

THE STATE

And

RONATI NCUBE

IN THE HIGH COURT OF ZIMBABWE
MIOYO J with Mr P. Damba and Mr E. Mashingaidze
BULAWAYO 13 & 14 OCTOBER 2020

Criminal Trial

B. Maphosa for the state
Miss D. Ncube, for the accused

MOYO J: The accused faces a charge of murder. It being alleged that on 25th of March 2017 and at house number 386 Nguboyenja, Bulawayo, the accused struck Ellen Sibanda with a stone holding it once on the mouth and once on the right eye. Deceased later died as a result of the injuries sustained in that assault. Accused pleaded not guilty to the charge of murder but instead offered a limited plea to the charge of culpable homicide.

The state counsel accepted the limited plea and the parties drew a statement of agreed facts which was tendered and marked exhibit 1 it reads as follows:

The post mortem report was also tendered and marked exhibit 3 it give the cause of death as subdural haematoma, head trauma (assault) from the facts before us, we are satisfied that the correct verdict in the circumstances is culpable and it is for that reason that the accused person is acquitted on the murder charge but is convicted on the lesser charge of culpable.

Statement of agreed facts

1. The accused was aged 52 years at the time of the commission of the offence. The deceased was aged 63 years at the time she met her death. The accused and deceased were siblings.
2. On the 25th of March 2017 and at around 20:30 hours, the accused who was drunk had a misunderstanding with Tafadzwa Mutomba. The accused armed himself with a concrete

stone and before he could assault Tafadzwa with it, the deceased intervened and tried to disarm accused who was holding that stone. In the process of struggling for the possession of the stone the accused hit the deceased with that stone once on the mouth and once on top of her eye.

3. When the misunderstanding was over both the accused and deceased left their house and went together for a beer drink. The deceased did not seek any medical treatment treating the injuries as minor. They did not report the matter to the police.
4. The following day being the 26th of March 2017 and at around 1400 hours the deceased complained of pains as a result of the previous day's assault by the accused. She was taken to Mpilo Hospital where she later died the same day at around 1700 hours.
5. The post mortem report was compiled by Doctor I. Jekeny who said the cause of death was:
 - (a) Subdural haematoma
 - (b) Head trauma
6. A report was made to the police after the death of the deceased.
7. The concrete stone used in the commission of the offence was recovered.
8. The accused will state that his actions were negligent when he assaulted the deceased. Further, he had no intention of killing the deceased.
9. Whereof the accused will plead not guilty to murder but guilty to a lesser charge of culpable homicide.

Sentence

The accused is convicted of culpable homicide. He is a 1st offender. He pleaded guilty to the appropriate charge. He is a sole bread winner. He was drunk at the material time. He lost his own sibling in the process. He has waited for justice for 3 years. However, a life has been unnecessarily lost in the most unfortunate of circumstances. From the facts before us however, it appears that accused was not engaged in a fight with the deceased. The deceased was struck by the stone as they struggled for its possession per the statement of agreed facts. This makes the strike more of an accident than an assault. Again, the degree of force used although not

ascertained, can be inferred from the conduct of the parties who themselves felt that there was no danger to the deceased's life and in fact went for a beer drink after that. If one looks at the aspect that this was an accident rather than an intentional assault on the deceased and if one looks at what transpired after the alleged accident, that is, all parties did not foresee any danger, this case then becomes a culpable homicide, that does not fall under the cases where a person intentionally struck another, aiming at a particular point of the body, to inflict harm, but even if it happened during a fight with another person, the strike on the deceased is no more than an accident in the true sense of the word. It then becomes difficult for the court, after accepting that the strike was accidental to impose a custodial sentence. The moral blameworthiness of the accused in the circumstances does not in our view warrant a custodial sentence which is a rigorous form of punishment aimed at reform. It is our considered view that even if accused was wrong in taking the stone to hit the other person and accidentally hit deceased as they struggled for it, one cannot say his moral blameworthiness equals that of a person who intentionally strikes another with a lethal weapon.

This court finds therefore that this is a peculiar case where the assault was more of an accident than an aimed strike.

For these reasons, accused shall be sentenced as follows:

1. The accused shall pay a fine in the sum of \$10 000,00 or in default of payment 2 years imprisonment.
2. In addition, accused is sentenced to 3 years imprisonment wholly suspended for 5 years on condition he is not within that period, convicted of an offence involving violence whereupon conviction he shall be sentenced to imprisonment without the option of a fine.
3. The accused is given time to pay until 16 October 2020.

National Prosecuting Authority, state's legal practitioners
Job Sibanda & Associates, accused's legal practitioners