

STATE
versus
SIKATI MARK VENGESA

HIGH COURT OF ZIMBABWE
PHIRI J
HARARE, 22, 23 and 24 February 2016

Criminal Trial

M Manhamo, for the accused
L T Nyama, for the respondent

PHIRI J: The accused was facing a charge of murder. He is aged 32 years. It was alleged that the accused unlawfully and with intent to kill murdered the now deceased, Denford Kapfunde by striking him with a half brick on the forehead at Selby Farm, Mt Hampden on the 16 July 2012. The deceased died at Parirenyatwa Hospital, Harare on the 26 July 2012.

The accused pleaded not guilty to a charge of murder but tendered the limited plea of guilty to Culpable Homicide. The State, conceded and accepted the limited plea.

A statement of agreed facts was tendered into evidence. The agreed facts briefly stated that the deceased and the accused stayed in the same compound at Selby Farm, Mt Hampden, Marborough Harare.

On 16 July 2012, the accused, deceased and one Blessing Jongwe went for a beer drink at Chigomo area in Mat Hampden. After the beer drink they proceeded home and on the way they met the accused's wife. The accused and the deceased had a misunderstanding after accused's wife had reported that she had been informed by the deceased, that, the accused had been assaulted by some unknown people at Chigomo area.

The accused then charged after the deceased who ran towards his homestead. The accused picked a half brick and hit the deceased on the head resulting in the deceased sustaining a deep cut on the forehead.

On 26 July 2012, the deceased died as a result of the injuries inflicted by the accused.

The State produced a post mortem report compiled by Doctor Gabriel Agüero who concluded that the cause of death was “severe head injury due to depressed skull fracture due to assault.”

The accused accepted that he negligently caused the death of the deceased.

This court accepted that the concession by the State was properly made and that death was negligently caused by the accused.

The accused was acquitted of murder and found guilty of culpable homicide.

Sentence

In assessing sentence this court shall have regard to all the mitigatory features as outlined by defence counsel.

The accused pleaded guilty to the charge of culpable homicide. He is a first offender and it appears that the accused and deceased were friends who had, in fact, spent 16 July 2012 drinking beer together.

It was submitted, on his behalf, that he co-operated with the police and duly presented himself for trial.

He spent some considerable time in custody, close to 3 months, when he was indicted, on various occasions, for his trial.

It is accepted that the death of his friend and his limited incarceration whilst awaiting trial affected him.

However in sentencing the accused this court takes into consideration the fact that this matter is one of those where the victim lost his life due to what this court regards as a petty misunderstanding between the deceased and the accused.

The facts of this case show that the accused was the aggressor. He ran after the deceased who was running towards his homestead, in the compound, and, threw the brick which injured the deceased.

This court does not condone the use of violence in order to resolve disputes. It also does not condone the acts of people who irresponsibly get intoxicated and behave irresponsibly.

Cases of people who get intoxicated and resort to violence leading to loss of life are on the increase.

The sanctity of life must be jealously guarded and accordingly a custodial sentence is justified in showing the court's displeasure towards the use of violence to resolve disputes.

I share the sentiments expressed by my brother Makonese J; in the case of *State v Meli Mbanu* HB 114/15 that a sentence of community service in cases of this nature would trivialize such offences and bring a lack of faith in the justice delivery system.

A life was lost and a wife and child have lost their bread winner. The accused failed to assist the deceased when the deceased was injured. It was the deceased's mother who had to ferry the deceased to the police station and the hospital. The accused did nothing to assist his injured friend.

The accused must reflect on his conduct and mend his mistakes and the sentence to be imposed therefore, gives the accused person the opportunity to rehabilitate.

In the result the accused is sentenced as follows;

“7 years imprisonment of which 2 years is suspended on condition the accused is not within that period convicted of any offence of which violence is an element and for which he is sentenced to imprisonment without the option of a fine.”

Nyama Law Chambers, accused's legal practitioners
National Prosecuting Authority, respondent's legal practitioners