

**THE STATE**

**Versus**

**SIMBARASHE SIBANDA**

IN THE HIGH COURT OF ZIMBABWE  
KABASA J with Assessors Mr G Maphosa and Mr J Ndubiwa  
HWANGE 27 JUNE 2023

**Criminal Trial**

*Mrs M Cheda*, for the state  
*Ms W Makorokoto*, for the accused

**KABASA J:** You are charged with the crime of murder as defined in section 47 of the Criminal Law (Codification and Reform) Act, Chapter 9:23. It being alleged that on 10 September 2022 and at Donga football ground, Donga village, Chief Sikalenge, Binga, you caused the death of Planner Munenge by assaulting him with a brick once on the head intending to kill him or realising that there was a real risk or possibility that your conduct may cause death but continued nonetheless.

You pleaded not guilty to the charge but tendered a plea of guilty to the lesser offence of culpable homicide which the state accepted.

A statement of agreed facts was then produced and marked Annexure 'A'. These facts are to the effect that as at 10 September 2022 when the offence was committed you were 23 years old whilst the deceased was 22. You were attending a soccer tournament which was to end the following day. You decided to sleep at the ground until the following day, so did the deceased.

The deceased then insulted you as you were seated around a fire and said you were mad. This was the second time the deceased had said that to you. You angrily retorted that you were not mad whereupon the deceased assaulted you with a clenched fist. You retaliated and the two of you fought. You then picked a brick which you threw at the deceased and it struck him on the head. He sustained a head injury from which he succumbed.

On 12 September 2022 a pathologist examined the deceased's body and concluded that his death was as a result of:-

Encephalic contusion

Cranial trauma

The post-mortem and the brick you used were produced and marked exhibit 1 and 2 respectively. The brick is 14 cm in length, 9 cm width and 2,220 kg in weight.

From these facts it was not disputed that it was because of the assault perpetrated by you that the deceased met his death.

The issue is whether you set out to kill the deceased or realised the real risk or possibility that your conduct may cause death but continued nonetheless.

Section 239 (1) (a) of the Criminal Law Code provides that:-

“(1) If, after being provoked, a person does or omits to do anything resulting in the death of a person which would be an essential element of the crime of murder if done or omitted, as the case may be, with the intention or realisation referred to in section forty-seven, the person shall be guilty of culpable homicide, if, as a result of the provocation –

(a) he or she does not have the intention or realisation referred to in section forty-seven.”

*In casu* the deceased had repeatedly said you were mad and you retorted that you were not. Instead of relenting the deceased proceeded to assault you. You retaliated and you fought. You then picked up this brick and threw it at the deceased, inflicting the injury which proved fatal.

The circumstances do not show that you set out to kill and achieved that purpose or that you realised the real risk or possibility that your conduct may cause death but proceeded nonetheless.

The state's acceptance of a limited plea to culpable homicide was an appreciation of the facts and the circumstances. You were negligent in causing the deceased's death. What is

blameworthy on your part is the absence of foresight and you ought to have guarded against conduct which led to the deceased's death.

You are accordingly found not guilty of murder but guilty of culpable homicide.

### **Sentence**

In assessing sentence we have considered that you are a first offender who pleaded guilty thereby showing contrition. You were 23 at the time the offence was committed and you are 24 now. You are a youthful offender. You are married with 2 minor children, aged 6 and 6 months old.

You were provoked by the deceased. The deceased's death is however likely to haunt you for the rest of your life. The taking of a human life has psychological effects which can be equated to mental imprisonment.

Aggravating is the fact that a life was lost. The brick you used was lethal and to hit a human being's head is something that cannot be condoned.

Violence is to be abhorred as it never resolves anything.

We have considered the cases referred to us by defence counsel, *S v Matinyenya* HH 204-20, *S v Mutani* HMT 2-18. The sentences imposed therein on a conviction of culpable homicide ranged from 4 – 5 years. The cases involved assaults.

Given your age and the fact that you had been provoked we are persuaded to follow the line of sentencing in the cases referred to us.

You are accordingly sentenced to 4 years imprisonment of which 1 year is suspended for 5 years on condition you do not within that period commit an offence of which an assault on the person of another is an element and for which upon conviction you are sentenced to a term of imprisonment without the option of a fine.

Effective      3 years imprisonment