

THE STATE

Versus

BUTHOKUHLE MPOFU

IN THE HIGH COURT OF ZIMBABWE
KABASA J with Assessors Mr G Maphosa and Mr J Ndubiwa
HWANGE 27 JUNE 2023

Criminal Trial

Mr M Dube, for the state
Mr P. Butshe-Dube, for the accused

KABASA J: You are charged with murder as defined in section 47 of the Criminal Law (Codification and Reform) Act, Chapter 9:23, in that on 23 April 2022 at Stanley Ncube's homestead, Ntuva village Nkayi, you assaulted the deceased with switches all over the body and a beer bottle on the head intending to kill him or realising that there was a real risk or possibility that your conduct may cause death but continued nonetheless.

You pleaded not guilty to the charge of murder but tendered a plea of guilty to culpable homicide. The state accepted the limited plea.

A statement of agreed facts was produced and marked Annexure A. The facts are to the effect that you were 32 whilst the deceased was 25 years old at the time of the commission of the offence. The deceased was your close friend.

On 23 April 2022 you were together with the deceased drinking beer until you decided to go to your brother in law's homestead. In your company was Manford Sibanda. Your brother-in-law was not home but arrived around 0230 hours. On arrival he objected to the deceased's presence as he accused him of having proposed love to both his twin step-daughters who are young persons at law. He asked that the deceased leave. You told the deceased to leave and as he left he insulted you. He fled but you pursued him and assaulted him with switches and a beer bottle before tying him to a pole where he remained until around 0600 hours. On realising that he was cold and unconscious you placed him by the fire. He was later ferried to hospital where he died on 25 April 2022.

A post-mortem was subsequently conducted and the pathologist gave the cause of death as traumatic shock as a result of an assault.

The post-mortem report, the 3 switches and the broken pieces of the bottle were produced and marked exhibit 1, 2, 3, 4, 5 respectively.

From these facts it was established that the deceased died as a result of the injuries he sustained after you and Manford assaulted him. You therefore caused his death.

The issue is whether you set out to cause the deceased's death or you realised the real risk or possibility that your conduct may cause death but proceeded nonetheless.

You did not take kindly to the insult which was derogatory in nature. The provocation in our view was such that you did not have an intention to kill. Section 239 (1) (a) of the Criminal Law Code states that in such circumstances a person who commits the offence of "murder" shall be guilty of culpable homicide.

We are therefore satisfied the state's acceptance of the limited plea was informed by a proper appreciation of the law and the facts.

You are accordingly found not guilty of murder but guilty of culpable homicide.

Sentence

You are a first offender who pleaded guilty thereby showing contrition. The deceased was a close friend and his death will haunt you for the rest of your life. You assisted by meeting the funeral expenses aided by your employer. You also paid 3 beasts as a form of appeasement.

You are married with 2 minor children. You were employed by the Zimbabwe National Army and you are likely to lose employment. You also paid the deceased's hospital bills.

Aggravating is the fact that a life was needlessly lost. Life is precious and people should respect the sanctity of life.

The assault on the deceased was prolonged and you exposed him to the cold for hours on end whilst restrained so that he could not move and seek warmth even at the fire where you were.

The sentence to be meted out must however reflect the circumstances of this case. We were referred to cases of a similar nature, where the accused caused the death of the deceased through assault. (*S v Ngwenya* HB 73-2018, *S v Makumbe* HB 21-07, *S v Ndlovu* HB 206/2017) Sentences ranging from 2 – 5 years with part suspended were imposed.

We are persuaded to follow the same line of sentencing.

You are accordingly sentenced to 4 years imprisonment of which 1½ years is suspended for 5 years on condition you do not within that period commit an offence of which an assault on the person of another is an element and for which upon conviction you are sentenced to a term of imprisonment without the option of a fine.

Effective: 2½ years imprisonment

National Prosecuting Authority, state's legal practitioners
Mathonsi Ncube Law Chambers, accused's legal practitioners