THE STATE

versus

NOBERT BVUKUMBWE

HIGH COURT OF ZIMBABWE

BERE J

MASVINGO, 2,3, 6 & 8 June 2011

**Criminal Trial**

Assessors:

Mr Dauramanzi

Mr Mushuku

Ms *T. Matenga*, for the State

*C. Maboke*, for the defence

BERE J: The deceased was nine years old at the time he met his death. He was the accussed’s biological son and a grade 2 pupil at Muraba primary school under Chief Muketi in Mwenezi district. The accused was a school teacher at the same school. The State’s allegations as can be gleaned from the summary is that on 28 of June 2009 the accused went with the deceased to the river to take a bath and to do some laundry. Whilst at the river the accused person started assaulting the deceased alleging that he had failed to comply with his instructions. The assault was protracted and it started with the accused assaulting the young boy with open hands over all his body and it was followed by the accused throwing the deceased on the rocks at the river until the deceased could no longer walk back home. The accused then carried the deceased home where the deceased succumbed to the assault and died.

The accused did not reveal the death of the deceased whom he secretly buried in a shallow hole at an ant hill near the school. Following the accussed’s arrest after a tip off by fellow teachers, the accused made indications leading to the recovery of the deceased’s body which was found to be in a moderate state of decomposition. The post mortem report carried out on the deceased’s body by doctor Castellians at the request of Zimbabwe Republic Police Mwenezi revealed that the deceased had sustained a skull fracture on the jaws, multiple head injuries and multiple loss of teeth. From the examination, the doctor concluded that the deceased had died as a result of skull fractures on the jaws and the head injuries caused by assault.

Whilst accepting that he took the deceased to the river for bathing and laundry the accused denied ever assaulting the deceased as suggested by the State. It was the accussed’s contention that the deceased fell from a rock where he was standing and when he did so he landed on a rocky surface thereby sustaining head injuries. The accused then carried the deceased on his back and took him back home where he passed away during midnight. It was the accussed’s person defence that he decided to temporarily bury the deceased without notifying the community because of his strained relationship with almost everyone in the neighbourhood including his fellow teachers and the community at large. He averred that he decided to keep the death exclusively to himself and to wait for his friend who had gone to Masvingo to get his salary and from whom he hoped to get financial assistance.

The critical and crucial state evidence centered on Rivanos Ganda, accussed’s fellow teacher at Muraba Primary School. His evidence was that on the morning of the fateful day he witnessed the accused teaching the deceased and assaulting him with two switches at different times.

The two switches were almost identical in sizes and that the combined assaults went on for almost an hour. It was his evidence that when one of the switches got broken the accused grabbed another switch and continued with the assault of the deceased. The length of the switch before it got broken was estimated to have been about 4 meters. It was the witness’s testimony that he was so touched by the assaults on the deceased to the extent that he could not even attend to his class but had to dismiss his pupils. Rivanos’s further testimony was that in the afternoon of the same day he passed through the accussed’s residence and advised him he was going to the river to bath and to do laundry. The accused told him that he would follow later. Indeed, the accused and the deceased did subsequently follow but went to a place down the river which was about 130 meters away from where the witness was.

The witness’s evidence was that as soon as the accused and the deceased got to the spot of bathing and laundry he heard the accused ordering the deceased to bath quickly. This instruction was immediately followed by the deceased’s unprovoked assaults by the accused. At this stage the accused was using open hands on the face, head and the back of the deceased. He told the court that the accused continued to assault the deceased even when he was wearing his clothes, ordering him to dress up ‘fast’. The witness said he saw the accused holding the deceased with both hands in a horizontal position and threw the little boy on the rocky surface headlong and picked him up. The same process was repeated twice and the deceased was being thrown for a distance of about two meters and landing on a hard and rocky surface.

He saw the accused holding the deceased by his shoulders and lifting him and heard him utter the words ‘fast, fast, let us go’. The last he saw of the deceased was when deceased was dragging his feet, showing he had extreme difficulties in walking before the two disappeared into the bushy area heading back to school. That same evening he took it upon himself to pass through the accussed’s place keen to ascertain the condition of the terribly assaulted child. It was his evidence that he found the accused seated by the doorway, the deceased was not there. The witness said he heard the deceased groaning and he went to put his clothes on the washing line. He reported the day’s ordeal to Ms Shava later in the evening and in the morning that followed. He made a report to the teacher in charge Stanford Chikami.

