

THE STATE

Versus

WISDOM MANGENA

IN THE HIGH COURT OF ZIMBABWE

MAKONESE J with Assessors Mr W. Matemba and Ms C. Baye

GWERU 7 FEBRUARY 2020

Criminal Trial

M. Ndlovu for the state

K. Manika for the accused

MAKONESE J: On the 24th April 2018 at around 20:40 hours the deceased was eating sadza at Mai Sam's Kitchen, Bigman, York Business Centre, Mberengwa. The accused and the deceased had a misunderstanding at the kitchen. The accused left the scene. The accused proceeded to Deo Shop. The deceased followed and caught up with the accused at Deo Shop. A further misunderstanding soon occurred involving the accused and the deceased. The deceased assaulted the accused with clenched fists. The accused fell down, got up and left Deo Shop heading towards Deo Night Club. After the accused had left, the deceased pursued the accused and caught up with him again at the verandah at Deo Night Club. The accused and deceased exchanged harsh words. The deceased assaulted the accused with clenched fists. At that stage, the accused who had been infuriated by the attack and the behaviour of the deceased pulled out an okapi knife from his pocket and stabbed the deceased twice on the upper part of both arms. The deceased sustained injuries in this knife attack. Transport was sought and deceased was ferried to Mberengwa Hospital where he was pronounced dead upon admission. The matter was reported to the police and accused was arrested at Filabusi on 23rd August 2018.

The accused has been arraigned in this court facing one count of murder in contravention of section 47(1) of the Criminal Law (Codification and Reform) Act (Chapter 9:23). The accused has tendered a plea of not guilty to the charge of murder but offers a plea of guilty with respect to the lesser charge of culpable homicide. The state has conceded that the limited plea to culpable homicide is appropriate in the circumstances.

A post mortem report compiled by Dr S. Pesanai at United Bulawayo Hospitals on the 2nd of May 2018 lists the cause of death as:

- (a) Haemorrhagic shock
- (b) Lacerated humeral vessels
- (c) Stab wound
- (d) Assault

On marks of violence, the pathologist observed a stab wound on the left arm posterior part (7 x 2 x 4cm).

A confirmed warned and cautioned statement made by the accused on the 24th August 2018 was also been tendered into the record. The accused admits stabbing the deceased with an okapi knife following a dispute with the deceased. The statement is in the following terms;

“ I admit to the allegations levelled against me that I caused the death of Steward Shava but he was the first to accuse me of having offended the bar lady who happened to be his relative when I was asking for my change. He clapped me with an open hand once on my right cheek and I fell down. I woke up and ran away but he gave chase and I ran behind Deo’s Night Club. I then came behind his back and managed to snatch the okapi knife which he was holding in one of his hands and I stabbed him on both right and left upper arms but I had no intention to kill him. I then ran into the nearby bush.”

On the evidence presented before the court we are satisfied that the accused did not possess the requisite *mens rea* to cause the death of the deceased. The accused however, negligently caused the death of his victim.

In the result, the accused person is found not guilty on the charge of murder, but guilty in respect of the lesser offence of culpable homicide.

Sentence

The use of knives and other dangerous weapons by youthful offenders seems to be getting out of hand. The accused who was aged 18 years stabbed his victim over some misunderstanding twice on the arm causing him to bleed to death. It is an established principle of our law that youthful first offenders must be treated with leniency. The rationale behind this approach is that youthful offenders deserve a second chance in life. The sentences imposed against such offenders must therefore be rehabilitative and not break the offender. Justice demands that before any sentence is imposed, the court must carefully assess the personal circumstances of the offender and the peculiar mitigatory features of the case. In this instance the factors in mitigation are that accused is a first offender who has pleaded guilty. He has shown a certain measure of remorse and contrition. The court shall take into consideration the fact that accused has spent a period of 1 year 5 months pending his trial. The accused shall live with the stigma and trauma of causing the death of a human being. Society demands that the sentences imposed in each case must balance the individual circumstances of the accused against the interests of justice. The sentence imposed must meet the ends of justice. A lenient sentence has the tendency to bring the administration of justice into disrepute. A careful balance must therefore be struck to ensure that a just, fair and appropriate sentence is imposed. In this case, the deceased was evidently the aggressor. He provoked and pestered the accused. He assaulted him with clenched fists. The deceased was aged 25 years at the time of his demise. He was more mature than the accused person. It is the view of this court that where there is a loss of life through the use of violence a custodial sentence is invariably imposed unless there exists weighty mitigating features in favour of the accused. The court is satisfied that period already served by the accused shall have the effect of putting him on the path to rehabilitation. For these reasons, the court considers the appropriate sentence to be as follows:

“Accused is sentenced to 6 years imprisonment of which 2 years is suspended for 5 years on condition accused does not within that period does not commit an offence involving violence and for which upon conviction he is sentenced to a term of imprisonment without the option of a fine.

Effective sentence – 4 years imprisonment”

National Prosecuting Authority state's legal practitioners
JumoMashoko & Partners accused's legal practitioners