

THE STATE

Versus

THUBELIHLE SIBANDA

IN THE HIGH COURT OF ZIMBABWE
MOYO J with Assessors Mr T E Ndlovu and Mr G Maphosa
HWANGE 6 OCTOBER 2022

Criminal Trial

Mrs C Gorerino, for the state
Ms T Chikwandare, for the accused

MOYO J: The accused person faces a charge of murder, it being alleged that on the 30th of August 2021 and at Sinikiwe Magutshwa's homestead Tshanke area Nkayi, accused unlawfully caused the death of Ferdinat Ndlovu by striking him with a log and switch several times all over the body and thereby causing his death.

The accused pleaded Not Guilty to the charge, he instead offered a limited plea to a charge of culpable homicide. The following were tendered into the court record.

- (1) state summary
- (2) accused's defence outline
- (3) accused's confirmed warned and cautioned statement
- (4) post mortem report
- (5) the logs that were allegedly used in the commission of the offence.

They were all duly marked.

Sinikiwe Magutshwa gave *viva voce* evidence for the state. Accused gave evidence for the defence. The evidence of

- (a) Gladys Magutshwa
- (b) Trymore Rukara

(c) Assistant Inspector Banda

(d) Dr Gregori

was admitted into the court record as it appears in the state summary.

The post-mortem report gives the cause of death as

(i) subdural haematoma

(ii) cranial trauma

(iii) assault

What transpired in this case is fairly straightforward. Accused's grandmother was cohabiting with the deceased at her homestead. Accused lived in a different homestead. The 1st state witness is accused's grandmother and the deceased was accused's step grandfather. Sometime in May 2021, deceased and the 1st state witness had an altercation wherein deceased stabbed Sinikiwe Magutshwa. Accused intervened and caused the arrest of the deceased who was later released by the police. Accused and other villagers then sought the intervention of the village head. Accused then left for work at a mine located further away from the area he lives in. While at the mine he heard that the deceased. Deceased was then told to go and bring his relatives for a resolution of his issues with Sinikiwe Magutshwa. Accused seems to have been under the impression that the village head and the chief banished deceased from the village.

While at the mine, he then heard from one Bukhosi Moyo that deceased had returned to Sinikiwe Magutshwa's homestead and taken it over by chasing away Sinikiwe Magutshwa. He returned from the mine on the fateful night, went straight to Sinikiwe Magutshwa homestead, armed with a log. He kicked open the bedroom hut door, found deceased and his grandmother Sinikiwe Magutshwa, sleeping while naked. He accosted accused and beat him several times on the back and chest, until deceased left the bedroom hut. He continued beating him outside force marching him out of the homestead, deceased later fell down. Accused thought it was because deceased had fits. Deceased later died from the injuries he sustained in that assault. Deceased complied with accused's instructions at all times, he apologised.

The post-mortem report details the following injuries

- (a) contused wound in parietal region
- (b) ecchymosis and
- (c) excoriations in chest
- (d) abdomen and back
- (e) fracture of the left arm
- (f) fracture of the sternum
- (g) comminute fracture in parietal region
- (h) subdural haematoma

From these injuries clearly, deceased was subjected to a severe assault. Clearly, from the nature of the weapon used, the assault as described by Sinikiwe, the injuries on the deceased's body, the only conclusion that can be drawn is that accused realised the possibility of death but nevertheless continued. Accused is accordingly found guilty of murder.

Sentence

Accused is convicted of murder. He is a 1st offender. He is 24, and therefore a youthful 1st offender. He however started at the deep end. He brutally assaulted the deceased who at all times was apologetic and compliant. Accused's conduct is not acceptable as life is sacred and should be protected by all means. The accused is accordingly sentenced to 15 years imprisonment.

National Prosecuting Authority, state's legal practitioners
Mhaka Attorneys, accused's legal practitioners