

THE STATE

Versus

SHINGIRIRAI CHIPANGA

IN THE HIGH COURT OF ZIMBABWE
KABASA J with Assessors Mrs C Baye and Mr E. Shumba
GWERU 22 JANUARY 2024

Criminal Trial

Ms N. Chikuni, for the state
G. Nyabawa, for the accused

KABASA J: You appear before us on a charge of murder as defined in section 47 (1) of the Criminal Law (Codification and Reform) Act, Chapter 9:23. You pleaded not guilty to the charge but tendered a plea of guilty to the lesser offence of culpable homicide. The state accepted the limited plea.

A statement of agreed facts which was subsequently produced showed that on 8 August 2021 you and the now deceased were at Chinyati Gold Mine when you had a misunderstanding over a group of people you suspected to be robbers. You then walked away but the now deceased followed you and charged at you, whereupon you picked a chisel and struck him twice on the head. You then grabbed him by his dread locks and head butted him three times on the head. He sustained injuries from which he subsequently died on 14 August 2021.

The weapon you used weighed 1, 12 kg and was 86 cm in length. The deceased died as a result of

- (a) Severe head injury
- (b) Head assault

There is no doubt that you caused the deceased's death. The issue is whether you intended to bring about that death and set out to cause it. The facts show that this was not a

death that was planned or that you realised that there was a real risk or possibility that your conduct would result in death but continued nonetheless.

You however were negligent and failed to take care resulting in the deceased's death.

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

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

In assessing an appropriate sentence we considered the following:-

You were a youthful 27 year old at the time the offence was committed. Youthfulness causes people to behave in an irrational manner which shows lack of foresight. (*S v Zaranyika* 1995 (1) ZLR 270 (H)).

You pleaded guilty albeit to the lesser charge. By pleading guilty you showed contrition and saved time. You appear genuinely contrite. The deceased provoked you.

You are married and your son was born whilst you were in prison awaiting trial. You were the sole breadwinner for your family.

You have been in prison for 2 years. We cannot underestimate your anxiety over this period.

In aggravation we have considered that:-

A life was needlessly lost. Arguments should not degenerate into acts of violence. The deceased charged at you but he was not armed. You armed yourself with a lethal weapon and used it to strike the deceased on the most vulnerable part of the body not once but twice. You also head-butted him three times, again on the head causing severe head injuries.

Your reaction was not called for and had you exercised self-restraint the deceased would not have lost his life. You did not render assistance to the deceased but a concerned bystander managed to resuscitate the deceased after pouring some water on him. Although he subsequently was assisted and managed to seek medical treatment, the vicious assault had inflicted injuries which were mortal.

The courts have time without number implored people to respect the sanctity of life. No one has the right to take another's life.

“Head butting is a vicious savage and cowardly form of assault.” (*S v Matopodzi* HH 131-95).

The weapon used, the part of the body it was aimed at, the head-butting and the use of force not commensurate with the harm the deceased posed justifies a departure from the presumptive penalty of 3 years or the 5 years where there exists aggravating factors. We would have considered 5 years but for the manner in which you assaulted the deceased. His injuries speak to some measure of cruelty and a viciousness that was not called for.

But for the 2 years you spent in pre-trial incarceration a sentence in the region of 7 - 8 years would have been appropriate.

In sentencing you we are alive to the need to mete out a sentence which fits you the offender, the offence and is fair to society (*S v Zinn* 1969 (2) SA 527).

You are accordingly sentenced to 6 years imprisonment of which 2 years is suspended for 5 years on condition you do not within that period commit an offence of which an assault or violence 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: - 4 years imprisonment

National Prosecuting Authority, state's legal practitioners
Nyabawa Legal Practice, accused's legal practitioners