

THE STATE
versus
ALEXANDER KANYE

HIGH COURT OF ZIMBABWE
MOYO J
GWERU 8 FEBRUARY 2018

Criminal Trial

T Mupariwa for the state
Ms S Ncube for the accused

MOYO J: Accused faces a charge of murder it being alleged that on 29 March 2011, he assaulted Ndumiso Nsingo with the back of an axe causing him to fall down. Ndumiso Nsingo later died from the injuries he sustained in this assault. The accused pleaded not guilty to murder but tendered a limited plea to a lesser charge of culpable homicide. The state counsel accepted this plea. Both the state and the defence drew a statement of agreed facts. It was tendered and marked exhibit 1.

It reads as follows:

1. Alexander Kanye (hereinafter called the accused person) was aged 47 years at the time of commission of the alleged offence. He resided at Village Rungu, Headman Kanda, Chief Malisa, Silobela in the Midlands Province.
2. Ndumiso Nsingo (hereinafter called the deceased) was aged 26 years at the time he met his death. He resided in village Ntobe, Chief Malisa, Silobela.
3. On the 29th of March 2011 and at about 1000 hours, the deceased followed his brother, one Mulungisi Nsingo who had been arrested by the accused, a member of the Neighbourhood Watch Committee, on allegations of assault.
4. The deceased approached the accused and asked him to loosen Mlungisi Nsingo since he had bound him tightly.

5. An argument then ensued between the two since the accused suspected that the deceased wanted him to set free Mlungisi Nsingo.
6. The deceased person then untied Mlungisi Nsingo's single hand. At that moment the deceased and Mlungisi Nsingo grappled with the accused person since he wanted to tie him up again.
7. The deceased took out a knife and flung it at the accused, injuring him on the hand in the process.
8. The accused person then took out an axe and struck him on the head with the back of an axe causing him to fall down. Apparently Mlungisi Nsingo had already fled.
9. The deceased was then taken to Silobela Hospital where he was later transferred to Kwekwe General Hospital where he passed away on the 31st March 2011.
10. On the 5th of April 2011, Dr A. R. Casteiianos examined the remains of the deceased and concluded that the cause of death was:
 - (a) depressed skull fracture
 - (b) head injury with axe
 - (c) assault
11. The accused accepts the evidence of the state witnesses as well as contents of the post mortem report. The accused denies having the requisite intention in the form of *dolus directus* or *dolus eventualis* to kill the deceased but acknowledges that through his conduct aforesaid he was negligent in causing deceased's death.
12. The state concedes that the accused was negligent in the manner he assaulted the deceased, and therefore accepts accused's plea of culpable homicide.

The post mortem report gives the cause of death as

 - (a) depressed skull fracture,
 - (b) head injury with an axe,
 - (c) assault.

The accused person is accordingly found not guilty of the charge of murder but is accordingly convicted per his plea to the lesser charge of culpable homicide.

Sentence

The accused person is convicted of culpable homicide. He is a first offender. He is aged 54 years old and was 47 years old at the material time. He was a member of the neighbourhood watch committee in the execution of his duties when he met resistance from the deceased. The deceased acted in an appropriate manner on the day in question.

He is a family man who is a peasant farmer. It has taken 7 years to bring him to justice through no fault of his own. He has, for 7 years anxiously awaited his fate. He is 54 years old and is in the afternoon of his life. He is on antiretroviral therapy meaning that his health could deteriorate at any given time.

As a member of the neighbourhood watch committee he was contributing positively to the society around him, assisting in curbing crime. He was accosted by the deceased in the execution of his duties and deceased drew a knife and flung it injuring the accused in the process. The accused must have felt threatened at that moment, he acted at the spur of the moment to defend himself. A life was indeed lost and these courts frown at the loss of life under any circumstances, however, the interests of justice deserve that where there is weighty mitigation as in this case a sentence that befits the offender and the circumstances of the commission of the offence be given. It is for these reasons that the accused due to the weighty mitigation will be sentenced to 3 years imprisonment wholly suspended for 5 years on condition, the accused person, is not within that period convicted of an offence in which violence is an element, whereupon conviction he shall be sentenced to imprisonment without the option of a fine.

National Prosecuting Authority, state's legal practitioners
Gundu and Dube, accused's legal practitioners