

THE STATE
versus
ROD BHUNU

HIGH COURT OF ZIMBABWE
MOYO J
GWERU 19 AND 24 MAY 2016

Criminal trial

Shumba for the state
Sibanda for the accused

MOYO J: The accused person in this matter was charged with murder, it being alleged that on 1 January 2012, the accused person killed the deceased Shadreck Kutsvara by stabbing him with an okapi knife. The accused person pleaded not guilty to the charge of murder but offered a limited plea to culpable homicide. The state rejected this plea resulting in the matter proceeding to a full trial.

The facts of the matter which are largely common cause are that on 1 January 2012, the accused and the deceased were at a beer drink at Sabina Kutsvara's homestead. Sabina Kutsvara is accused's second wife and deceased's mother. Deceased is the accused person's step son. The beer had been brewed by Sabina Kutsvara. At about 20:00 hours, accused and Sabina Kutsvara had a misunderstanding resulting in both of them engaging in a scuffle. This caused the deceased to intervene and the scuffle stopped. Deceased however, proceeded to spill the beer that was being sold. This angered the accused person who confronted the deceased. The two started tussling and ended up in a cotton field. It is there that the accused person then stabbed the deceased with an okapi knife. The knife belongs to one Phineas Mahlathini whom the accused had disarmed earlier as a way of avoiding the usage of dangerous weapons at the beer drink.

The post mortem report Exhibit 4 gives the cause of death as haemo pneumothorax. I should comment at this juncture that the post mortem report as provided in this case is not explicit and informative at all. It must provide the court with the nature of the injuries and a detailed account not just the conclusion.

At the cotton field, there was no eye witness the other people having remained at the homestead and not being able to see what transpired there as it was then dark.

The accused person's version is the only version that is available at that crucial stage. His evidence is that the deceased pinned him down, kicking him and since he had the knife which he was in possession of, after disarming one of the patrons, he then used it lashing at the deceased trying to scare him, in the process stabbing the deceased.

He says he did this so as to scare the deceased and force him to stop attacking him. Accused's version of events at this juncture has not been disputed by the state as it could not adduce any other evidence to the contrary. It is at this juncture that the state counsel conceded that the accused person's plea of guilt to the lesser offence of culpable homicide could not be challenged by it as it did not have evidence of what transpired at the critical moment save for the fact that it is common cause that eventually, the accused person then stabbed the deceased causing his death. The concession by the state was properly taken in our view as the accused's version of what transpired at the cotton field is the only version that the court can rely on and as such the fact that the accused person used the knife in a bid to free himself from the deceased's attack cannot be refuted. It is this court's view that the facts of the matter do not meet the requirements for self defence, as provided for in section 253 of the Criminal Law Codification and Reform Act [Chapter 9:23] and the accused person correctly offered a limited plea.

It is for these reasons that the accused person shall be found not guilty on the charge of murder but will be convicted of the offence of culpable homicide.

Sentence

The accused person is sentenced to seven years imprisonment with 2 years imprisonment suspended for 5 years on condition the accused person, does not within that period, commit an offence of which violence is an element, whereupon conviction he shall be sentenced to imprisonment without the option of a fine.

National Prosecuting Authority, state's legal practitioners
Mhaka Attorneys, accused's legal practitioners