

THE STATE**Versus****LANDELANI TSHUMA**

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J with Assessors Mr Matemba and Mrs Baye
GWERU CIRCUIT COURT 24 MAY 2017

Criminal Trial

T. Mupariwa for the state
P. Rajah for the accused

MAKONESE J: The accused is facing a charge of murder. It being alleged that on the 1st of April 2011 and at village Simboti, Chief Nemangwe, Gokwe, the accused wrongfully and unlawfully caused the death of Gaboyi Gabi a male adult aged 71 years by striking him with a log and axe on the head, leg and right arm several times. The accused pleads not guilty to the charge of murder but tenders a plea of guilty with respect to the lesser charge of culpable homicide. The state accepts the limited plea. The brief facts of this matter as contained in the statement of agreed facts (exhibit 1) are that on the 1st of April 2011 and at about 1500 hours the accused's pig strayed into the deceased's homestead. At that stage the pig grunted and the accused heard it resulting in him approaching the deceased's home. A misunderstanding arose leading to the deceased and accused trading harsh words. The deceased picked up an axe (exhibit 5) and struck the accused. The blows landed on the accused's chin, chest and forearm. The accused retaliated by arming himself with a log (exhibit 4) which he used to strike the deceased on the head once. The deceased fell to the ground as a result of the blow. The accused then took the deceased's axe and struck him on the leg and arm. One Simboti Chiyamuri arrived at the scene and restrained the accused from further assaulting the deceased. The deceased was attended at Gokwe District Hospital and died that same day as a result of injuries inflicted by the accused.

The state tendered a post mortem report compiled by Dr Mapanga following an examination of the remains of the deceased. The post mortem report was marked as exhibit 2 and lists the cause of death as (a) fractured skull; (b) two deep lacerations on the parietal bone (right side); (c) laceration on the right arm; (d) fractured femur/deep cut above knee.

The proximate cause of death is head injury.

On the basis of the evidence presented before this court we are satisfied that the accused did not intend to bring about the death of the deceased. The accused, however acted negligently in causing the death of the deceased. It is clear that the limited plea was properly conceded. The accused is found not guilty and acquitted on the charge of murder. Accused is found guilty of culpable homicide.

Sentence

The accused has been convicted of a very serious offence. The accused has been convicted of culpable homicide arising from the death of a 71 year old male adult. This offence ordinarily would attract a term of imprisonment. The courts frown upon persons who resort to self help leading to the loss of human life. The court, however, would be failing in its duty, by not taking into account the weighty mitigating features of this case. The accused is first offender. He has pleaded guilty and has shown his remorse and contrition. The accused indicates that he paid compensation to the deceased's relatives in the form of 8 head of cattle, 2 donkeys, 3 goats and a scorch cart. This court does not sanction the payment of such compensation but nonetheless the court must consider it as a weighty mitigating factor. The imposition of a custodial sentence would be wholly inappropriate in the particular circumstances of this case if one has regard to the inordinate delay that has been occasioned in this matter. Accused has had to wait for 6 years before the conclusion of this matter. The accused would have served and completed a prison sentence had he been tried earlier. In addition the accused has spent a cumulative period of 4 months in remand prison before trial and after his indictment. His experience in prison must have had a lasting effect on him as he waited for his trial

anxiously. As has been stated by these courts on several occasions, the sentence imposed on convicted persons must be just and fair. The interests of justice must be served in all aspects surrounding the commission of this offence. It would not be proper for this court to fail to observe that the deceased was the initial aggressor. The deceased not only threatened the accused with an axe, but delivered a blow to the accused. The accused was lucky not to have sustained life threatening injuries. It is this court's view that the following would be an appropriate sentence:

“Accused is to pay a fine of \$100,00 in default of payment 12 months imprisonment. In addition 5 years imprisonment wholly suspended for 5 years on condition accused is not within that period convicted of an offence involving violence and for which the accused is sentenced to a term of imprisonment without the option of a fine.”

The National Prosecuting Authority, state's legal practitioners
Gonese & Partners, accused's legal practitioners