

THE STATE

versus

TINASHE MHIRIPIRI

HIGH COURT OF ZIMBABWE
MAWADZE J,
MASVINGO, 21 MAY, 2018

Assessors

1. Mr Chikukwa
2. Mr Dauramanzi

Criminal Trial - Sentence

M. Tembo for the state

B.T. Hazangwi for the accused

MAWADZE J: The accused was initially facing the charge of murder as defined in s 47(1) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*]. However, at the commencement of the trial both the state and the defence agreed that the charge of culpable homicide as defined in s 49 of the Criminal Law (Codification and Reform) Act [*Cap 9:23*] is the appropriate charge. The accused was thus duly convicted on his own plea of guilty of the charge of culpable homicide.

The agreed facts which inform the charge are as follows;

The 31-year-old accused is the son of the now deceased and they both resided at the same homestead in Taruvinga Village, Chief Nyamandi, Gutu, in Masvingo. The accused is married with a 9-year-old child in Grade 4. The now deceased was 69 years old.

On the fateful day on 5 September 2017 both the accused and the now deceased arrived home separately from a beer drink. They were both drunk. The accused proceeded into the now deceased's bedroom and went on to lie on the now deceased's bedding spread on the floor. This infuriated the now deceased who confronted the accused as to why the accused was lying on the now deceased's bedding and also in his bedroom. A quarrel ensued resulting in a scuffle between the two. The accused got out of the now deceased's bedroom and picked a "mususu" log from the goats' pen. The accused threw the log at the now deceased hitting him below the left rib cage. The now deceased fell down and his wife and another son rendered first aid. This was in the evening. The now deceased's condition deteriorated during the night and he passed on in the early hours of the next day on 6 September, 2017.

As per the post mortem report the cause of death is stated as "*haemorrhage shock, retroperitoneal haematoma, ruptured left kidney, blunt trauma to abdomen and assault.*"

In assessing the appropriate sentence, the court is alive to the prevalence of cases of this nature arising from needless violent conduct. This has resulted in the loss of life, a precious gift from God which cannot be replaced. This court has said times without number that it has the duty to uphold the sanctity of human life and that human blood is sacred.

It is saddening that in most cases such offences are committed as a result of very petty disputes and after consumption of alcohol. The lack of respect for human life is shocking to say the least. In this case one cannot believe that the now deceased lost his life due to a dispute over some bedding. This is an issue which could have been amicably resolved without resort to violence had the accused not taken leave of his senses. It is unheard of in our custom that the accused would decide to lie on his parents' bedding let alone to lay his fingers on his own father moreso an old man. Indeed, voluntary intoxication is not a mitigatory factor as is provided for in s 221(2) of the Criminal Law (Codification and Reform) Act [*Cap 9:23*].

It is clear from the injuries inflicted that the accused used severe force on his aged father. This court has a duty to send out the correct message that such conduct would be met with the full wrath of the law. An exemplary and deterrent sentence is therefore called for.

The court has not lost sight of the mitigatory factors.

This is the accused's first brush with the law hence he has the propensity to reform and desist from further crime. Indeed, he deserves to be treated with some measure of leniency.

The plea of guilty by the accused has immensely contributed in the swift disposal of this case. Less state resources have been expended. The witnesses have been saved from coming to court to testify. The matter has been disposed of within a short period of time. It is clear that the accused is contrite as he readily admitted to his wrongful and negligent conduct without raising fanciful defences.

The accused will forever live with the stigma that he caused the death of his own father. This is not an easy burden to carry. Society may be unforgiving. The accused's family and siblings will always blame him for their father's demise. This is some form of punishment.

It is important to note that the accused delivered a single albeit fatal blow. This was not a prolonged or sustained assault. Infact the accused threw the log at the now deceased. It is unfortunate that this single blow was fatal.

The accused has suffered from pre-trial incarceration form September 2017, a period of about 8 months.

After weighing both the mitigatory and aggravatory factors the following sentence is deemed to be appropriate.

“6 years imprisonment of which 2 years imprisonment are suspended for 5 years on condition accused does not commit within that period any offence of which the use of violence upon the person of another is an element and for which the accused would be sentenced to a term of imprisonment without the option of a fine.

The effective sentence is 4 years imprisonment.”

National Prosecuting Authority, counsel for the accused

Chakabuda Foroma Law Chambers, pro deo counsel for the accused