

THE STATE
versus
WILSON RICHARD MUBURIRWA

HIGH COURT OF ZIMBABWE
MAWADZE J.
MASVINGO, 21 January 2022

Criminal Trial: - Sentence

Assessors

1. Mr Chikukwa
2. Mr Mutomba

Ms M. Mutumhe for the State
Ms E.Y. Zvanaka for the accused

MAWADZE J: The accused was arraigned for murder as defined in s 47(1) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*].

At the commencement of the trial counsel found each other and agreed that the proper charge was culpable homicide as defined in s 49 of the Criminal Law (Codification and Reform) Act, Chapter 9:23]. The matter therefore proceeded on the basis of a statement of agreed facts.

The agreed facts are as follows;

On 21 July, 2021 both the 37 year old accused and the 33 year old deceased Maxwell Vengai were at Mushambanevhu business centre in Bikita drinking beer. The now deceased was apparently more drunk and he approached the accused alleging that the accused was using vulgar language in the presence of the now deceased's wife. An altercation ensued. The two protagonists started pushing each other. In the process the accused fell on top of the now

deceased. The accused was in possession of a homemade pliers in his hands. During that scuffle the now deceased was stabbed with the pliers once on the inguinal area. It is conceded that the accused did not intend to stab the now deceased but acted negligently during the brawl.

Upon realizing that the now deceased had been seriously injured the accused fled from the scene leaving the homemade pair of pliers. However the accused handed himself over to the police the following day at 0600 hrs. Meanwhile the now deceased passed on on the way to Chikuku Clinic, Bikita due to excessive bleeding.

The post mortem by Dr Zimbwa Exhibit 1 reveal the following;

- “1. *Single stab wound in the right inguinal area ± 4cm wide, smooth edges ± 10 cm Deep.*
2. *Catastrophic external hemorrhage*
3. *Intra-abdominal hemorrhage”*

The cause of death is said to be;

- “1. *Hemorrhage shock*
2. *stab wound”*

The said homemade pliers was tendered as Exhibit 2. It has a weight of 1.2 kg and is 27 cm long.

The question of what is the appropriate sentence in the circumstances is within the discretion of the court. This discretion is not exercised capriciously but judicially where a delicate balance should be made between the mitigating and aggravating factors in this case.

Culpable homicide arising from the violent conduct remains a very serious offence which in the absence of very persuasive mitigating factors invariably attracts a custodial sentence. The reason for this is obvious. The court takes a dim view to loss of life albeit negligently. Human blood remains sacred. The duty of the court is to protect life.

Cases of this nature remain quite prevalent in Masvingo where people resort to violent conduct with fatal consequences even from minor disputes. There is need for people to restrain themselves and avoid physical confrontation for minor disputes. The accused should have realized that the now deceased was very drunk and was probably not reasoning properly. The accused should have just walked away despite the apparent provocation. Instead he chose to engage in a brawl with a drunk person while holding a dangerous metal object. A life was unnecessarily lost as a result. It cannot be replaced. The dispute was very minor.

On the other hand this is the accused's first transgression of the law. The accused deserves some measure of leniency.

The accused's personal circumstances call for leniency. He is not employed. His wife and four minor children solely rely on his manual labour. The accused's incarceration would severely prejudice them.

Despite fleeing from the scene the accused came to his senses the following day and handed himself to the police. Thereafter he co-operated with the police.

In court the accused did not waste time. He pleaded guilty and was not keen to raise frivolous defences. A lot of time and resources were saved in prosecuting this case. Due reward should be given to the accused as his plea of guilty contributed to the swift administration of justice.

There is ample evidence that accused is contrite. Besides co-operating with the police and pleading guilty to the charge the accused paid compensation in form of beasts to the deceased's family. The exact number was however not stated. Further the accused's family contributed to the funeral expenses.

It is now a fact that the accused shall forever live with the stigma that he caused the now deceased's death. Society may be unforgiving and may regard him as a "murderer" despite that he was convicted of culpable homicide.

To some extent the now deceased was the author of his demise as he was not only more drunk but was the aggressor.

Despite the lack of intention to cause death the accused should nonetheless be punished for his negligence.

Accordingly the accused is sentenced as follows;

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

Effective sentence is 2 years imprisonment."

National Prosecuting Authority, for the state
Saratoga, Makausi Law Chambers, pro deo counsel for the accused