

THE STATE**Versus****KEABESTOE SIZIBA**

IN THE HIGH COURT OF ZIMBABWE
BERE J WITH ASSESSORS MR SOBANTU & MR E. R.M. NYONI
BULAWAYO 15 OCTOBER 2015

Criminal Trial

Miss N. Ndlovu for the state
M. Dube for the accused

BERE J: Initially the accused was being charged with the offence of murder which after consideration of the evidence available was reduced to culpable homicide to which the accused pleaded guilty.

It will be necessary for the court to capture in greater detail the circumstances surrounding this offence. There is no better way of showing it than to re-state the statement of agreed facts as jointly crafted by the state and defence counsel. It goes as follows:

- “1. The deceased Moses Ndlovu was 33 years old at the time he met his death and that he used to reside at Nkalange Village 6, under Chief Marupi in Guyu area, Gwanda.
2. The accused (Keabatsoe Siziba) was 34 years old at the time of the commission of the offence. He resides at Nkalange Village 6, Chief Marupi in Guyu, Gwanda. The accused and the deceased were neighbours.
3. On the 23rd of April 2013 at around 2000 hours the Accused and the deceased were at Tibeli Business Centre in Guyu. The deceased was drinking beer and so was the Accused who was with his brother Simon Siziba who had come to pick up his wife who was expected to be on a Green Horse bus which plies that route.
4. When the Green Horse bus arrived, a state witness (Forget Mpala) disembarked. Accused’s brother assisted the witness to carry his luggage into Siyabalandela Bottle Store.
5. Inside the bottle store, the witness and Simon Siziba met the Accused and the deceased. Accused extended his hand and greeted the witness Forget Mpala. The deceased then did the same.

6. This did not go down well with the Accused who told the deceased to desist from greeting people whom he did not know. The deceased went out indicating that he knew the witness.
7. Shortly, the deceased returned to the bottle store. On his way back he encountered the Accused person and the witness at the door with the two making their way out of Siyabalandela Bottle Store.
8. The accused again told the deceased off about greeting people he did not know. The deceased in response indicated that it was not an offence to greet any person.
9. The accused then instructed the deceased to take a vow that he would not do it again (that is that he would not greet people who he did not know) by digging a hole in the ground with his fingers and filling it with saliva. The deceased refused to comply with Accused's injunction.
10. A misunderstanding then ensued between the two. The accused then began to assault the deceased by kicking him with booted feet and hitting him with fists and open hands several times all over the body.
11. Simon Siziba (Accused's brother) also joined in and slapped the deceased about three times on the face. However, the latter attempted to restrain the Accused from further assaulting the deceased. Accused could not be restrained, he continued to hit the deceased with fists and pen hands all over the body until deceased escaped and fled into the night.
12. The following day, the 24th of April 2013 the deceased who had sustained some internal injuries in the assault was assisted to Selonga Clinic complaining of stomach pains. At Selonga Clinic he was referred to Gwanda Provincial Hospital where he was seen by a doctor and discharged on the 25th of April 2013.
13. The deceased's condition continued to worsen after the initial visit to hospital. He was in and out of Gwanda Hospital on a number of occasions to seek treatment.
14. On the 8th of May 2013, the deceased who was showing signs of discomfort was again taken to Gwanda Hospital. On the 9th of May 2013 the deceased was referred to United Bulawayo Hospitals where a surgical procedure was performed on him on the 10th of May 2013 in a bid to address the internal injuries he had sustained in the assault.
15. The deceased did not recover and died on the 1st of June 2013 due to injuries sustained on the assault of the 23rd of April 2013 at the hands of the Accused person.
16. The Post Mortem report compiled by Doctor S. Pesanai after examining the deceased's remain list the cause of death at
 - i) Septic shock
 - ii) Severe peritonitis
 - iii) Perforated bowel
 - iv) Assault

Reasons for sentence

As is clear from the summary the accused stands convicted of the offence of culpable homicide and the post mortem report records the deceased's cause of death as assault which led to perforated bowel, septic shock and severe peritonitis.

In our approach to sentence we will be guided by the following factors.

In mitigation, the accused must benefit from his unsolicited plea of guilty which to a large extent is indicative of his remorse. By so pleading the accused has sought to accept the consequences of his conduct.

This is the accused's first collision with the law. He was 34 years old at the time. The accused carries with him the usual family responsibilities, being a father of 2 minor children and a wife all of whom are exclusively dependent on him as a breadwinner. That the accused had partaken alcohol and to some extent had his faculties compromised is accepted.

In aggravation we accept as a fact that whereas the accused will look forward to being reunited with his family after serving his punishment, the same cannot be said of the deceased. Except in the biblical sense the deceased will not rise to be with his family members again because in our simple perception, once one loses life, it cannot be regained.

We are particularly concerned by the manner in which this assault came about. There was not the slightest form of provocation. The deceased was brutally and viciously assaulted for nothing but greeting someone.

If anything, this assault shows the bullying character of the accused. It is made worse by the accused's refusal to be restrained by his own brother.

The viciousness of the assault is beyond reproach and is evidenced by the post mortem report. We agree with the state counsel that life was needlessly lost and that this could have been avoided.

This court has a natural obligation to show its abhorrence by condemning such conduct. By any stretch of imagination the accused's moral blameworthiness is exceedingly high.

Sentence – 9 years imprisonment 3 years of which is suspended for 5 years on condition the accused does not within that period commit any offence involving violence upon the person of another and for which upon conviction will be sentenced to a term of imprisonment without the option of a fine.

*The National Prosecuting Authority, the state's legal practitioners
Messrs Dube, Mguni and Dube, accused's legal practitioners*