

THE STATE
versus
NQOBILE NCUBE

HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 23 JULY 2015

Criminal Trial

Mr W. Mabhaudhi for the state
Mr R. Mahachi for the accused

MAKONESE J: The accused was charged with the crime of murder. It being alleged that on 19 December 2014 at Mabutho Ncube's homestead, Nyambane village, Gulathi area, Matobo, the accused did wrongfully and unlawfully kill and murder Mabutho Ncube a male adult who was aged 35 years, by striking him with a log on the head. The accused pleaded not guilty to the charge and tendered a limited plea of guilty with respect to the lesser charge of culpable homicide. The State accepted the limited plea and tendered a Statement of Agreed facts (Exhibit 1). The brief facts are that on 18 December 2014, the accused and the deceased who were husband and wife had a misunderstanding over the accused's disappearance from their matrimonial home without the deceased's knowledge. The deceased did not accept the accused's explanation. On the following day, on 19 December 2014 around 2000 hours the accused and deceased had a physical confrontation. Harsh words were exchanged between the parties. The accused alleges that the deceased threatened to stab her with a knife. In anger, the accused picked up a log and struck the deceased twice on the head. The accused disappeared from the scene.

On 20 December 2014 accused phoned deceased's brother and informed him that she had fought with deceased and struck him with a log. On 21 December deceased's brother proceeded to deceased's homestead where he found the deceased naked and lying in a pool of blood, dead.

The deceased had succumbed to the injuries sustained in the assault. The post mortem report (Exhibit 2) reveals that the cause of death was:

- (a) subarchnoid haemorrhage
- (b) depressed skull fracture
- (c) blunt force trauma head
- (d) homicide

The pathologist concluded from the examination that the cause of death was consistent with a blunt force trauma with a heavy and blunt object. On external examination the following marks of violence were observed: abrasion on left hand (2cm x 2cm), swelling on hand, blood on the face, neck, shoulders and forearm. Lacerations below right eye (2cm), laceration on left frontal (4cm) and left parietal (6cm).

The court is satisfied that the accused acted negligently in causing the death of the deceased. Accordingly, the accused is acquitted on the charge of murder, and found guilty in respect to culpable homicide.

Mitigation

Counsel for the accused argued that the court must be lenient with the accused. She was aged 29 years at the time. She is now 30 years old. She has some unique family responsibilities in that she has three minor children aged 13 years, 11 years and 8 years respectively. These children are from a previous marriage. The father of the children is now late. She had no children with the deceased. Her children are now in the care and custody of accused's mother who is disabled. The court is urged to take into account that accused is sorry and regrets what happened. She apologized to the family of the deceased for this unfortunate loss of life. The accused did not waste the court's time by putting up false defences which would have necessitated a full trial. The accused has been in remand prison since 27 December 2014 and has thus already been punished for her wrongful conduct. The court must also take into account accused's moral blameworthiness regard being had to the circumstances that led to the fatal assault. Although accused concedes that she exceeded the bounds of self defence it must be noted that she was threatened with a knife by the deceased and that there was a physical confrontation between the parties.

Aggravation

The State argued that a custodial sentence is the only appropriate sentence. The deceased evidently sustained very serious injuries. The accused must have exerted severe force when striking the deceased twice on the head. The courts have always stated and restated that domestic disputes must be resolved amicably and that parties must not resort to violence. The court is urged to uphold and preserve the sanctity of human life.

Reasons for sentence

In arriving at an appropriate sentence the court must always strive to strike a balance between the interests of the accused person and the societal expectations. The court will not impose sentences that tend to bring the administration of justice into disrepute or that lead society to lose faith in the justice delivery system. The sentence must always fit the offender and be appropriate regard being taken of all circumstances surrounding the commission of the offence. The court takes into account all the mitigating features of the case as argued by accused's defence counsel.

There are certain mitigating features of this case which the court may not ignore, namely:

- (a) there was a misunderstanding between the parties.
- (b) The attack on deceased was not a premeditated
- (c) There was evidence of prior violence between the parties and accused was threatened with a knife.
- (d) The accused acted at the spur of the moment and in the heat of frustration.

There are however some aggravating features of the case which show that the moral blameworthiness of the accused is on the high side, namely:

- (a) The injuries reflected on the Post Mortem Report show that deceased sustained serious injuries.
- (b) The accused struck the deceased twice on the head using a log.
- (c) The degree of force exerted upon the deceased's head must have been severe for accused to suffer a depressed skull fracture and subarchnoid haemorrhage.
- (d) The accused fled the scene after the incident and did not render assistance.
- (e) Accused did not make a timeous report and deceased's body was only discovered two days after the fatal assault.

The courts are dealing with cases of domestic violence at an alarming rate. Hardly a day passes without an incident being reported of a couple being involved in case of fatal domestic violence, leading to loss of life. The message from the courts should, and must be that violence is not tolerated as a means of resolving disputes. Violence has no place in a modern society and the courts must uphold the sanctity of human life.

I do concur with both defence and state counsel that a custodial sentence is the only appropriate sentence.

In the circumstances, the accused is sentenced as follows:

“4 years imprisonment of which one is suspended for 5 years in condition accused does not within that period commit an offence of which violence is an element and for which she is sentenced to a term of imprisonment without the option of a fine.

Effective sentence (three) 3 years imprisonment.”

*National Prosecuting Authority’s Office, the state’ legal practitioners
Messrs T. Hara and Partners, accused’s legal practitioners*