

THE STATE

Versus

EMMANUEL MUPARUTSA

IN THE HIGH COURT OF ZIMBABWE
KABASA J with Assessors Mrs C Baye and Mr E. Shumba
GWERU 23 JANUARY 2024

Criminal Trial

Ms C Hungwe, for the state
B. A Chifamba, for the accused

KABASA J: You appear before us on a charge of murder as defined in section 47 (1) of the Criminal Law (Codification and Reform) Act, Chapter 9:23. You pleaded not guilty to the charge but tendered a plea of guilty to the lesser offence of culpable homicide. The state accepted the limited plea.

The statement of agreed facts show the circumstances under which the deceased lost his life. On 4 November 2021 you were at OK Supermarket Gweru, so was the now deceased. You had a misunderstanding which led to a fist fight. You then tried to leave the scene but the 60 year old deceased pursued you and the fight continued. You then picked up a half brick weighing 1, 760 kg and used it to assault the now deceased on the head. He sustained a deep cut and succumbed to that injury.

A post-mortem conducted by Doctor Pesanai gave the cause of death as:-

- (a) Extensive subarachnoid haemorrhage
- (b) Depressed skull fracture
- (c) Assault

You do not deny using a brick to assault the deceased and that you aimed the assault on the head.

The deceased therefore died as a result of injuries you inflicted on him. Did you however intend to kill him or realised that there was a real risk or possibility that your conduct may cause death but continued nonetheless. The circumstances do not show that this is what occurred. The now deceased was the aggressor who would not allow you to leave as he pursued you.

He was however not armed. Your use of a brick which you used several times on the head was therefore not justified. You could have fled and left the now deceased, more so as he was 60 years old and you were an energetic and youthful 29 year old.

By using a brick to assault the deceased on the head you exceeded what one could see as self-defence. By exceeding these bounds the defence is not available to you as a complete defence. It however is available to you as a partial defence reducing murder to culpable homicide.

The state's acceptance of the limited plea is indicative of an appreciation of the facts and the law.

You are therefore convicted of culpable homicide.

In assessing an appropriate sentence we considered the following:-

You are a 32 year old first offender who pleaded guilty. You showed contrition and saved time and resources.

At the time the offence was committed you were 29 years old. After your arrest which was soon after the deceased's death, you have been in pre-trial incarceration. You have therefore spent 3 years 3 months in pre-trial incarceration.

Justice delayed is justice denied. Given the circumstances of this case, had the matter been concluded closer to the time of commission, you would have completed serving your sentence by now.

The deceased was the aggressor. It can be said he was the author of his own demise. This is not to mean we condone what you did.

You were looking after your 99 year old grandmother. Your incarceration must have impacted negatively on her well-being. You were employed and given the time you have

been in pre-trial incarceration, chances are you have since lost that job. In this harsh economic environment that is some form of punishment on its own.

We are not able to say there exists aggravating circumstances in this case justifying a departure from the presumptive penalty as provided in SI 146/23.

In aggravation we considered that:-

A life was unnecessarily lost. Life ought not to be snuffed out by another human being. People ought to respect the sanctity of life.

The use of a half brick on a human being's head is inexcusable as the head is a very vulnerable part of the body. The force used was severe as the doctor noted extensive subarachnoid haemorrhage due to a depressed skull fracture.

That said the sentence must fit you the offender, the offence and be fair to society (*S v Zinn* 1969 (2) SA 527)

You deserve to be treated with some measure of leniency as a first offender (*S v Dhliwayo* 1999 (1) ZLR 229 (H)). You also appear genuinely contrite. It is unlikely that you would repeat this type of offence. You did not subject the deceased to treatment indicative of lack of respect.

Given the circumstances of this case and the slightly over 3 years that you have been in custody, a wholly suspended sentence will meet the justice of this case. The 3 years you would have been sentenced to in 2021 is what we consider appropriate.

You are accordingly sentenced to 3 years imprisonment, the whole of which 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.