

THE STATE
versus
FORTUNATE NYATHI

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 8 AND 9 MARCH 2016

Criminal Trial

Miss *N Ngwenya* for the state
I. Mafirakureva for the accused

MOYO J: The accused person faces a charge of murder it being alleged that on 14 June 2015 he killed his cousin Nkosiyazi Zwelithini Mhlanga.

The accused person pleaded not guilty to the murder charge but instead offered a limited plea to the charge of culpable homicide. The state accepted the limited plea and tendered a statement of agreed facts prepared and signed by both parties. It was marked Exhibit 1 and it reads as follows:

1. The deceased was 24 years old at the time he met his death. He used to reside at Dzidzane Village, Guyu during his lifetime
2. The accused Fortunate Nyathi is a male juvenile who was aged 16 at the time of the commission of the offence. He resides at Nehemiah Nyathi's homestead, Dzidzane Area, Guyu.
3. The accused and deceased were related as cousins.
4. On the 14th day of June 2015 and at around 1700 hours, the deceased and accused were seated at Dzidzane Bus stop, Dzidzane Village Garanyemba Area, Guyu together with their friends.

5. A misunderstanding erupted between deceased and accused. The accused then cut a stick from a tree and struck the deceased once on the left elbow and once on the back of the neck he then turned and fled with the stick he had used to assault deceased.
6. The deceased fell down unconscious and he was rushed to the clinic where he was pronounced dead on arrival.
7. On the 15th day of June 2015 the accused was handed over to the police by his brothers. The stick he had used to assault the deceased was not recovered.
8. The accused pleads not guilty to murder but pleads guilty to culpable homicide in that he negligently and unlawfully caused the death of deceased when he assaulted him once at the back of the neck with a stick once on the left elbow.

The state counsel also tendered the affidavit by Constable Isaac Jacob who is the officer who identified deceased's body to the pathologist. It was marked Exhibit 2.

The post mortem report was also tendered and marked Exhibit 3. It gives the cause of death as;

- 1) neurogenic and medullary shock
- 2) subdural haematoma cervical contusions.
- 3) severe head and neck trauma due to beating injury.

The fourth exhibit is the accused person's birth certificate copy which confirms that he was born on 24 August 1998. With the facts as contained in the statement of agreed facts and the documentary evidence before us, we are satisfied that a murder charge could not be sustained. We accordingly find the accused person not guilty of murder and however proceed to convict him of the offence of culpable homicide.

Sentence

The accused person stands convicted of the offence of culpable homicide. He pleaded guilty to that charge, he is a first offender, he was aged 16 years at the time of the commission of the offence. A misunderstanding arose between him and his cousin. He went to school only up to the level of Grade 7. He is from a poor and unsophisticated background. It is unfortunate that children who cannot be kept in school due poor backgrounds then find themselves in these

situations where they lack proper guidance and have no direction in life.

We need to emphasise however, that loss of life through violence is a cancer that is eating into our society and violence has suddenly taken over out there, where people butcher each other on the slightest of misunderstandings. This, the court should express its displeasure at. The personal circumstances of the accused person however, bring in weighty mitigation, he was 16, immature, and acted spontaneously and has nothing to show for himself as a background.

Parents should be conscitised that raising children is work and despite their being in poor moral community they should try to bring up children with an acceptable level of education. Even if one goes up to grade seven, vocational training institutions are there, to assist with skills for different trades that our youth can engage in rather than being idle and finding themselves in this kind of predicament. We agree with the submissions made by all concerned that a noncustodial sentence would meet the justice of this case.

We accordingly sentence the accused person to 5 years imprisonment with 2 years imprisonment suspended on condition the accused person performs 420 hours of community service at Garanyemba clinic.

The remaining 3 years imprisonment are wholly suspended for 5 years on condition the accused person is not within that period convicted of an offence of which violence is an element whereupon conviction he shall be sentenced to imprisonment without the option of a fine.

*National Prosecuting Authority, the state's legal practitioners
Messrs Moyo and Nyoni, accused's legal practitioners*

