of his written statement. The rest of the evidence in his written statement is not different from that of the first witness. The only distinction is their job descriptions as he was a security guard. This witness also did not witness the actual assaults and the stabbings.

Notably, in the State papers, reference is made to more than one person in the company of the accused who caused the commotion in the Seaway Night Club. This is different from what is alleged in the charge sheet which mentions only two.

Of the 17 lined up witnesses, only the evidence of Phillip Mudzimu, Patricia Sepi, John Karavino, Square Tera, Doctor Matanyaire, Prosper Tsvangirai, Stuart Chirenje was admitted by consent. Four of the witnesses gave oral evidence, whilst the rest were not called though their evidence was challenged. The court will disregard the evidence of Alphonso Musambakaruma, Madambuko Goshokosho and Cosmas Muparidzi, as it was not legally tendered and produced.

The third witness happened to be one of the owners or senior managers of the Seaways Night Club. He responded to a call in respect of

the disturbances in the night club. He disputed that the second witness was the one on duty on the day in question. He stated that it was Tatenda on duty not Logan. This witness summoned his brother and co-managing business partner after being informed of the fracas. They accosted the accused in the company of his one-night stand who was pointed to him near the bus stop. They effected a citizen arrest on allegation of a cellphone theft and took the accused to the police. He told the court that the report of the murder was filed much later at 5am after the accused was already in police custody.

In contradistinction to the second witness's evidence, the third witness mentioned that the accused had a scissors upon being searched but qualified that he could not recall vividly all what transpired. The second witness had said an okapi knife had been retrieved from the accused

Alfonso Musambakaruma was the last witness to be called. He is a member of the Zimbabwe Republic Police within the Central Investigation Detectives Unit. He is the officer who recorded the warned and cautioned statements as well as the indications. Nothing much was elicited from this witness. The warned and cautioned statement and the indications were contested thus not produced. After leading evidence from the last witness, the State proposed to proceed by way of a trial within a trial. It then changed its mind after encountering difficulties in securing witnesses. It then closed its case.

In his defence the accused does not deny going to the crime scene in the company of his fugitive friend. He disputes that he was involved in a fight and that he assaulted or stabbed the deceased. He maintained that he was arrested in connection with a cellphone theft. When the complainant in that case exonerated him at the police station and after the police had cleared him, the murder report was then made. He confirmed the third witness's testimony that he was arrested whilst walking with his girlfriend in the morning of that day. In a way, the third

State witnesses' evidence corroborates that of the accused in some material respects. Accused denied being in possession of a weapon let alone a knife or having been found with one. He also denied acting in concert with anyone.

The onus to prove all the essential elements of the charge lies with the State, as is well established. Now from the evidence on record did the State manage to prove beyond reasonable doubt that indeed the accused killed the deceased in the manner alleged or was acting in concert with the escapee. See *S v Isolano 1985 (1) ZLR 62 (S) at 64-65*.

S18 subsection 2 of the Criminal Law Codification Act [*Chapter 9:23*] succinctly states that no person shall be held to be guilty of a crime in terms of this Code or any other enactment unless each essential element of the crime is proved beyond a reasonable doubt as amply captured by Mr. Dhamusi for the State.

It is clear, that there is no direct evidence linking the accused to the offence. No one saw him assaulting the deceased in any manner nor stabbing him. No one witnessed what transpired at ZUPCO bus stop where the offence is said to have taken place.

What we only have as a proved fact is that accused was at one stage at Seaways Night Club at the same time with the deceased. For the court to convict on circumstantial evidence all inference should be drawn from proved facts. See *S v Shariwa 1987 (1) ZLR*, *S v Marange & Ors 1991 (1) ZLR 244 (S)* and *S v Tembo 2007 (2) ZLR 33 H. Muyanga v the State HH79/13*.

There is mention of a bloodied knife which was found but no evidence to conclusively say it was found on the person of the accused. Had it been found blooded as claimed, upon the initial arrest on the issue of cellphones, police would have interrogated the accused in that respect. In a way, it dents the evidence that the knife was found on the person of

the accused. Apart from the disorderly conduct which the accused denies there is nothing much to go by or rely on. There was need to conduct further investigations especially from the accused's female companion who had been present both at the bar and at the time of the accused's arrest.

Further, the police should have noticed blood stains on the accused's clothes at the time of the arrest as there was no indication that he changed his clothes or had time to change given the time between the bar commotion and his arrest. More evidence should have been gathered from the patrons who were in the vicinity of the pub, bus stop or inside the night club.

As such the court is unable to find any proved facts whereby to draw an inference that accused committed the offence or that any person in his company committed the offence as to impute the doctrine of common purpose. No other documentary evidence was produced save the post mortem report. The State has thus failed to prove its case against the accused person either directly or circumstantially.

It is all about evidence. We are left with little choice but to acquit the accused person.

Accordingly, accused person is found not guilty and acquitted.

National Prosecuting Authority for the State.

Watungwa & Associates for the Accused.