

THE STATE

VERSUS

BLESSED NDLOVU

IN THE HIGH COURT OF ZIMBABWE
CHEDA J
BULAWAYO 9 JUNE 2011

Culpable Homicide

CHEDA J: This matter was placed before me for review.

The accused was charged with culpable homicide which charge he pleaded guilty to, was convicted and sentenced to pay a fine of \$800 or 6 months imprisonment.

The facts of this matter which are common cause are that accused was found with 82 grams of gold in his house. An arrest was effected by the police and he was ordered to drive in his own vehicle to the police. On the way he started accusing one Constable Gono for causing his arrest for an offence which he did not commit. He then threatened to crush his motor vehicle against any other vehicle on a tree so that he could die instead of going to prison.

The accused proceeded to drive in a zig-zag manner resulting in the two police officers jumping off the moving vehicle. He, however, continued to drive in that manner and drove straight to a durawall, hit it resulting in one Shylet Tshuma, his girlfriend dying.

The sentence imposed by the trial court is grossly inadequate for such an offence in the circumstances. In fact its leniency shocks a reasonable man's conscience.

Accused was not even negligent but was reckless. He intended to kill himself which was certainly in order as the choice of departure from this world was exclusively his. But, to decide to embark on such a fatal enterprise in the company of innocent people is an exhibition of recklessness of the highest order. Both the legal principles which hold the sanctity of life in high esteem and public policy can not gloss over such negligence on the part of the accused.

Judgment No. 71/11
Case No. HCAR 638/11
CRB Reg 42/11

It is for that reason that the court should have visited such acts of barbarism and recklessness with appropriate sentence, of which the sentence imposed here does not fall within that category.

The sentence passed in this matter is grossly out of step with legal reasoning and cannot be confirmed.

In my view the appropriate and effective sentence should have been 2-3 years imprisonment effective.

In the circumstances I can not confirm these proceedings as being in accordance with real and substantial justice.

I accordingly withhold my certificate.