

THE STATE  
versus  
CLIFF CHURU

HIGH COURT OF ZIMBABWE  
BACHI MZAWAZI J  
CHINHOYI, 19 to 20 February 2024.

Assessors: *Mrs. Mawoneke*  
*Mr. Kamanga*

### **Criminal Trial**

*Mr. R. Nikisi*, for the State  
*Mr. P. Mazvazva*, for the Accused

BACHI MZAWAZI J: The accused person Cliff Churu was arrested and arraigned for the murder of his colleague and house mate Richmore Gomo. A statement of agreed facts was tendered as the counsels from both sides had plea bargained for a lesser charge of culpable homicide. The court found it proper as firstly the State is *dominus litus* in the sense that if its evidence cannot sustain a conviction in the main charge a plea-bargaining route may be the best course of action.

Following, that all the necessary documentary evidence was tendered into evidence by consent. A verdict of culpable homicide was returned. The cause of death was stated by the autopsy as intracranial bleeding due to skull fracture.

The summarized facts as borne by the statement of agreed facts is that the deceased and the accused had been friends for some time. The deceased had no fixed home, he lived a nomadic life in search of part time jobs. The accused who shared a family home with his mother and siblings offered the deceased a place to stay. They had in common their perennial search and offer of part time services.

It is during one of those stints of part time jobs that, Nicolas July missed his turkey eggs. Upon confronting the two at a party where they were imbibing alcohol, they pointed fingers at one another. This led to a brawl where the accused was overpowered by the deceased who was much younger. Accused then picked a brick and struck the deceased once on the head thereby knocking him unconscious. The deceased was resuscitated and they both found their way to their shared accommodation. It is alleged that the deceased then succumbed to the head blow after the accused had tried to render some assistance thinking it was mere cold. The offence took place at Plumstead Compound, Barket on the 26<sup>th</sup> of July 2022.

From the record, the recorded evidence of the State witnesses all seem to suggest that the accused and the deceased were at the same drinking place when the incident took place. However, the accused person's confirmed warned and cautioned statement which is supported by his oral evidence in the sentencing enquiry portrays a different picture. In his own words, accused stated to the police that he heard a rumor that he was implicated in the egg theft. This led him to approach the deceased, confront him and a fist fight ensued. This comparison is necessary in that the court is not privy to the exhibits, in particular the warned and cautioned statement until it is produced in court. In stated cases that is done after the statement of agreed facts has already been produced.

The stated facts painted a picture of beer drinking buddies whose actions and reactions were largely influenced by their consumption of alcohol. This is not reflected by the accused's own admissions as embodied in the confirmed warned and cautioned statement. He was not drunk when he accosted the deceased. The theft aspersions filtered to his ears as gossip and not from its original source. He charged in anger at the deceased in a retaliatory mood. This analogy has a bearing not only to the

mental state of the accused but on the determination of the appropriate sentence.

Nevertheless, accused on the basis of the agreed facts has already been convicted of culpable homicide. That is negligently causing the death of the accused with reasonable foreseeability that death will be occasioned. As such, our analysis will zero on the degree of blameworthiness of the accused in the whole scenario. The accused person is now 49 years. He was 48 years at the time of the commission of the offence. He is a father of 6 children but still stays with his mother. He has no savings as he survives from hand to mouth on piece time jobs.

In his favour is the fact that, he is not inherently a bad person. He looks unsophisticated and of below average intelligence. He acted as a good Samaritan by offering the accused shelter for close to a year. There is no record of violence between them during the duration of their stay together. Though accused's mother, attested that both accused and the deceased used to loose control of their senses after an intake of beer but never resorted to violence. The court also learnt that the accused's family though of little means assisted in the funeral by purchasing a coffin. Further, negotiations as regards traditional reparations were commenced but not completed between the two families.

In aggravation, the accused, failed to restrain himself, that is to exercise self-control. He used a brick, to strike the most delicate and vulnerable part of the human torso housing the brain and major central nervous.

The deceased's young family lost a bread winner and disintegrated. The deceased's wife deserted her 6 minor children with their paternal relatives in search of a livelihood elsewhere. The deceased's brother informed the court that they are struggling to fend for the children in the

absence of their father. The deceased was aged 32 years at the time of his death.

In assessing the appropriate sentence, a balance has to be struck between the interests of the administration of justice and those of the victim and the offender. Life is sacrosanct. Only God gives life. It is he who should terminate it. The rate at which lives are lost at beer drinking places over very trivial issues is ever increasing at an alarming rate. Traditional values should be restored as it is clear that social disintegration has brought along several unrestrained vices. Dispute resolution mechanisms should be employed especially in some sects in society such as resettlement areas and compounds.

In its submissions the State presented by Mr. Nikisi, advocated for a stiffer penalty being guided by the presumptive sentence which is five years in terms S.I 146/24. It relied on the cases of *S-v-Karonga HH 604/2017* where the accused was sentenced to six years with three years suspended and three years effective. See *S-v-Inyesa HH 183/2016*.

On the other hand, Mr. Mazvazva for the defence urges the court to take into account that the accused is a first offender coupled with other mitigatory factors already taken into account. He moves for a 3 year sentence with half of it suspended. In support of his averment, Mr. Mazvazva cited the cases of *S-v-Francis Mariga HB 31-2020*, *S-v-Mdungu & Anor HMA 33-2018* amongst others.

On the final analysis, each case stands on its merits. The mitigatory factors to a certain extent outweigh the aggravatory features. Accused is forever stigmatized and haunted by the blood he spilled. No amount of money or any prison term can bring back the life that has been lost.

Taking into account the presumptive sentence as a guide and first port of call and being swayed by the case of *S-v-Karonga* as cited by Mr. Nikisi, the court is of the view that a custodial term is appropriate.

Deterrent should play a major role given the rampant killings in society. Any other penalty will trivialize the offence and send a wrong signal to society and the community where this offence was committed.

Accordingly, accused person is acquitted of murder. He is found guilty of culpable homicide.

He is sentenced to 6 years imprisonment, 3 years is suspended for 5 years on good behavior. He is to serve an effective 3 years imprisonment.

*Legal Aid Directorate*, for the Accused.

*National Prosecuting Authority*, for the State.