

THE STATE
versus
TRY MUZERENGANI

HIGH COURT OF ZIMBABWE
MOYO J
GWERU 23 MAY 2016

Criminal Trial

Shumba for the state
T. Shoko for the accused

MOYO J: The accused person faces a charge of murder, it being alleged that on 15 November 2007 he unlawfully caused the death of Tashinga Mhike by striking him with a log several times on his body. He pleaded not guilty to the charge of murder but instead offered a limited plea of guilt to the lesser charge of culpable homicide. The state accepted this limited plea. Both parties drew a statement of agreed facts which was tendered by the state and whose material aspects read as follows:

1. Try Muzerengani, (hereinafter referred to as the accused) resides in village Muzerengani, Chief Nemangwe, Gokwe in the Midlands Province. He was 35 years old at the material time.
2. The deceased is Tashinga Mhike and was staying in the same homestead with the accused and the two are blood brothers.
3. On the 15th of November 2007 in the morning, the accused went to water some cattle at the gardens. While there the deceased arrived, armed with a log.
4. The deceased at that time was suffering from a chronic headache and was alleging that it was the accused who was bewitching him.
5. The deceased then delivered a blow on the accused with the log. The accused ducked the blow.

6. It is then that the accused also armed himself with a log which he pulled from the hedge of the garden and started striking back. In the process he struck the deceased on the head once. The deceased fell to the ground as a result of the blow.
7. While the deceased was on the ground, the accused delivered more blows on the deceased all over the body with the log. The deceased cried out in the process, causing some boys who were herding cattle nearby to alert other people.
8. These people went to the scene and found the deceased lying on the ground.
9. The deceased was then ferried in an ox-drawn cart to the police who then advised that deceased be ferried to hospital.
10. Unfortunately deceased died before arrival at the hospital resulting in his body being ferried to Gokwe Hospital. While there a Government Clinical Officer, Aaron Chikara, conducted a post mortem examination and concluded that the cause of death was fractured skull and brain haemorrhage.
11. The accused accepts the evidence of the State witnesses as well as 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.
12. The State concedes that the accused was negligent in the way he conducted himself and in that he did not take all the necessary steps to ensure that his actions did not cause the deceased's death. The State therefore accepts the accused's plea to culpable homicide.

It was marked Exhibit number 1. The post mortem report which gives the cause of death as a fractured skull, and brain haemorrhage was tendered and marked Exhibit 2. The log that was allegedly used in the commission of the offence was marked Exhibit 3. From the facts before us, we accordingly find the accused person not guilty of the charge of murder but proceed to convict him on the lesser charge of culpable homicide.

Sentence

The accused person stands convicted of the offence of culpable homicide. He is a first offender, he was 35 at the time of the commission of the offence. He is now aged 44. He is married with six children. He has compensated deceased's family. The deceased in this case was the aggressor. The accused has waited for justice for 9 years.

However, these courts, do not take likely any circumstances where life has been lost through violence. These courts are day in day out inundated with cases involving the loss of life where people are killed over disputes that can otherwise be handled in a lawful manner. It is not justified to kill another person simply because they have sought to attack you or have attacked you, surely in an open field there were other available options of averting the attack like fleeing. It is therefore this court's view that accused persons should not resort to violence at the slightest of provocation, for the simple reason that life, being sacred, these courts will never take such matters likely. It is for these reasons that the accused person will be sentenced to 8 years imprisonment of which 2 years imprisonment will be 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 the accused person shall be sentenced to imprisonment without the option of a fine.

National Prosecuting Authority, state's legal practitioners
Legal Resources Foundation, accused's legal practitioners