

THE STATE

Versus

BIKANI SIBANDA

IN THE HIGH COURT OF ZIMBABWE
MOYO J with Assessors Mr M. Ndlovu and Mr O. Dewa
BULAWAYO 23 FEBRUARY 2023

Criminal Trial

K. Shava and K. Jaravaza, for the state
P. Butshe, for the accused

MOYO J: The accused faces a charge of murder, it being alleged that on the 16th of May 2020 and at Till Cocktail Bar, Sontala Business Centre in Kezi accused struck Jahani Ncube with an unknown object on the head and underneath the left ear intending to kill him or realising that there is a real risk or possibility that his conduct may result in death but nonetheless continued.

The accused pleaded not guilty to the charge on murder but tendered a limited plea to a charge of culpable homicide. The state counsel accepted this limited plea and the parties drew a statement of agreed facts which was tendered into the court record. It reads as follows:-

1. Sometime in late 2019 the accused lost his five heifers and he then got information that the deceased was keeping them at his place where he was keeping his own beasts.
2. The accused approached the deceased and the latter confirmed that indeed he was keeping them and he undertook to bring the heifers back.
3. Later on in April 2020 when the accused approached the deceased enquiring about his heifers the deceased started prevaricating. About a week before the 16th of May 2020 the accused then reported the matter to a Kezi police officer

who was doing patrols at Sontala area. The officer called the deceased and took his details and he advised the two parties to resolve the matter amicably but he also said that if they failed they should go to Kezi police station the following week.

4. On the fateful day the accused met the deceased at Sontala business centre. The deceased called him to where he was and the accused went there.
5. The deceased started querrying why the accused had reported the matter to the police officer and he told the accused that since the accused was a small boy he the deceased was going to discipline him. The accused insisted that he wanted his heifers.
6. The deceased then slapped the accused and as the accused blocked a second slap the deceased produced a knife and advanced towards the accused. The accused then hit the deceased once on the face in order to ward him off. The deceased fell backwards, and his knife fell away from him.
7. The accused woke the deceased up and he called others to assist the deceased. After someone had rendered first aid to him the deceased went away.
8. The deceased met his death as a result of the assault by the accused, two days later.
9. The post-mortem may be produced as an exhibit.

The state counsel also tendered the post mortem report which gives the cause of death as subdural haematoma and head trauma.

From the evidence before this court, the accused is found not guilty on the charge of murder and is acquitted. He is however found guilty of the lesser charge of culpable homicide.

Sentence

The accused is convicted of culpable homicide. He is a first offender who pleaded guilty to the appropriate charge. He is a family man and a breadwinner. Deceased was the aggressor and he acted unreasonably on the day in question. Accused had sought to use the usual channels of resolving disputes normally used by law abiding citizens. Deceased did not embrace accused's good gesture. He instead resorted to violence against the accused. This

court however, realises that a life was lost in these unfortunate circumstances. Accused's version is what was used by this court as there were no eye witness accounts. A sentence must meet the interests of justice, that is society's expectations, accused's personal circumstances as well as the circumstances of the commission of the offence. Defence counsel suggested a custodial sentence suspended on condition accused performs Community Service, this court is of the view that this would trivialise the offence and yet a life was lost as a result of an assault by the accused. Whilst this court accepts that there is weighty mitigation in accused's favour, that does not remove the fact that a life was lost and it being sacred, its loss is viewed seriously by these courts. Refer to *Sibanda v State* SC 5-14.

A sentence that would meet the justice of this case, balancing the weighty mitigation and the loss of life, would be at the bottom end of custodial sentences in culpable homicide where there is weighty mitigation and such a sentence is in the region of 3 years. It is for these reasons that accused will be sentenced as follows:-

Accused is sentenced to 3 years imprisonment with 1 year imprisonment suspended for 5 years on condition accused does not within that period not commit an offence involving violence whereupon conviction he shall be sentenced to imprisonment without the option of a fine.

National Prosecuting authority, state's legal practitioners
Mathonsi Ncube Law Chambers, accused's legal practitioners