

THE STATE
versus
MUNYARADZI MATUKE

HIGH COURT OF ZIMBABWE
MOYO J
GWERU 19 MAY 2016

Criminal Trial

Ms Y. Mugumba for the state
A. Chihiya for the accused

MOYO J: The accused person is charged with the offence of murder. It being alleged that on 25 March 2012 he assaulted the deceased Jacob Matereke with a log resulting in deceased dying on 3 April 2012 from the injuries sustained in the assault.

The accused person pleaded not guilty to this charge but instead offered a limited plea to a charge of culpable homicide. The state accepted this limited plea and the parties drew exhibit number 1 being a statement of agreed facts. Its material aspects read as follows:

1. Munyaradzi Matuke (hereinafter called the accused person) was aged 20 years at the time of the commission of the alleged offence. He resided at Lot 1 Induna Farm Lalapanzi in the Midlands Province.
2. Jacob Matereke (hereinafter called the deceased person) was 49 years at the time of his death. He resided at the same farm with accused.
3. On the 25th day of March 2012 and at about 0500 hours, the deceased went into accused's room at the farm and pulled away the blanket from the accused who was still sleeping. The deceased kicked the accused once with booted feet and got restrained by people who were present in the room.
4. The accused person then got up and went to the shops where he spent the whole day there and returned around 1900 hours.

5. The accused indicated that he wanted to go to the fields and guard against pigs, but the deceased indicated that he was to attend to the fields himself. This degenerated into an argument as both parties insisted that they wanted to go to the fields.
6. The deceased who was holding a machete, struck the accused once on the face with a clenched fist.
7. Accused then picked up a log that was nearby and struck deceased once on the forehead and he fell unconsciously.
8. The deceased was ferried to Gweru General Hospital where he was later transferred to Parirenyatwa Hospital where he passed away on 3 April 2012.
9. On the 5th of April 2012, Dr Gabriel Agüero examined the remains of the deceased and concluded that the cause of death was
 - (i) Severe head injury due to assault.
10. The accused person accepts the contents of the post mortem report. The accused denies having the requisite intention in the form of Dolus Directus, or Dolus Eventualis to kill the deceased but acknowledges that, through his conduct aforesaid, he was negligent in causing the deceased's death.
11. The state concedes to the fact that the accused was negligent in the way he conducted himself in the manner he assaulted the deceased. The state acknowledges that the accused was negligent resulting in the death of the deceased and concedes to accused's plea of culpable homicide.

The post mortem report was tendered and marked Exhibit 2 it gives the cause of death as severe head injury due to assault. The log that was allegedly used in the commission of the offence was tendered and marked Exhibit 3.

The court accordingly from the evidence before it, found the accused person not guilty of murder but nonetheless proceeds to convict the accused person of the offence of culpable homicide.

Sentence

The accused person stands convicted of the offence of culpable homicide. He is a first offender. He was aged 20 years at the material time and is currently 23 years old, he is married with a child, he did not waste the court's time, he pleaded guilty, a plea of guilty has the aspect of remorsefulness attached to it. The deceased was a nuisance in this case, first provoking accused in the morning and again later in the evening when he decided to fight deceased over who should go to the fields yet deceased had picked that chore first. Deceased was the aggressor not once but twice on that day. Accused however, should have restrained himself than to act in the manner that he did, he should have been more careful in dealing with the deceased although his youthfulness would count in his favour, a life was lost unnecessarily, deceased had just clapped him when he resorted to using the log. Accused could have managed the situation in a more reasonable manner. These courts frown at the loss of life through violence, and deceased's conduct was despicable on the day in question. He however did not deserve to be killed in the manner accused did.

The accused person is accordingly sentenced to 7 years imprisonment of which 2 years imprisonment is 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
Mutatu and Associates, accused's legal practitioners