

THE STATE**Versus****L N (JUVENILE)**

IN THE HIGH COURT OF ZIMBABWE
BERE J with Assessors Mr T.E. Ndlovu & Mr F. Dube
HWANGE CIRCUIT COURT 7 & 8 MARCH 2016

Criminal Trial

Miss N. Munsaka for the state
E. Mashindi for the accused

BERE J: The accused was arraigned and brought to court on a charge of murder in terms of section 47 (1) of the Criminal Law Codification and Reform Act [Chapter 9:23]. When called upon to plead the accused pleaded guilty to culpable homicide as informed by section 49 of the Criminal Law Codification and Reform Act [Chapter 9:23]. The state accepted the limited plea on the strength of a joint statement of agreed facts which was to the following effect.

- “1. The deceased was aged 15 years at the time he met his death and he used to reside at Thabani Ndlovu’s homestead, Sizinke village, Lusulu, Lupane.
2. The accused was aged 15 years at the time of the commission of the offence and he resides at Priscilla Ndlovu’s homestead Sizinke village, Lusulu, Lupane.
3. The deceased and accused were cousin brothers.
4. On the 1st of May 2015 at around 2000 hours the deceased was in the company of Tafara Ndlovu, Brightwell Ndlovu and Bhokinkosi Ndlovu in the bush gathering honey from a bee hive.
5. They were joined by the accused, Zwelonke Ndlovu and Clement Ndlovu.
6. Tafara Ndlovu and Clement Ndlovu began to quarrel over an unresolved dispute from the previous week.
7. Accused held Tafara Ndlovu by the collar and warned him not to assault Clemence Ndlovu.
8. Deceased intervened advising accused to solve the matter amicably.
9. Accused threatened to assault deceased with a homemade axe he was holding but was disarmed by Brightwell Ndlovu.
10. Accused snatched another axe from Clemence Ndlovu and struck the deceased once on the rib cage below the left armpit using the back blunt side of the axe.
11. Deceased fell down and was unconscious.

12. Elisa Ndlovu was called and she tried to render first aid but realised that deceased had died.
13. The accused person pleads not guilty to murder but guilty to culpable homicide in that he negligently caused the death of the deceased.”

Following upon the submission of the post mortem report, exhibit I, the accused’s birth certificate, exhibit 2 and the murder weapon exhibit 3, the court pronounced the accused not guilty of murder and proceeded to return a verdict of culpable homicide and went on to consider the appropriate sentence for the accused.

Sentence

The accused has been convicted of a fairly serious offence in this matter.

In aggravation, the court notes with extreme concern that the accused negligently cut short the life of the deceased in sad and disturbing circumstances.

What makes the accused’s conduct highly reprehensible is the fact that when the accused exhibited his aggressive conduct towards one of his colleagues, Tafara Ndlovu by threatening to assault him over a minor disagreement, it was the deceased who intervened and restrained him from doing so.

When the accused turned his anger against the deceased by threatening to strike him with an axe the accused was disarmed by Brightwell Ndlovu. But alas! The accused did not accept the responsible gesture demonstrated by his colleague. He instead chose to be intransigent and demonstrated his resolve to fatally injure the deceased by snatching another axe which turned out to be the murder weapon.

This was an unprovoked assault which was brought about by the evidently bullying attitude of the accused person.

Although this was a single strike, the weapon used was dangerous. Axes are never meant to be used against fellow humans. A young life was needlessly lost and the pain that the accused has caused to the deceased's family cannot be under-estimated.

In mitigation the court notes the following factors; although this offence is a heinous one, the accused is a youthful first offender aged 15 and was evidently very emotional and remorseful about his conduct. He regretted his conduct which resulted in the untimely death of the deceased.

The probation officer's report suggests that this offence occurred spontaneously with no traces of premeditation. It was out of character with the accused person.

Above all, the report also speaks to the accused being a young man who is capable of being reformed if put in an appropriate institution where counseling and correctional measures can be undertaken. The court has largely been guided by the recommendations made by the probation officer. It is hoped the accused, given his youthfulness will eventually end up as a more youthful member of society.

Both counsels were in agreement that this was a case where the court could also lean on the guidelines spelt out in the African Charter of the Rights and Welfare of Children in assessing what may be an appropriate sentence.

In accordance with section 351 (2) of the Criminal Procedure and Evidence Act Chapter 9:07 it is ordered that the accused be sentenced as follows:

That the accused be taken before Lupane Magistrates' Court be dealt with in terms of the Children's Act [Chapter 5:06].