

THE STATE

Versus

JOAB NCUBE

IN THE HIGH COURT OF ZIMBABWE
MOYO J with Assessors Mrs Baye and Mr Matemba
GWERU 19 SEPTEMBER 2023

Criminal Trial

T. Chitere, for the state
M. Shumba, for the accused

MOYO J:- The accused faces a charge of murder it being alleged that on the 22nd of December 2020 and at Puma Service Station Zvishavane, he unlawfully caused the death of Evans Maziva by stabbing him once on the left thigh with a double bladed thick knife.

The accused pleaded not guilty to the charge of murder but offered a lesser plea to the charge of culpable homicide.

The state accepted the limited plea and the parties drew and tendered a statement of agreed facts. The post-mortem report and the knife that was allegedly used in the commission of the offence were also tendered. They were all duly marked. The statement of agreed facts reads as follows:

1. **JOAB NCUBE** (hereinafter referred to as the Accused) was 23 years old at the material time and resides in Village Murambi, Chief Mazvihwa in Zvishavane. He is not formerly employed.
2. **EVANS MAZIVA** (hereinafter referred to as the deceased) was 24 years old when he met his death and resided in Makame Village, Chief Mkoba in Gokwe South. He was not formerly employed.

3. On the 22nd December 2020 in the evening, the accused and the deceased met at a beerhall in Mandava Township, Zvishavane and they had an altercation over some money which deceased allegedly took from the accused. They however parted ways subsequently.
4. At about 0130 hours, the accused was a passenger in a taxi driving along R.G Way, Zvishavane when he spotted the deceased who was walking in the opposite direction and was approaching Puma Service Station.
5. The accused instructed the taxi driver to stop the vehicle and the driver obliged, resulting in the accused exiting the vehicle. He approached the deceased and there ensued some verbal exchange about the money which had been allegedly taken by the deceased at the beer hall. In the process, the accused pulled out a double bladed knife and stabbed the deceased once on the left thigh.
6. The deceased staggered for about 20m and fell to the ground. He rose from the ground and staggered again and fell to the ground near Pote Hardware Shop. The deceased was bleeding profusely from the resultant injury. Meanwhile the accused had left the scene at high speed.
7. A witness who had observed what had happened between the accused and the deceased called the police who arrived and noticed the deceased lying on the pavement at Pote Hardware shop. The police observed that the deceased's pair of trousers was soaked with blood and there was a wound on the left thigh. The deceased then could not speak.
8. The deceased was taken to Zvishavane District Hospital where he was attended by a nurse who observed that the deceased had a deep cut on the lateral side of the left thigh, bleeding profusely and was unconscious. The nurse further sutured the wound and injected 3 litres of intravenous fluid before placing him on a bed to rest. Unfortunately, the deceased died 30 minutes thereafter. He was then certified dead by a doctor.
9. On 24 December 2020, the deceased's body was ferried to United Bulawayo Hospitals where a post mortem was conducted by a pathologist who concluded that the cause of death was:

- Hypovolemic shock
- Femoral artery laceration
- Stab wound

Post mortem report number 1455-1450-20 was compiled and will be produced as an exhibit.

10. Through investigation, a double bladed flick knife which was blood stained was recovered from the accused's bedroom on the day of his arrest. The Knife will be produced as an exhibit.
11. The accused denies intending to kill the deceased and realizing that there would be a real risk or possibility of death. Rather, the accused accepts that through his negligent conduct, he caused the death of the deceased and thus pleads to culpable Homicide.
12. The state concedes to the fact that accused was negligent in the manner he stabbed the deceased, and therefore accepts the accused's plea of guilty to Culpable Homicide.

From the facts before us, we are satisfied that the accused did not harbour the requisite intention to commit murder but that he acted negligently in the circumstances.

He is accordingly found not guilty and acquitted on the charge of murder but is convicted of culpable homicide.

SENTENCE

The accused is convicted of culpable homicide. He is a 1st offender, youthful one. He pleaded guilty to the appropriate charge. He is a bread winner and family man. He paid compensation and has shown remorse and waited for trial for 2 and half years.

However, in aggravation, is the fact that a human life was lost in circumstances where accused was already armed with a lethal weapon (one is tempted to hold the view that if accused was not roaming around with such a weapon, a different scenario would have obtained.)

The other problem is accused's conduct of seeing deceased walking beside a road and stopping the taxi he was in to attack him. Surely, he stripped himself of an inference of acting

without thinking or out of anger, at the heat of the moment. His moral blameworthiness is increased by the fact that he saw deceased walking beside the road, entertained the thought of attacking him and stopped the taxi to satiate his appetite of attacking a defenseless man that was then peacefully walking beside the road unbeknown to him that he was about to be attacked. Again, accused's conduct after stabbing the deceased has a bearing on his moral blameworthiness. His behavior was thuggish, typical of a mindless attack on the body of another and fleeing the scene leaving the deceased to die on his own. The manner and reason of the attack as well as the possession of the knife increase accused's moral blameworthiness in this case. A sentence in the region of 10 years imprisonment would meet the justice of this case but accused must also be given credit for the compensation and remorse warranting that a sentence portion of the sentence be discounted. The aspect of compensation and remorse cannot be ignored and it would then remove the sentence from the 10 year bracket to perhaps 8 years with a portion suspended.

It is for these reasons that accused will be sentenced to 8 years imprisonment with a 2 years imprisonment suspended for 5 years on condition accused 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
Chitere-Chidawanyika & Partners, accused's legal practitioners