

THE STATE

and

SHANAN MAKUNDE

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
GWERU 30 JANUARY 2013

Mr Mupariwa for the state
Mr T Chivasa for the accused

Criminal Trial

MAKONESE J: The accused is facing a charge of murder, it being alleged that on the 13th September 2011 and at Village Balapa, Headman Sikombingo, Chief Sogwala, Lower Gweru, the accused wrongfully and unlawfully and with intent to kill Mkhumbuzi Bhebhe, a male adult aged 20 years, did stab him with a knife on the left side of the chest, realising that there was a real risk that his conduct may cause death, thereby inflicting injuries that resulted in his death.

The accused pleaded not guilty to the charge of murder and tendered a limited plea of culpable homicide. I entered a Not Guilty plea with respect to the charge of murder.

The State and defence tendered with evidence as Exhibit 1 a statement of Agreed Facts. The facts that are common cause in this matter are that on the day in question the accused person who was aged 16 years at the time stabbed the deceased once with a knife blade in the chest thereby causing injuries that led to the death of the deceased.

It is not in dispute that at around 2130 hours the deceased met the accused person along a footpath close to Village Mgatshwa. The accused was coming from a church service in the company of his friends, namely Jimson Ngwenya, Prince Dube, Luckyboy Mtasa, Prosper Mbambo and Admire Sibanda. The deceased indicated to the accused and his friends that he had observed thorns in the mortar he had prepared for moulding bricks and suspected that it was of them who had put the thorns. This resulted in an altercation and the deceased slapped

the accused on the face. The deceased and accused exchanged blows but ultimately deceased overpowered the accused. This resulted in the accused producing a short sharp knife blade which he used to stab the deceased once in the chest. The stab wound led to fatal consequences. The deceased fell down after walking a few metres in the direction of his home. He got up and tried to walk but fell down again. Siphon Mpfu, and Jimson Ngwenya then ferried the deceased to his home. The deceased was unable to speak but was groaning. He later died that same day.

The State led *viva voce* evidence from one witness Admire Sibanda who is a male juvenile from village Mgatshwa in the lower Gweru Area. This witness testified that deceased confronted him and the accused and accused them of placing some thorns on or upon his bricks. This led to a misunderstanding which resulted in the deceased challenging the accused to a fight. The witness said that deceased was the aggressor because he slapped the accused and thereafter there was an exchange of blows. The accused was overpowered because of his youthfulness and apparent smaller built to that of the deceased person. The witness said that after the parties had struggled with each for about 5 minutes he heard deceased saying that accused had stabbed him. He saw deceased falling down and trying to walk towards his home. The deceased fell down and was ferried from the scene of the crime by Siphon Mpfu, Prince Dube and Jimson Ngwenya. The evidence of the witness was straight forward in all material respects and was credible.

The State produced by consent a Post Mortem Report by Dr Sanganayi Pesanai which was tendered as Exhibit 2. The results on the Post Mortem are as follows:

“Cause of death:-

- (1) haemorrhagic shock
- (2) perforated heart
- (3) stab wound
- (4) “Homicide “.

The State further sought and obtained formal admissions of the evidence of the following witnesses in terms of section 314 of the Criminal Procedure and Evidence Act[Chapter 9:07]:-

- (1) Prince Dube
- (2) Jimson Ngwenya
- (3) Luckboy Matwasa
- (4) Sipho Mpofo
- (5) Edgal Mthumbi
- (6) Welcome Ndlovu
- (7) Lazarus Mpande

Having examined the evidence led by the State and the admitted evidence we concluded that the State had properly conceded that limited plea of guilty with respect to culpable Homicide was appropriate.

Accordingly the accused person is found not guilty and acquitted on the charge of murder. The accused is however convicted of culpable homicide in accordance with his limited plea.

Sentence: 6 years imprisonment with labour with 2 years imprisonment suspended on the usual conditions.

*Criminal Division, Attorney General's Office, state's legal practitioners
Chivasa and Associates, accused person's legal practitioner*