

THE STATE
versus
ROBSON CHILANGA
and
SAINI ASIDI

HIGH COURT OF ZIMBABWE
MWAYERA J
MUTARE, 25 September 2018 and 9 October 2018

Criminal Trial

ASSESORS: 1. Mr Mudzingo
2. Mr Magorokosho

J Matsikidze, for the State
N Nhambura, for 1st accused
P Nyakureba, for 2nd accused

MWAYERA J: The matter started off as a murder trial. At the close of State case, parties conferred and agreed that the accused persons' plea to culpable homicide be accepted. A statement of agreed facts outlining common cause aspects was compiled and presented before the court. Having established the genuineness of the plea of guilty to culpable homicide we retained a verdict of guilty to culpable homicide. We were then addressed in mitigation and aggravation by the respective counsels.

Both Mr *Nhambura* and Mr *Nyakureba* addressed us in mitigation as regards the personal circumstances of the two accused persons. Accused 1 is 49 years old, a family man with responsibilities as the family's sole breadwinner. The 2nd accused is 79 years old, has an elderly wife approximately 59 years old to take care of. Both accused pleaded guilty to culpable homicide and such a plea of guilty cannot go unrecognised as it is a sign of regret and genuine penitence of what occurred.

The accused are both first offenders and such will be taken note of by the court as mitigatory. The accused persons have suffered pre-trial incarceration and the trauma that goes with the offence of murder hovering over one's head. Further the accused persons stand convicted of culpable homicide of a blood relation brother and son respectively. They will

both live with the stigma of having killed a close relative. Secondly, the sting and stigma of brother and father having teamed up to cause the death of the other son and brother respectively will forever live in the history and life of the accused persons and their family. In any event society does not know the difference between murder and culpable homicide. Further in mitigation is the fact that both accused had partaken alcohol and were drunk. This drunken state although it does not diminish liability reduces moral blameworthiness because of the diminished appreciation of events.

The counsels cited relevant cases in seeking to assist the court in exercising its sentencing discretion. Sight should however not been lost that the circumstances of each case are pivotal in coming up with an appropriate sentence. As correctly observed by the State counsel Mrs *Matsikidze* and Defence counsels to an extent the offence the accused stand convicted of is serious and calls for a custodial sentence. Domestic violence is rampant and cases occasioning loss of the God given and a constitutionally provided for right to life are on the increase. The court will surely not treat with kid gloves people who voluntarily imbibe liquor and in a drunken stupor act irresponsibly causing loss of life. The accused persons mercilessly assaulted the deceased in the presence of his juvenile daughter. She tried to restrain but the accused ignored. This is certainly in aggravation. That the juvenile 16 year old daughter of the deceased one Lucia Asidi witnessed the callous attack of her father over a cell phone which was available further aggravates the offence. The child and all other relatives will live with the trauma all their life. No amount of remorse and or compensation will bring back the life of the deceased whose life was cut short at a prime age of 44 at the hands of the accused persons.

The 2nd accused's moral blameworthiness is higher than accused 1 given he instigated the whole incident in an irresponsible manner which exhibited immature behaviour. As stated by the witness he was a stress monger and divisionist who did not want to see his children united and happy. In spite of his old age we found no reason why the 2nd accused should be treated differently from the 1st accused on considering sentence. Even going by his demeanour in court, accused 2 is one such irresponsible old member of society who would reign havoc in the community worse off after partaking alcohol.

There is need for the court to send the right signal to the community that physical prowess in a bullying manner is not acceptable. We are alive to the fact that in passing sentence one should consider the offence, seek to match it to the offender and act in the interest of administration of justice, while at the same time tempering justice with mercy. It is

our considered view that imprisonment with a portion suspended will meet the justice of the case.

Each accused is sentenced as follows: 6 years of which 2 years imprisonment is suspended for 5 years on condition accused does not within that period commit any offence involving the use of violence on the person of another for which he is sentenced to imprisonment without the option of a fine.

National Prosecuting Authority, State's legal practitioners
Mugadza Chinzamba & Partners, 1st accused's legal practitioners
Maunga Maanda & Associates, 2nd accused legal practitioners