

THE STATE
versus
X (JUVENILE)

HIGH COURT OF ZIMBABWE
MAWADZE J
MASVINGO, 20 July 2023

Assessors 1. Mr Nish
2. Mr Chikukwa

Criminal Trial - Sentence

Ms M Mutumhe, for the state

Ms S Moffat, for the accused

MAWADZE J: The now 16 years old male juvenile was arraigned for the murder of his 48-year-old paternal uncle who was in *loco parentis* to the accused.

At the commencement of the trial both counsel found each other and agreed that culpable homicide as defined in section 49 of the Criminal Law [Codification and Reform] Act [Chapter 9:23] rather than contravening section 47 (1) of the same Act [Chapter 9:23] which relates to murder is the appropriate charge. Indeed, the facts support that position.

The background facts are as follows;

At the material time on 12 November 2021 the accused was 14 years. He is now 16 years old. The accused's parents divorced when he was very young. His father was deceased and his mother moved on and entered into another marriage. The accused was left in the custody of his paternal uncle the now deceased Bernard Mukumba. After the commission of the offence the

accused was taken by a paternal aunt who stays in Kadoma. At the material time the accused was in Form 2 staying in Gutu, Masvingo.

The facts giving rise to this tragic event is that on 12 November 2021 in Ndisenge Village Chief Munyikwa, Gutu, Masvingo the accused was playing football with other young boys including deceased's child Y. In the process the accused taunted Y (who is much younger to the accused) saying he was HIV positive because of his thin and frail looking stature. This angered Y who hit the accused with a stick. The accused hit back with open hands and bare feet several times all over the body causing Y to bleed from the nose. Y left the scene and met his father Bernard Mukumba the now deceased to whom he made a report of the assault perpetrated on him by the accused. The now deceased would have none of it and he confronted the accused at home. The accused in turn picked a frame and threw it at the now deceased but missed. The accused then picked a piece of a farm brick and hit the now deceased with it on the chest. The now deceased /was fatally injured. He fell down bleeding from the nose and vomiting blood. Thereafter the now deceased fell unconscious and was ferried to Masvingo Provincial hospital where he was pronounced dead. The piece of the farm brick as per Exhibit 2 weighs 960g and was 13cm long.

The post mortem report Exhibit 1 mortem report indicates the following injuries on the now deceased;

- "1. Bruising of chest with large haematoma between the left and right pectoral muscles.
2. Crepitus of ribs on the left upper chest."

The cause of death is said to be "*respiratory failure* " caused by "*blunt chest trauma*,"

There is no doubt that the accused committed a very serious offence. A life was needlessly lost as a result of the accused's violent and negligent conduct. The sanctity of human life can not be overlooked or ever emphasised.

Cases of loss of life through violent conduct remain worryingly prevalent. What is even more saddening is such serious offences are being committed by very young people. It is not an easy task for the courts to pronounce an appropriate sentence on such juvenile offenders facing very serious crimes. The delicate balance is always elusive.

The now deceased was in *loco parentis* to the accused. He lost his life at the prime age of 48 years. He has since left a grieving wife, children without a father and probably shell-shocked

relatives. His sole crime was to try a probably chastise the accused who was under his care for the misbehaviour of the accused of assaulting another child. This unfortunate incident could have been avoided had the accused acted with restraint.

The court is baffled as to why the accused, a child, reacted in such a violent manner upon being confronted by a person much older to him and whom he regarded as a father. Probably the reason for this is captured in Exhibit 5 the Probation officer's report which gives useful insight into the accused's upbringing and his childhood alienation. Be that as it may it is taboo for the accused to resist chastisement in that manner which smacks of total disrespect of his guardian. It remains shocking that a mere 14-year-old boy would decide to fight a 48-year-old paternal uncle.

The accused should be made to understand that such criminal conduct has dire consequences.

Having said that the court mindful that the accused is a juvenile offender in conflict with the Criminal Law. He can not be treated as an adult unless where he is an unrepentant recidivist beyond redemption and rehabilitation.

The accused was honest enough to admit to his wrong doing by pleading guilty.

This is the accused's first brush with the law. He can not be punished in a manner which exposes him to adult hardened criminals.

The most mitigatory factor is the accused's age. At the material he was 14 years old and he is now 16 years old. He therefore falls into that category of special offenders. Immaturity is a very determining factor. The accused may not have fully appreciated the consequences of his conduct. The court would be failing in its duty if it condemns such a young person for life.

The court shall incorporate the Probation Officer's report Exhibit 5. It shows amongst other things that the accused is not inherently a wicked person or a truant child.

This case entails some boyish brawl as two children were playing. The now deceased probably did not interfere in an objective and helpful manner. The accused may have rightly felt that the now deceased was taking sides with his son.

The accused delivered one *albeit* fatal blow. The loss of life is unfortunate. At such a tender age the accused will now live with the fact that he took away the life of his paternal uncle. The resultant trauma and ostracization may haunt him for the rest of his life.

The court is enjoined in the circumstances to past a rehabilitative sentence. The family relations should be maintained. The accused should be spared of the harmful effects of imprisonment. One would want to believe that after his arrest and being arraigned before this court has a sobering effect on him. A wholly suspended prison term is therefore in order.

In the result the accused is sentenced as follows;

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

National Prosecuting Authority, counsel for the state

Legal Resources Foundation (Masvingo), pro deo counsel for the accused