

THE STATE

Versus

LOVESON MPOFU

IN THE HIGH COURT OF ZIMBABWE
KABASA J with Assessors Mrs C Baye and Mr E. Shumba
GWERU 23 JANUARY 2024

Criminal Trial

Ms C Hungwe, for the state
Z. Tapera, for the accused

KABASA J: You appear before us on a charge of murder as defined in section 47 (1) of the Criminal Law (Codification and Reform) Act, Chapter 9:23. You pleaded not guilty but tendered a limited plea to the lesser offence of culpable homicide. The state accepted the limited plea.

A statement of agreed facts was produced and in it was revealed that on 3 August 2019 you and the deceased were at Ngigeni Business Centre. You were drunk and were insulting people who were there. The deceased reprimanded you and you took exception to that. The deceased decided to flee but you pursued him armed with a broken bottle and a knife. You proceeded to stab the deceased on the cheek and shin. The deceased was ferried to hospital where he was treated and discharged but his condition deteriorated. He was later taken to Harare Central hospital where he died on 5 September 2019.

A post-mortem conducted by doctor Javangwe gave the cause of death as:-

- a) septicaemia
- b) Chronic pyelonephritis

The chronic pyelonephritis relates to an inflammation of the kidney and this therefore had no causal link to the assault. However septicaemia relates to an infection, with compromised immunity the body's reaction to the infection has dire consequences. The post-

mortem showed that the deceased's cheek was swollen, he had fever and headache. The doctor noted abrasions and cellulitis on the left cheek. This is the cheek you stabbed him on and got infected. The septicaemia was directly linked to the infection arising from the stab wound on the cheek, which stab wound you inflicted.

Whilst the second cause of death may not be related to the assault, the first cause of death is directly related to the assault and it therefore can be safely said the assault on the deceased led to his demise.

The facts however do not show that you set out to kill the deceased and achieved that objective. You were however negligent and careless in using a broken bottle and a knife to stab him on the cheek and the shin.

By failing to take care you took a life but under circumstances which do not speak to intent, actual or legal.

The state's acceptance of the limited plea was therefore as a result of an appreciation of the facts of the case and the law.

You are accordingly found not guilty of murder but guilty of culpable homicide.

In coming up with an appropriate sentence we considered the following:-

You are a 35 year old first offender who pleaded guilty thereby showing contrition and saving time and state resources. You had been drinking beer before the tragic incident.

You are married with 2 minor children aged 11 and 9. You are the sole breadwinner for your family. Your incarceration is likely to adversely affect them.

You have been in pre-trial incarceration for close to 4 years. Justice delayed is justice denied. Had this matter been finalised closer to the time the offence was committed you would have most probably completed serving your sentence.

In aggravation we have considered that:-

A life was needlessly lost. Life is a gift to be cherished and no one has a right to take another's life.

The sanctity of life ought to be respected and one who takes another's life must expect to be punished. You used a broken bottle to inflict the injury.

The deceased had done nothing to deserve this assault. He was 66, almost twice your age and he only asked that you refrain from insulting other people who were at this business centre. He acted like a father and by assaulting him in the manner you did you showed lack of respect. You were a bully. The deceased may have had his own underlying health issues but you hastened his demise by inflicting an injury that turned septic resulting in an infection which his compromised immunity failed to fight.

In sentencing you however we cannot ignore the 4 years you have been in pre-trial incarceration. The sentence must not show vindictiveness as too harsh a sentence is as ineffective as a too lenient one. (*S v Ndlovu* HB 46-96). You have to pay for your crime but the court must be rational and fair (*S v Harington* 1988 (2) ZLR 344).

In considering the 4 year pre-trial incarceration the court is exercising some measure of mercy which in itself tampers its approach to sentence in order to arrive at a just and fair punishment. (*S v Rabie* 1975 (4) SA 855). The inordinate delay in bringing the matter to trial informed our decision not to impose the presumptive penalty of 5 years.

For these reasons you are sentenced to 3 years imprisonment of which 2 years is suspended for 5 years on condition you do not within that period commit an offence of which an assault or violence on the person of another is an element and for which upon conviction you are sentenced to a term of imprisonment without the option of a fine.

Effective: - 1 year imprisonment

National Prosecuting Authority, state's legal practitioners
Mkwashi, Maupa and Partners, accused's legal practitioners