

THE STATE

Versus

THEMBELANI MPOFU

IN THE HIGH COURT OF ZIMBABWE
KABASA J with Assessors Mr G Maphosa and Mr J Ndubiwa
HWANGE 27 JUNE 2023

Criminal Trial

Mr Dube, for the state
Mrs J Change, for the accused

KABASA J: You are charged with murder, it being alleged that on 17 July 2022 at Esiqongweni General Dealer in Tsholotsho, you caused the death of Honest Ndlovu by striking him with a knobkerrie on the left side of the head intending to kill him or realising that there was a real risk or possibility that your conduct may cause death but proceeded nonetheless.

You pleaded not guilty but tendered a plea of guilty to the lesser charge of culpable homicide which the state accepted.

A statement of agreed facts was produced and marked Annexure 'A'. These facts are to the effect that on 17 July 2022 at around 0200 hours the deceased had a misunderstanding with one Fitwell and Lovious who were in your company. All of you were at a party. Fitwell and Lovious decided to move away from the deceased who persisted in following them. You were watching from a distance. You then took a knobkerrie from one Mthulisi Sibanda's pocket and threw it from a distance hitting the deceased on the left side of the head. The deceased fell to the ground and lost consciousness. He regained consciousness and was able to go and make a report of the assault to the police. He was referred to hospital at Tsholotsho where he was transferred to Mpilo Hospital. He died thereat on 25th July 2022.

His body was examined by a pathologist who gave the cause of death as severe head injury as a result of an assault.

The post-mortem report and the knobkerrie used to inflict the injury were produced and marked exhibit 1 and 2 respectively. The knobkerrie's dimensions are 39 cm in length, 25, 5 cm head circumference, 9 cm handle circumference and 0,540 kg in weight.

From these facts there was no dispute as to the cause of the deceased's death. You caused the death using the knobkerrie which fractured the deceased's skull.

Although you had not been provoked by the deceased, the circumstances of the case as detailed in the statement of agreed facts did not show that you set out to kill the deceased and achieved that purpose.

You however were negligent in throwing that knobkerrie which hit the deceased. You threw it from a distance and in doing so failed to guard against the infliction of harm on the deceased. Therein lies your blameworthiness.

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

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

Sentence

You are a 21 year old first offender. You were 20 at the time the offence was committed. You are a youthful offender.

You are married but are yet to start a family. You are likely to lose your employment given the consequences which are attendant with this conviction.

You pleaded guilty thereby showing contrition by taking responsibility for your actions.

Aggravating is the fact that a life was needlessly lost. Cases of violence are unfortunately on the rise and people do not seem to take heed of the warnings given by the courts against the use of violence.

The knobkerrie you used is of such a nature that it can be described as a lethal weapon and it hit the most delicate part of the human anatomy.

You could have restrained the deceased through engaging him but you introduced a weapon.

You are youthful but it appears as if the youth of today are the ones who resort to violence at the slightest excuse.

In assessing an appropriate sentence we have considered the cases cited, *S v Shariwa* HB 37-03 urges courts to spare youthful offenders from the rigours of imprisonment whenever possible.

In *S v Dube* HB 56-18 the accused used a knobkerrie to assault the deceased several times and a sentence of 6 years was considered appropriate.

In your case you struck once but with enough force to fracture the deceased's skull and in circumstances where the use of such a weapon was not warranted.

The courts must not shirk from imposing exemplary sentences even for first youthful offenders where the justice of the case demands so. (*S v Mapfuma* HB 41-90)

In the result you are sentenced to 6 years imprisonment of which 1 year 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: - 5 years imprisonment

National Prosecuting Authority, state's legal practitioners
Muviringi and Associates, accused's legal practitioners