

THE STATE
vs
TAFADZWA CHIMUNDA

HIGH COURT OF ZIMBABWE
MAWADZE J.
MASVINGO, 10th May, 2021

Criminal – Sentence

Assessors

1. Mr Chikukwa
2. Mr Mushuku

E. Mbavarira, for the applicant
Ms P. Chimwanda, for respondent

MAWADZE J: The 20 year old first offender was arraigned for murder as defined in s 47(1) of the Criminal Law (Codification and Reform) Act, [Cap 9:23]. However at the commencement of the proceedings both counsel found each other and the matter proceeded on the basis of a statement of agreed facts. The accused was therefore convicted of contravening section 49 of the Criminal Law (Codification and Reform) Act [Cap 9:23] relating to culpable homicide.

The agreed facts are as follows;

The accused and the 34 year old now deceased were half brothers sharing the same father.

On 16 June, 2020 the now deceased who was drunk proceeded to the residence of the accused and his mother at about 1900 hrs. The now deceased wanted to discuss the issue of

farming land left behind by their deceased father. The discussion degenerated into a heated argument and the now deceased hurled vulgar insults at accused's mother. This infuriated the accused who ordered the now deceased to leave and discuss the matter the following day.

The now deceased briefly left but returned armed with a knife. Upon observing this the accused picked a piece of firewood from the fire which he threw at the now deceased hitting the now deceased fatally on the abdomen. The accused then fled. The now deceased complained of severe stomach pain and passed on on 19 June, 2020.

The cause of the now deceased's death as per the post mortem report is;

"blunt abdominal trauma"

Our task in this matter is to assess the appropriate sentence.

The sanctity of human life cannot be over emphasised. Once a life is lost it cannot be retrieved or replaced. It is incumbent upon the courts to send the message clearly that violence can never be the means to resolve any dispute. This court has said times without number that cases of violence leading to loss of life, committed by very young people are worryingly prevalent in Masvingo.

In casu the dispute between the accused and the now deceased was a minor one. Further, the now deceased was drunk. The accused should therefore have avoided further confrontation with the now deceased.

Despite inflicting a single blow it is apparent that severe force was used. The accused was clearly negligent in how he propelled the said piece of firewood as it hit the abdomen with fatal consequences. What aggravates the accused's conduct is that the accused decided to flee without offering any help to the now deceased. The accused's conduct deserves censure.

This court has not lost sight of the fact that the accused was 19 years old at the material time. Indeed youthfulness denotes immaturity and failure to properly weigh the consequences of one's conduct. As a young man the accused should be given the proverbial second chance.

At the material time the accused was an 'A' level student. Due to incarceration for a period of 11 month to date he failed to write his final 'A' level examinations. The accused's future may well have been ruined or negatively affected.

The accused deserves a great measure of leniency as a first offender. The sentence to be imposed should be more rehabilitative rather retributive.

The accused admitted to his errant conduct. He tendered a plea of guilty. Less time and resources were therefore used in prosecuting him. The State witnesses though present were saved the time to testify. The contrition shown by the accused should be rewarded with a lenient sentence. Further, the pre-trial incarceration period of 11 months cannot be ignored.

There are also mitigatory factors surrounding the commission of the offence.

The now deceased was not only drunk but was the aggressor. It is the now deceased who greatly contributed to his demise. The now deceased was abusive to the accused's mother uttering vulgar words and profanities at her. The accused felt duty bound to intervene on the side of his mother.

The now deceased is the one who actually came to accused's residence. The wise counsel by the accused by imploring the now deceased to leave and return the following day while in his sober senses fell on deaf ears. Instead the now deceased briefly left and returned now wielding a knife. The accused prudently took pre-emptive action. A single, albeit fatal blow was delivered.

The stigma now attached to the accused that he has the blood of his half-brother on his hands will forever haunt him. In the eyes of the general public he will be viewed as a murderer.

There is nothing to suggest that the accused is an inherently wicked person. There is therefore no need for this court to punish the accused to the point of breaking him. Instead a proper balance between the mitigatory and aggravating factors should be struck and allow the accused to pick the pieces as it were and be rehabilitated.

In the circumstances the following sentence is appropriate;

“4 years imprisonment of which 2 years is suspended for 5 years on condition the accused does not commit within that period any offence involving the use of violence upon the person of another and/or negligently causing the death of another for which the accused is sentenced to a term of imprisonment without the option of a fine.

Effective Sentence: 2 years imprisonment.”