

THE STATE

Versus

KWANELE PROMISE MHLANGA

IN THE HIGH COURT OF ZIMBABWE

MAKONESE J with Assessors Mr J. Ndubiwa and Mr J.L.M Zulu

HWANGE 8 JUNE 2022

Criminal Trial

Mrs M. Cheda, for the state

Ms C. Manyeza, for the accused

MAKONESE J: Accused is facing a charge of murder in contravention of section 47 (1) of the Criminal Law Codification Act (Chapter 9:23). It being alleged that on 21st March 2020 and along Garikai Road, Ntabazinduna, the accused wrongfully and unlawfully caused the death of Khulekani Ndlovu, by assaulting him with an electrical cable several times all over the body and stabbing him once on the arm and on the thigh intending to cause his death. The accused denies the allegations. He tenders a limited plea of guilty to the lesser charge of culpable homicide. The state accepts the limited plea.

The state tendered a statement of Agreed Facts which summarises the circumstances leading to the commission of this offence. The accused was aged 19 years at the time this offence was committed. He resided at Plot number 5 Whitesrun Fort Rixon. The deceased was 26 years of age at the time he met his demise. He resided at Mabutweni Line, Chief Ndiweni, Ntabazinduna. On 21st March 2020 and at around 0100

hours the accused and a group of friends were coming from a beer drink at Tsabatsaba Bar. The accused and the deceased engaged in a fist fight after exchanging insults. Deceased then strangled the accused. At the same time one Witness Mafuyana was assaulting the accused with stones. The accused produced a knife and stabbed the deceased once on the right thigh and once on the right arm. Deceased was still strangling accused. At that point, deceased let go of the accused. Mafuyana continued pelting the stones at accused. Accused ran away from the scene leaving the deceased. Deceased later died from injuries sustained in the attack. Accused pleads not guilty to the charge of murder. He tenders a plea of guilty to the lesser charge of culpable homicide. He admits that he negligently caused the death of the deceased.

Doctor Juana Rodriguez Gregori is a registered Forensic Pathologist based at United Bulawayo Hospitals. On the 23rd of March 2020 he examined the remains of the deceased and compiled a Post Mortem Report filed under number 342/341/2020. The Post mortem reveals that the cause of death was:

- (1) hypovolemic shock
- (2) laceration of femoral artery
- (3) stab wound

On marks of violence the report indicates that the deceased sustained a penetrating wound 7cm in length located in the interior of the right thigh, in the right forearm 6cm in length.

The state tendered into the record an Okapi knife that was used in the stabbing. The knife has a weight of 0.05 kgs, the length of the blade is 13.5cm, the width of the blade at the widest part is 2.5 cm, the width of the blade at the tip is 1mm. The length of the handle is 14cm. Its handle is 2.3cm in width.

The evidence placed before the court indicates that the accused did cause the death of the deceased. No evidence, has however been adduced to prove that accused had the requisite *mens rea* to cause the death of his victim.

In the result, and accordingly, accused is found not guilty of murder. Accused is however, found guilty of culpable homicide.

Sentence

Our courts are inundated with cases of violent crimes involving the use of knives. Youthful offenders who carry dangerous knives will not hesitate to use them at the slightest provocation. The courts do indeed have the solemn duty to protect the sanctity of human life. In exercising its sentencing discretion the court must carefully balance the needs and expectations of society against the interests of the accused. In this matter, the accused who was aged 19 years at the time of the commission of the offence finds himself convicted of a serious offence. Whilst the court accepts that the accused is a first offender, who has shown a certain measure of remorse, the courts must pass a sentence that reflects the seriousness of the offence. The court will take into account that accused is youthful, that he lacked maturity in his response to the attack by the deceased. The accused is a young man with the usual family

responsibilities. Accused spent 3 months in custody before he was granted bail. To the accused's credit is the fact that he has presented himself before the court to receive his punishment. He has not chosen to evade justice by absconding. Accused persons who avail themselves to court and accept responsibility for their conduct ought to be credited for that. Offences of this nature invariably attract custodial sentences. *Ms Manyeza* appearing for the accused has proposed a sentence of 2 years imprisonment with a part suspended. She argues that the sentence imposed must be rehabilitative. *Mrs Cheda*, appearing for the state has argued that a sentence of 6 years with a part suspended would meet the justice of this case.

It is our view, that whilst a rehabilitative sentence is called for, the sentence this court imposes must not have the effect of trivialising the offence.

In the circumstances, and accordingly the following is deemed an appropriate sentence:

“Accused is sentenced to 5 years of which 2 years is suspended for 5 years on condition accused does not within that period commit an offence involving violence and for which upon conviction accused is sentenced to a term of imprisonment without the option of a fine.”

Effective Sentence: 3 years.

National Prosecuting Authority, state's legal practitioners

Mhaka Attorneys, accused's legal practitioners