

THE STATE

Versus

VETENGENI KWARAMBA

HIGH COURT OF ZIMBABWE
MAWADZE J
MASVINGO, 19 SEPTEMBER 2023

Assessors

1. Mr Gweru
2. Mr Chikukwa

Criminal Trial - Sentence

Ms Makoni with B.E Mathose for the state
F. Chirairo, for the accused

MAWADZE J: This is rather a rare, unfortunate and tragic case of Culpable Homicide.

The accused was initially being charged of murder as defined in Section 47 (1) of the Criminal Law [Codification and Reform] Act [*Chapter 9:23*]. The matter however proceeded on the basis of a statement of agreed facts and he was convicted on his own plea of guilty of Contravening Section 49 of the Criminal Law [Codification and Reform] Act [*Chapter 9:23*] which is culpable homicide.

The accused is now 35 years old and an uncle to the then 62 year old now deceased. They both resided under Chief Makanganwi, Bikita, albeit in different villages.

On 7 March 2023 both the accused and the now deceased were among mourners attending a funeral wake of their grandfather in Romberai Village, Chief Mazungunye, Bikita. During a

church service both accused and the now deceased were amongst a group of men slaughtering a beast for relish at the funeral gathering.

The agreed facts are that both the accused and the now deceased as uncle and nephew engaged in the normal jokes mocking each other as what usually happens at such funeral gatherings. The accused had exhibited premature appetite for roasted beef and the now deceased had in turn mocked the accused. The accused failed to take the joke in his stride. Instead the accused resorted to some physical violent act akin to World Wrestling Entertainment (WWE) moves by tackling the 62 year old now deceased nephew. The accused held the now deceased's legs, lifted them up to the accused's chest level and folded them. The hapless now deceased was bent over and forced to lie on his waist with his legs pressed and folded. The now deceased was literally resting on his neck, a move called "*sharp shooter*" in wrestling parlance. As a result undue pressure was exerted on the now deceased's neck causing a neck fracture.

The now deceased was ferried to Silveira Mission Hospital after which he was transferred to Masvingo General Hospital where he passed on 8 March 2023. The post mortem report Exhibit 1 reveal the following,

- "1. *No injuries noted externally*
2. *Neck creptus, neck hypermobile, moves laterally through an angle of 270°*"

The cause of death is said to be "*neck fracture*" arising from "*blunt trauma*"

It is aggravating that a life was lost recklessly. As already said the accused and the now deceased were just joking and there was no need for the accused to resort to violence. There was need for the accused to act with restraint.

The accused clearly acted in a violent manner in respect of a 62 year old now deceased. Excessive force was applied on the now deceased by the accused who is visibly young, strong and fit. It is clear the accused acted negligently.

Be that as it may, as already said this was an unfortunate incident arising from a form of play normally called "*chikudo*" in Shona.

The accused is a middle aged man. He is separated from his wife. The accused's mother looks after accused's very young children, the oldest being 7 years old. The accused survives as a push cart driver in Mbare, Harare earning a paltry US\$50 per month.

As already said the accused pleaded guilty to the charge. He did not waste time and the witnesses were excused without much ado.

The accused is a first offender who deserves a great measure of leniency.

The accused was very contrite and this should tilt the scales in the accused's favour. Soon after realising that he had inadvertently caused the injury on the now deceased the accused immediately stopped and tried to resuscitate the now deceased. The accused ferried the now deceased to Silveira Mission hospital. He paid the fee to transfer him to Masvingo General Hospital. Upon death he ferried the now deceased to his final resting place. During the funeral the accused provided food and groceries for the mourners.

As per Exhibit 2 the accused paid as compensation a whopping 19 cattle, 10 goats and 4 ploughs. The accused clearly atoned for his conduct. The accused and the now deceased's families are now reconciled and have accepted what happened. This gesture paves way for reconciliation and both families are likely to move on in harmony despite the stigma attached to the accused. The question of restorative justice is critical.

The issue now is whether incarcerating the accused would serve any purpose. There is now no need for retribution. An effective prison term in the circumstances serves no purpose. In whose interest would it be? A fine is burdensome to the accused who clearly lack means and has genuinely paid huge compensation. A sentence of community service would place unnecessary hardships on the accused and the young family dependant on his manual labour. At the end of the day a wholly suspended prison term would be in order.

Accordingly the accused is sentenced as follows,

“3 years imprisonment wholly suspended for 5 years on condition the accused does not commit within that period any offence involving the use of violence upon the person of another and or unlawfully negligently causing the death of another through violent conduct and for which the accused is sentenced to a term of imprisonment without the option of a fine”