

THE STATE

Versus

THAMSANQA NGWENYA

IN THE HIGH COURT OF ZIMBABWE
KABASA J with Assessors Mr G Maphosa and Mr J Ndubiwa
HWANGE 26 JUNE 2023

Criminal Trial

Mrs M Cheda, for the state
Ms C Manyeza, for the accused

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

A statement of agreed facts was subsequently produced and marked Annexure A. The facts show that as at 17th August 2022 you were 27 whilst the deceased was 74 years old. The deceased came to the borehole where you and other villagers were fetching water. He advised you not to use the pump in the manner you were using it and held you by your shirt. You then struck him with open hands and fists on the face and all over the body. Efforts to restrain you failed and you pushed the deceased towards the pump. He fell and hit his head against the pump bolts. You continued with the assault until the deceased fell unconscious. He was ferried to a clinic and was subsequently referred to St Luke's hospital where he succumbed to his injuries on 18th August 2022, a day after the assault.

His body was later examined by a pathologist who gave the cause of death as traumatic shock as a result of the assault. The post mortem report was produced and marked exhibit 1.

From the foregoing there is no doubt the deceased died as a result of injuries you inflicted. Did you however intend to kill him or did you realise the real risk or possibility that your conduct may cause death but continued nonetheless?

A reading of the facts do not call for the conclusion that you desired death and achieved it or that you realised the real risk or possibility that your conduct would result in death. You were however negligent in failing to exercise care resulting in the deceased sustaining the injuries which resulted in his death.

The state's acceptance of the limited plea was therefore an appreciation of the facts and the law. A murder charge could not be sustained on the facts.

In the result you are found not guilty of murder but guilty of culpable homicide.

Sentence

You are a 28 year old first offender. You were 27 at the time the offence was committed. You showed a measure of contrition by taking responsibility for your actions and pleading guilty to culpable homicide.

You will live with the burden of knowing you took a life and that is likely to have a psychological impact on you.

You have spent 10 months in pre-trial incarceration.

In aggravation is the fact that you showed disrespect to this elderly 74 year old who only sought to ensure you used the pump properly for the benefit of the whole community. At 74 he was old enough to be your grandfather. He was also a village head.

A life was needlessly lost through mindless aggression. The use of violence frequently rears its ugly head with tragic consequences and the courts must mete out exemplary sentences to discourage mindless violence and disrespect for the sanctity of life.

Sentences for culpable homicide range from as little as 2 years to 7 – 9 years depending on the circumstances.

In casu the assault on the deceased was uncalled for. There was no provocation to talk about and unlike in cases where death occurs following a fight. (*S v Chidhiza* HMT 15-2018, *S v Mlambo* HMT 19-2018, *S v Mungareka & 4 Ors* HMA 55-20) in your case there was no fight and no aggression on the part of the deceased justifying the assault you perpetrated on him.

Defence counsel called for a sentence of 8 years and the state was of the view that a sentence of 6 – 8 years would be appropriate.

The range of the suggested penalty clearly shows an appreciation of the fact that your conduct deserves to be suitably punished.

The court must however guard against a vengeful attitude in its assessment of an appropriate sentence.

That said you are sentenced to 8 years imprisonment of which 1 ½ years is suspended for 5 years on condition you do not within that period commit an offence of which an assault 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: - 6 ½ years imprisonment

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