

THE STATE
versus
CANISO GUDYE

HIGH COURT OF ZIMBABWE
MAWADZE J.
MASVINGO, 3 February, 2022

Criminal Trial: - Sentence

Assessors

1. Mrs Chademana
2. Mr Gweru

E. Mbavarira for the State
J. Ruvengo for the accused

MAWADZE J: The now 34 year old accused was arraigned for the murder of his then 73 year old father 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 in the circumstances is culpable homicide, a permissible verdict. The accused was thus convicted of contravening s 49 of the Criminal Law (Codification and Reform) Act, [*Chapter 9:23*] as per the statement of agreed facts.

The summary of the relevant facts is as follows;

Both the then 32 year old accused and the 73 years old now deceased who are son and father respectively were residents of Mhazo Village, Chief Mazungunye, Bikita. The accused was the eldest surviving child of the now deceased who then had only three surviving children.

Apparently there was a simmering dispute in the family which borders on traditional beliefs and superstition.

The dispute was centred on the allegation that the now deceased had misused some beasts belonging to the accused's late grandmother. As a result some misfortunes had befallen the family. After consulting some traditional healers it was said the now deceased was to compensate the said late grandmother's relatives by paying some unspecified amount of money in order to appease the avenging spirit of the said late grandmother of the accused. This problem had started in 2006 and the now deceased was not forthcoming.

On the fateful day on 30 September, 2020 the accused decided to confront his father the now deceased over the issue. The now deceased was at Cherekedzai homestead in Chokufa Village, Chief Mazungunye, Bikita where there was a traditional beer drink.

The accused arrived at the said beer drink at about 14.00 hrs. Upon arrival the accused demanded the said money from the now deceased. The now deceased had only US\$5 on his possession. The accused would have none of that. The accused demanded that the now deceased should find a reasonable amount of money. The accused force marched the now deceased to the now deceased's homestead to be given money. The fearful now deceased complied.

Along the way the incensed accused plucked a switch from a guava tree weighing 190g and 107cm long. The accused also took a log weighing 560g and 120cm long. The accused used the said weapons to assault the defenceless now deceased several times all over the body.

The accused's mother Veronica Chikwevo who is the now deceased's wife got wind of what was happening and rushed to the scene some 400 m from the now deceased's homestead. She found the now deceased unable to talk and could only gesture to Veronica Chikwevo to give the accused some money.

The now deceased was vomiting blood. He collapsed and had to be ferried home in a wheelbarrow. Tragically the now deceased passed on the same day at about 1900 hrs.

The post mortem report shows that the cause of the now deceased's death was "blunt abdominal trauma."

In arriving at the appropriate sentence we are enjoined to weigh both the mitigating and aggravating factors in this case.

The offence of culpable homicide arising from violent conduct like *in casu* remains a very serious offence. The sanctity of life cannot be over emphasized. Once a life is lost it cannot be replaced. The cardinal responsibility of the court is to protect life.

It is saddening to note that the now deceased was in the afternoon of his life at 73 years of age. He posed no danger to the accused and could not even defend himself. The accused is visibly well built young man whose physical stature resembles the modern day WWE wrestlers. It is disheartening that the accused decided to physical harm this frail 73 year old man.

The degree of force the accused exerted was very high. The post mortem report shows the now deceased bled internally, was vomiting blood and could neither talk nor walk after the assault. He passed on few hours later.

The now deceased is accused's father. It is taboo in our African culture for one to chastise or assault his or her own father. It matters not how much the accused felt aggrieved or whatever the reason was. The lack of respect the accused showed to his father is shocking. The log - exhibit 2 which the accused used showed his callousness.

Violent conduct will never resolve disputes. Instead it compounds the problem. *In casu* the now deceased can now not even help to resolve the said problem as he is deceased. The accused himself is now facing a long jail term. In short nothing has been resolved by accused's misguided and violent conduct.

In mitigation we have considered that the accused's two minor children and his wife would be greatly prejudiced by his incarceration. They survived on his manual labour.

The accused deserves leniency as he pleaded guilty to the charge. Credit should be given to him for not wasting time and resources. This matter has been finalized in a very short time. The accused's mother Veronica who is deceased's wife and a state witness was saved the trauma to face her son the accused giving evidence in the matter involving the demise of her husband accused's father.

The accused shall forever live with the stigma, trauma and shame that he had the blood of his father on his hands. The accused's siblings, relatives and at society at large may not forgive him for such conduct. This will forever haunt the accused.

The accused has been in prison since the time the now deceased passed on. The pre-trial incarceration period is about 1 year and 4 months.

There is no doubt that the accused who is a first offender is genuinely contrite. His demeanour in the dock is self-evident.

The accused labored under the wrong and misguided view that he had the right to force his father to act in a particular manner. The court is alive that accused lacked the intention to kill. He is therefore being punished for his negligence or reckless conduct.

The accused's moral blameworthiness is high. The court should show its abhorrence or disdain for such conduct. An exemplary and deterrent sentence is called for if we are to preserve the moral values of our society.

The following sentence would therefore meet the justice of this case;

*“7 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 or involving the negligent cause of the death of another through violent conduct and for which the accused is sentenced to a term of imprisonment without the option of a fine.
Effective sentence is 5 years imprisonment.”*

*National Prosecuting Authority, counsel for the state
Ruvengo, Maboke & Company pro deo counsel for the accused*