The witness was emphatic of what he saw under cross-examination. He was visibly surprised and annoyed by the suggestions made by the defence counsel when it was suggested to him that the deceased fell at the river. He denied that the deceased ever got the chance to sit on the rock as suggested by the deceased person. It was the witness’s evidence under cross-examination that he would characterize the accused as a harsh person and not easy to deal with. Other than this he denied that he had any motive to lie against the accused person. He reiterated that his testimony in this matter was motivated by the desire to share with the world the inhumane treatment he fortuitously witnessed the accused subjecting his late son. The thrust of the accused person’s attack on the evidence of Rivanos was the averment that the witness had a personal vendetta against him. He stated that on 28 June 2008 the witness took the deceased away without his consent and when the deceased came back he seemed to be troubled.

Ironically the accused did not raise this with the witness especially when the witness passed through the accussed’s residence that same day informing the accused that he was on his way to the river to which the accused admitted he would follow later. The court’s view is that if there was anything unusual with the deceased at that time, the accused ought to have raised it with the witness. The court therefore does not accept the position taken by the accused. The accused spared no effort in his testimony to explain the vendetta which he alleged the witness had against him. In his own defence outline the accused saw the witness bathing about 200 meters away from where he and the deceased were but surprisingly when he testified he tried to create the impression the witness could not have seen him because of the distance and the bushy area.

In the courts view, borrowing heavily from the evidence of Gibson Dzimati which largely centred on exh 2 the sketch plan and the indications made by both Rivanos and the accused the court is satisfied that Rivanos had a clear view of the spot where he alleged he saw the accused assaulting the deceased. Whilst conceding that the area was bushy, both witnesses clearly stated that there was nothing that obstructed Rivanos from seeing what was happening at the scene of the crime at the river. We accept that version and we are unanimously satisfied that Rivanos was at a vantage point when he stated he saw the accused assaulting the deceased.

Under cross examination Rivanos acquitted himself extremely well and we are more than satisfied he told the court the truth. The evidence of Stanford Chikami was quiet significant in that it demonstrated the accussed’s stout effort to keep the death of the deceased exclusively to himself. It was Stanford’s evidence that he took a group of pupils from Muraba Primary School and went around the school to try and locate the remains of the deceased but to no avail. The accused deliberately did not open up about the whereabouts of either the deceased or his remains despite being aware almost everyone at the school including Rivanos were concerned about the whereabouts of the deceased. The accused did not impress the court as a credible witness. We found it extremely strange that if the deceased had died as a result of an accidental fall from a rock, why would this information have been kept to the exclusive breast of the accused?

Equally strange is the accussed’s decision to secretly bury the deceased’s remains by himself and keeping the burial spot exclusively to himself. Such behaviour in our view lends evidence to the evidence of Rivanos that the deceased died as a result of assaults by the accused person. We have not allowed ourselves to be detained by the suggestion by the accused person that he decided not to report the deceased’s death to anyone within the neighbourhood because of his fears of the community and the alleged strained relationship with his fellow teachers at Muraba Primary School. We find it equally strange that the accused could not share his misfortune on the deceased’s death (that is if it was accidentally caused) with Ms Shava with whom he shared the same two roomed house which literally shared the same entrance. Though the home shared separate doors, these doors were no more than a meter apart.

We are unanimously satisfied that the deceased died as a result of the assaults by the accused as captured in exh 1 the Post-Mortem Report. Having accepted the assaults to which the 9 year old deceased was subjected to by the accused person on the fateful day particularly the assaults which were concentrated on the deceased’s head as confirmed in exh 1, the only reasonable inference that we are compelled to draw is that the accused person desired to cause the death of the deceased and he achieved his objective. We are unable to arrive at any other conclusion. In fact no any other reasonable conclusion can be drawn from the conduct exhibited by the accused person when he assaulted the minor child in the manner described by Rivanos and accepted by this court.

Verdict: Guilty of murder with actual intent.

The accused’s behaviour in killing his biological minor child in our view is irrational and inexplicable. See the case of *Petros Chief Sibanda* v *The State[[1]](#footnote-1)* We direct that the accused be mentally examined before we hear evidence on extenuation. The accused is to undergo an EEG scan to determine his mental condition before he is sentenced. Collateral history to support the psychiatrist examination of the accused must be gathered by the psychiatrist doctor concerned.

*Attorney-General’s Office*, for the State

*Mwonzora & Associates*, for Defence Counsel

1. Judgment No. SC 137/03 [↑](#footnote-ref-1)