

THE STATE

Versus

DEVIOUS HOVE

IN THE HIGH COURT OF ZIMBABWE
KABASA J with Assessors Mrs C Baye and Mr E. Shumba
GWERU 22 JANUARY 2024

Criminal Trial

Ms L C Mamombe, for the state
Ms S. Ncube, for the accused

KABASA J: You appear before us on a charge of murder to which you pleaded not guilty. You tendered a plea of guilty to culpable homicide which the state accepted.

The statement of agreed facts, post-mortem report and the two pieces of a wooden plank were subsequently produced. The plank is what was used to assault the now deceased.

The statement of agreed facts revealed that on 10 August 2020 you were attending a working party with the now deceased. You had an argument over a cup of traditional beer which you were drinking. As a result you took a sharp edged plank and struck the now deceased once on the head. The now deceased succumbed to the injury sustained from the assault. A post-mortem examination conducted on 23 August 2020 gave the cause of death as:-

- a) Subdural haematoma
- b) Head trauma

It is therefore not disputed that you caused the deceased's death. The issue is whether you desired to bring about this death.

The facts show that you reacted to this argument and not that you had set out to cause the deceased's death. You were angry with the deceased who insisted on helping himself to your beer. It can therefore not be said you desired death and set out to achieve that result or

that you realised the real risk or possibility that your conduct may cause death but continued nonetheless resulting in the deceased's death.

You were however negligent. You failed to exercise care and the state's acceptance of the limited plea of culpable homicide is therefore an appreciation of the facts and the law.

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

In assessing an appropriate sentence we considered that you were 47 years old at the time. You pleaded guilty thereby showing contrition and saving time and state resources.

You are employed and the sole breadwinner for your family. You have a wife and 3 children, the youngest is 9 years old. You also look after your deceased brother's three children. You compensated the deceased's family and contributed towards the funeral expenses.

In aggravation we have considered that a life was needlessly lost. No one should lose their life at the hands of another.

It cannot be said there was contributing negligence because an argument over the sharing of a mug of beer cannot amount to one contributing to their demise.

At 50 you are not elderly for us to consider that imprisonment would adversely impact on you than it would to a younger offender. 50 is not old.

The deceased was 65 years old and deserved to be respected given the age difference. He was 18 years your senior and you showed disrespect when you assaulted him.

Your conduct has caused pain to his family and loved ones who lost a father, husband, uncle and brother over a petty issue.

The presumptive penalty is 3 years where there are no aggravating factors but given the weapon you used, the part of the body you struck and the age disparity between the two of you, we have a basis to depart from the presumptive penalty.

The sentence however need not be unduly harsh because you had no evil intent. You were careless. (*R v Richards* 2001 (1) ZLR 129 (S)).

The punishment must fit you the offender, the offence and be fair to society. It must be blended with mercy. (*S v Rabie* 1975 (4) SA 855).

For these reasons you are sentenced to 4 years imprisonment of which 1 ½ years is suspended for 5 years on condition you do not within that period commit an offence of which an assault or violence 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: - 2 ½ years imprisonment

National Prosecuting Authority, state's legal practitioners
MSU Legal Aid Clinic, accused's legal practitioners