

THE STATE
versus
MELI MBANO

HIGH COURT OF ZIMBABWE
MAKONESE J
GWERU 19 MAY 2015

Criminal Trial

Mr *T. Mupariwa* for the state
Mr *H. Ndlovu* for the accused

MAKONESE J: The accused is facing a charge of murder. He is aged 18 years. It being alleged that on 10 April 2014 at village Fayabo, Lower Gweru, the accused wrongfully and unlawfully with intent killed and murdered Onismo Moyo a male adult, by striking him once on the head. The accused pleaded not guilty to the charge but instead tendered a limited plea of guilty with respect to culpable homicide. The state acceded to the limited plea. A statement of agreed facts (Exhibit 1) was tendered into the evidence. The brief facts as accepted by both the state and the defence are that on 10 April 2014 at 1000 hours, the deceased was herding cattle in the grazing land, anticipating that accused would take over those duties later that day. When accused arrived he did not take over as expected. He refused. An argument erupted between the deceased and the accused. This argument degenerated into a fist fight. One Ndumiso Moyo intervened in a bid to stop the fight but the accused and deceased continued trading insults. The deceased then confronted the accused and slapped him once on the cheek with an open hand. The accused got hold of a knobkerrie and struck the deceased on the head once. The deceased left to go home but on the way complained of dizziness. He collapsed and subsequently died. The accused who surrendered himself to the police was later arrested. The accused accepts that he caused the death of the deceased negligently. He did not intend to kill the deceased.

The state then tendered Exhibit B2, the knobkerrie. The dimensions of this weapon are: measured weight 166 grams, length 47 cm, circumference of the head 15cm.

The last Exhibit 3 is the Post Mortem Report compiled by Dr Zimucha. The cause of death as reflected in this report is:

(a) Severe head injury, trauma on skull (right occipito temporal region).

The other observations were a depressed skull fracture on right occipito temporal region, nose bleeding, large haematoma on right occipito – temporal region.

We are satisfied that the limited plea of culpable homicide has been properly conceded by the state. The accused clearly used excessive force in striking the deceased on the head and negligently caused his death. The accused is accordingly found guilty of culpable homicide. Accused is acquitted of murder.

Sentence

In assessing sentence the court shall have regard to all the mitigating features of the case as outlined by defence counsel. The court shall have particular regard to the youthfulness of the accused. He was aged 17 years at the time of the commission of the offence. He was not mature and possibly acted hastily and at the spur of the moment. However, in most cases of this nature, the crimes are not committed after careful planning. The accused's moral blameworthiness is measured on the nature of his response and reaction to a given set of circumstances. The accused and the deceased had a minor dispute. There was provocation on the part of the accused. Had it not been for that provocation the situation might have been different. The court takes into cognizance that accused has shown a great deal of contrition and remorse. He has pleaded guilty and has not sought to absolve himself of liability. The sentence imposed must be rehabilitative in nature. The accused is still young and he should reflect on his conduct and correct his mistakes.

It is of critical importance to consider on the other hand the impact of the offence on the victim's family. A young life was needlessly lost. The courts have a duty to guard jealously the sanctity of human life. The courts will impose custodial sentences as a mark of displeasure at the

use of violence in resolving petty disputes. The accused who was only 17 years old at the time threw himself at the deep end by using deadly violence to cause the death of another human being. The court must however, strive to strike a balance between the interests of justice and those of the accused person. A sentence of community service in this case would tend to trivialize the offence and the public will lose faith in the justice delivery system. The sentence to be imposed in this case must be just and fair.

In the result accused is sentenced as follows:

“6 years imprisonment of which 3 years is suspended for 5 years on condition accused is not within that period convicted of any offence of which violence is an element and for which he is sentenced to imprisonment without the option of a fine.

Effective sentence: **3 years imprisonment”**

*National Prosecuting Authority’s Office, the state’s legal practitioners
Chitere, Chidawanyika and Partners, accused’s legal practitioners*