

THE STATE
versus
DANIEL MOYO

HIGH COURT OF ZIMBABWE
MATHONSI J
GWERU 24 JANUARY 2017

Criminal Trial

M Shumba for the state
H Ndlovu for the accused

MATHONSI J: The accused person must have harboured a grudge against the deceased for the flimsiest of reasons- having flashed a torch light in his face on a previous occasion. For a youthful person, he was 17 years old at the time, this was understandable and could be put down to immaturity. It is however what he was prepared to do as a result of this anger that he was bottling which is shocking indeed.

The accused is charged with the murder of Takudzwa Roy Mashavidze aged 18 at Kanengoni Village under Chief Nhema in Shurugwi on 22 November 2010 by striking him on the head inflicting injuries from which he immediately died. He has pleaded not guilty to murder but guilty to culpable homicide. The state has accepted that limited plea.

According to the statement of agreed facts on 22 November 2010 at about 2000 hours the deceased met the accused who was in the company of other people. They were coming from church. The deceased had in his possession a torch which Abius Magama who was in the accused's company took from him before switching it on thereby attracting the attention of the accused. The latter immediately accused the deceased of having flushed the torch in his face sometime back.

The accused snatched the torch from Magama and smashed it against a tree resulting in it breaking into pieces. When the deceased demanded his torch back the accused tried to assault him but was restrained by others. Undeterred the accused picked up a stone which he hurled at

the deceased hitting him on the left side of the head. The deceased staggered, fell to the ground and moments later he died.

According to the post mortem report of Dr. S. Pesanai who carried out the post mortem examination of the deceased's body, the deceased died as a result of massive subarchnoid haemorrhage, depressed skull fracture and assault. The accused accepts that he was negligent in causing the death of the deceased.

In our view the concession made by the state has been proper. This was a case of negligent killing. The facts do not point to the intentional killing of the deceased but to the fact that the accused was negligent in the manner in which he conducted himself leading to the death of the deceased.

In the result the accused is hereby found not guilty of the crime of murder. He is however found guilty of culpable homicide.

Reasons for sentence

In assessing an appropriate sentence we have taken into account the fact that the accused was 17 years old at the time of the commission of the offence and as such we agree with *Mr Ndlovu* for the accused that his actions may be consistent with youthfulness, immaturity and thoughtlessness associated with that.

We are also mindful of the fact that the state has in explicable delayed bringing this case to trial by almost 7 years. As a result it has subjected the accused person to trauma throughout the remainder of his young life. He is now an adult with a family of his own which looks up to him for sustenance. This court will always discount a portion of the sentence where the state unnecessarily delays prosecution of accused persons in order to encourage the state to expeditiously visit justice upon accused person.

However the conduct of the accused person on the night in question was so senseless that even youthfulness cannot be used to excuse it. People do not react by smashing a torch against a tree because it was flashed in their face. Neither do they strike a defenceless person on the head with a stone for that reason.

We have a duty to uphold the sanctity of human life and to guide society against such unbecoming conduct. In our view a custodial sentence is unavoidable in this case but the

sentence will reflect a year that we have discounted by reason of the unnecessary delay. We would have settled for 8 years and 4 suspended but we will now start from 7 years.

Accordingly the accused is sentenced to 7 years imprisonment of which 4 years imprisonment is suspended for 5 years on condition he is not during that period convicted of any offence involving violence for which upon conviction he is sentenced to imprisonment without the option of a fine.

Effective sentence: 3 years imprisonment.

National Prosecuting Authority, the state's legal practitioners
Chitere, Chidawanyika and Partners, accused's legal practitioners