

THE STATE

Versus

PETER JOJO

IN THE HIGH COURT OF ZIMBABWE
MOYO J
GWERU 21 SEPTEMBER 2023

Criminal Trial

Ms A. Chikuni for the state
B. Dube for the accused

MOYO J: Accused faces a charge of murder, it being alleged that on the 25th of May 2022 and at Zuva Tuckshop, Mazalayedwa, Gokwe South, accused caused the death of Simon Chikumbirike by hitting him with a log on the head and all over the body several times.

The accused denied the charge and tendered a limited plea to a charge of culpable homicide. The state accepted the limited plea and drew and tendered a statement agreed facts. Also tendered was the accused's confirmed warned and cautioned statement, post mortem report and the weapon that was allegedly used in the commission of the offence. They were all duly marked. The statement of agreed facts reads as follows:

1. Peter Jojo (hereinafter referred to as the accused) was 37 years old at the time of the commission of the alleged offence. He resides at Village 6, Chief Neuso Sanyati, Kadomma and is not employed.
2. Simon Chikumbirike (hereinafter referred to as the deceased) resided in Village Mhaka, Chief Njelele, Gokwe. He was aged 51 years old at the time of his death.
3. The accused and the deceased were not related.
4. On the 25th day of May 2022 and at around 1900 hours, the accused person, while in the company of his convicted co-accused Mashoko Siyamunyanga, Josphat Pome and knowledge Siyamunyanga were drinking beer at Zuva Mine Tuckshop, Mazalayedwa, Gokwe South.

5. The deceased arrived at the same tuckshop and joined the accused person and his patrons.
6. Accused inquired about his money from the deceased and the deceased respondent in a manner that angered the accused person.
7. Thereafter a fight ensued between deceased and accused, accused was overpowered by the deceased who had sat on top of him as well as biting him on his fingers and grabbed him by the neck.
8. Mashoko Siyamunyanga then ran and took a log from the fire and blew it off and hit the deceased once on the back of the head.
9. Accused then picked up the same log and started assaulting the deceased on the head and all over the body, several times.
10. The deceased collapsed and was ferried to the hospital and was pronounced dead upon arrival at Gokwe District Hospital.
11. Matter was reported to the police leading to the arrest of the accused person.
12. Deceased's remains were taken to United Bulawayo Hospitals on 30 May 2022 where Dr Juana Rodriguez Gregori conducted a post mortem examination and concluded that the cause of death was:
 1. Subarachnoid Haemorrhage
 2. Cranial Trauma
 3. Assault
13. The accused accepts the evidence of state witnesses as well as contents of the post mortem report. The accused denies requisite intention to kill in the form of *dolus directus* or *dolus eventualis*. Rather the accused acknowledges that through his conduct aforesaid he was negligent in causing the death of the deceased.
14. The state concedes to the fact that the accused was negligent in the manner he assaulted the deceased and therefore accepts accused's plea of culpable homicide."

From the facts before this court, it is clear that accused did not harbor an intention to kill the deceased but that he acted negligently in the circumstances.

From the afore-stated reasons I will make the following order:

The accused is found not guilty on the charge of murder but instead convicted on the lesser charge of culpable homicide.

Sentence

The accused is convicted of culpable homicide. He is a 1st offender, he pleaded guilty. He is a family man and a sole bread winner. However, a life was lost and these courts frown at the loss of life through violence while his co-accused struck the deceased when the current accused was still under attack, He struck the deceased after the attack and his moral blameworthiness is thus slightly different from that of his co-accused. A sentence in the same region as his co-accused would meet the justice of the case as there is no strong reason to treat him differently.

A sentence in the region of 5 years with a portion suspended will meet the justice of this case. He however will not benefit from the additional discount that his co-accused received as a result of his pre-trial incarceration as that is a feature peculiar only to that accused. He is accordingly sentenced as follows:

The accused is sentenced to 5 years imprisonment with 2 years imprisonment suspended for 5 years on condition he is not within that period convicted of 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
Dube, Gundu & Pamucheche Legal Practitioners, accused's legal practitioners