

THE STATE

Versus

CRAIG WALTERS

IN THE HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 14 JUNE 2022

Criminal Trial

Miss N. Ngwenya for the state
M. Ndlovu for the accused

MOYO J: The accused faces a charge of murder. It being alleged that on the 21st of January 2021 he assaulted his wife Marylene Walters resulting in her death. Accused denies the charge, he was offered a limited plea to a charge of culpable homicide. The following were tendered into the court record:

- the state summary
- the accused's defence outline
- the accused's warned and cautioned statement
- the post mortem report
- the sticks that were allegedly used in the commission of the offence. They were all duly marked.

The post mortem report gives the cause of death as:

1. Subdural hematoma and subarachnoid haemorrhagic
2. Heart trauma

The evidence of the following state witnesses was admitted into the court record as it appears in the state summary.

- Kennedy Matuma
- Wilson Fikile Walters
- Harry Banda
- Philjon Walters (Senior)
- Silibaziso Phiri

- Blessing Zegija
- Sydney Tapfuma
- Phaniel Nkomo
- Dr Juana Rodrigues Gregori

Philjon Junior Walters gave viva voce evidence for the state and accused gave evidence for the defence.

The facts of this matter are largely common cause. The accused and deceased were husband and wife. Accused came back from Gwanda unexpectedly, to find deceased not at home. He then went out to look for her, and found her in a compromising position with a man. They then had an argument, deceased allegedly insulted accused. They then wrestled over a cellphone that deceased had, she then threw it away.

Kennedy Matumba then came along and he found them arguing, they asked him to call the cellphone, it rang and accused picked it. Accused then went through the cellphone and saw some messages with the neighbor whom he had found her in a compromising position with. The messages sounded like the 2 had an affair. He then assaulted her. She allegedly grabbed accused's private parts and this further angered him. He used fists to push her and sticks to assault her. He says he concentrated the assault on the legs and the thighs. He says deceased must have suffered injuries to the head when she fell. Regarding the head injuries other than that they were to the back of the head and the front, no further particulars were given. The doctor was not called to explain to the court if the deceased could have sustained the injuries from a fall or not. The accused's version in this respect remains and was never rebutted. Even if the court were to assume it's the accused who inflicted such injuries, the court would have to read into the court record even the object used as it was never produced by the state except the 2 switches. An accused's version is not rejected for the mere reason that he is an accused, the state must prove beyond a reasonable doubt that the accused's version is not reasonably possible true and that in fact it is manifestly false. No such effort was made by the state. The accused's defence is primarily that he lost control of his senses due to anger and that he was provoked by deceased's conduct of having an extra-marital affair and also catching her red handed. The state has not rebutted all that. Neither has the state told the court a version that would lead the court to reject accused's. Again, the court is not allowed to infer that the injuries on the head were inflicted by the accused and not by deceased's falling because in drawing

inferences the court is not allowed to read facts into the court record but should only do so from proven facts. There are no proven facts that show that the deceased could not have fallen and sustained the injuries on the head. The court is bound by the proven facts before it. Any grey area in a criminal case, is resolved to the benefit of the accused person as that in essence means that the state has failed to prove its case beyond a reasonable doubt.

Clearly, the accused was provoked by deceased's conduct and his actions fall within the ambit of section 239 (1) (a) of the Code. Which reads as follows:

“239 When provocation a partial defence to murder

- (1) If, after being provoked, a person does or omits to do anything in the death of a person which would be an essential element of the crime of murder if done or committed as the case may be with the intention or realization referred to in section forty seven, the person shall be guilty of culpable homicide if, as a result of the provocation
 - (a) He or she does not have the intention or realization referred to in section forty-seven;”

The accused is accordingly acquitted on the charge of murder and is convicted of culpable homicide.

Sentence

The accused is convicted of culpable homicide. He is a 1st offender. He pleaded guilty to the appropriate charge. He has shown contrition. He had been provoked. He is a family man. He has spent 1 ½ years in prison. However, a life was unnecessarily lost in the most unfortunate of circumstances. These courts frown at the loss of life through violence. Ordinarily, accused would have been sentenced to about 7 years in prison in the circumstances, with 2 years suspended on the usual conditions. He has, however, spent a year and half in remand prison and he deserves a discount for that. It is for these reasons that accused will be sentenced to 5 and half years imprisonment with 2 years imprisonment suspended for 5 years on condition accused does not, within that period, commit an offence involving violence whereupon conviction he shall be sentenced to imprisonment without the option of a fine. That leaves him with 3 and a half years effective.

*National Prosecuting Authority, state's legal practitioners
Ndlovu Mehluli & Partners, accused's legal practitioners*