

THE STATE
versus
ROBERT NYONI

HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 8 AND 9 OCTOBER 2015

Criminal Trial

T Hove for the state
G Sengweni for the accused

MAKONESE J: The deceased was aged 30 years at the time of his death and accused was also aged 30 years. The accused appears in this court on a charge of murder. The allegations are that on 1 January 2013 and at Umvutshwa Farm, Umguza District, the accused wrongfully and unlawfully and intentionally killed and murdered Morris Sibanda a male adult during his lifetime. On the fateful day and at around 0900 hours the deceased arrived at accused's place of residence where he wanted to collect property which accused had taken from deceased's rural area in Jotsholo. The accused who was in the company of his wife denied having taken deceased's property. A misunderstanding ensued, resulting in the deceased striking accused with an empty beer bottle on the shoulder. The accused retaliated by hitting the deceased once on the head, just above the right ear, using a plank. The deceased collapsed and died on the spot.

The accused pleaded not guilty to the charge of murder and tendered a plea of guilty to the lesser charge of culpable homicide. The state conceded that death was not caused intentionally and that accused acted negligently. The accused was acquitted on the charge of murder.

The state and defence tendered into the record a statement of agreed facts (Exhibit 1) whose contents are in the following terms:

“Statement of agreed facts

The state and defence agree that the following issues are common cause:

1. The accused resides at Menami Nyoni, Homestead, Tshongogwe area, Lupane and was aged 30 years at the time of the commission of the offence.
2. The deceased resided at Umvutshwa Farm Compound and was aged 30 years at the time he met his death.
3. On the 1st of January 2013 at around 0900 hours deceased went to accused’s place where he wanted to collect his property which he alleged had been taken by the accused in Jotsholo.
4. The Accused, who was in the company of his wife, one Argatha Dube, denied having taken the property.
5. A misunderstanding ensued resulting in the deceased hitting accused with a beer bottle on the shoulder.
6. The accused retaliated by hitting deceased once on the head just above right ear with a plank.
7. The deceased collapsed and died on the spot.
8. The accused will plead not guilty to murder.
9. The accused will plead guilty to culpable homicide.”

The State then tendered by consent the Post Mortem Report (Exhibit 2). The report lists the cause of death as:

- (a) bronchoaspiration
- (b) intracranial haemorrhage
- (c) blunt force trauma
- (d) homicide

The report compiled by Dr Sangananyi Pesanai on 2 January 2013, reflects that an examination of the remains of the deceased showed a scalp haematoma, right parietal region to the left parietal region. The pathologist further observed massive subachnoid haemorrhage and

right extradural hematoma. The pathologist concluded that the injuries were consistent with bleeding in the brain secondary to skull fracture caused by a blunt and heavy object.

On the evidence presented before us we are satisfied that the limited plea to a lesser charge of culpable homicide was properly made. We accordingly find the accused guilty of a culpable homicide.

The accused's defence argued that the accused deserved a non-custodial sentence for the following reasons:

- a) accused is a first offender
- b) accused pleaded guilty
- c) accused has shown remorse
- d) accused spent almost one year in remand custody before he was admitted to bail.
- f) deceased appeared to have been the aggressor.

It was contended on behalf of the accused that a sentence with the option of community service was appropriate.

We could not agree with defence counsel. It is trite that sentencing is at the discretion of the court. The sentence imposed in each case must be just and fair. The sentence must not be too lenient but at the same time it must reflect the seriousness of the offence. Invariably, where there is loss of life, the court must not lose sight of the consequences of the loss of life on the victim's family. The deceased was at the prime of his life. The accused though provoked, retaliated in a manner that was disproportionate to the provocation. He struck the accused with a dangerous object on a sensitive part of the body. The injuries reflected on the Post Mortem Report reveal that excessive force was used. A single blow to the head below the ear left the deceased with a fractured skull and massive subarachnoid haemorrhage. It is clear that the deceased's chances of survival were very slim. It is our view that a sentence of community service will trivialize the offence. It would be seen as a reward to the offender and it is against all notions of justice. These courts have time and again indicated that members of the public must be reminded that violence has no place in a modern and democratic society as a means of dispute resolution. In cases of this nature imprisonment is the only appropriate sentence.

In the circumstances accused is sentenced as follows:

“3 years imprisonment, of which 1 year is suspended for a period of 5 years on condition accused is not within that period convicted of any offence involving violence and for which he is sentenced to imprisonment without the option of a fine.

Effective sentence 2 years imprisonment.”

National Prosecuting Authority, state’s legal practitioners
Messrs T. Hara and Partners, accused’s legal practitioners