

THE STATE

Versus

BUSANI BANDA

IN THE HIGH COURT OF ZIMBABWE

MAKONESE J with Mr O. Dewa and Mr M. Ndlovu

BULAWAYO 7 & 8 SEPTEMBER 2021

Criminal Trial

B. Gundani for the state

S. Mlambo for the accused

MAKONESE J: On the 29th day of July 2020 and at Zimbili Business Centre, Fort Rixon area, accused stabbed the deceased one Carlton Mnkandla with a sharp stick in the chest. The deceased sustained serious injuries and died from injuries suffered in the attack. The accused is aged 39 years. He is facing a charge of murder. He denies intentionally causing the death of the deceased but avers that death was accidental. Accused's defence counsel confirms that the accused is tendering a plea of guilty with respect to the lesser charge culpable homicide.

The state and the defence have prepared and tendered into the record of proceedings a statement of agreed facts. It is not disputed that on the day in question the accused, the deceased and other patrons were at Zimbili Business Centre, Fort Rixon where beer was being consumed. Qubekani Moyo met the deceased who was in the company of his two friends. The deceased was reprimanded and advised to stop stealing other patron's goods. The deceased was infuriated. He teamed up with his two friends in a bid to assault Qubekani Moyo. Welcome Ngwenya came and intervened and restrained Qubekani Moyo whom they locked up in a shop. The accused then intervened as well and told the deceased together with his two friends not to engage in any form of violence at the business centre. The deceased and his two friends turned on the accused and started assaulting him with clenched fists. The accused retaliated, picked up a stick and stabbed the deceased once in the left side of the chest. Deceased fell to the ground and lay prostrate bleeding profusely. Wondersome Ngwenya and Esau Ncube escorted the deceased to Zimbabwe Republic Police, Mbembesi in Wondersome Ngwenya's motor vehicle. The matter was reported to the police. The deceased was referred to hospital for treatment. The deceased was admitted at Mpilo Hospital where he succumbed to the injuries sustained in the assault and died. Accused was arrested on 30th July 2020 on murder charges. On 3rd August 2020 Dr Juana Rodriguez Gregori, a duly registered medical practitioner examined the remains of the deceased and concluded that the cause of death was:

- (a) Hypovolemic shock
- (b) Haemopneumothorax
- (c) Stab wound

A post mortem filed under report number 659/658/2020 has been produced by consent as an exhibit. On marks of violence the report indicates that deceased sustained an incised wound 2.5cm in length located on the 2nd anterior intercostal space, at 1cm to sternum, penetrating in thoracic cavity. The injuries are consistent with a stab wound caused by a sharp object. We are satisfied that the accused caused the death of the deceased. There is however, no evidence placed before us to prove beyond reasonable doubt that accused had the necessary *mens rea*, (intention) to cause the death of the victim. In the circumstances, the concession by the state in accepting a plea of guilty to the lesser charge of culpable homicide, has been properly made.

Accordingly, the accused is found not guilty on the charge of murder. Accused is found guilty of culpable homicide.

Sentence

The accused has been convicted of a very serious offence. In assessing an appropriate sentence, the court must take into consideration the personal circumstances of the accused and the interests of justice. The accused was aged 39 years at the time he committed the offence. He is a married man with the usual family responsibilities. Accused was employed as a guard at Zimbili Business Centre. He will lose his employment as a result of this conviction. Accused has pleaded guilty to culpable homicide. He has thus shown a certain measure of remorse and contrition. He has spent just over 1 year in custody pending his trial and has undoubtedly learnt his lesson. He is a first offender. The practice of these courts is to keep first offenders out of prison whenever possible. The court shall endeavor to impose a rehabilitative sentence. The accused was evidently provoked by the deceased as his colleagues and only retaliated as he felt threatened and in danger. Accused's use of a sharp object, a stick, which resulted in a stab wound in the chest area was unwarranted and excessive. Accused acted irrationally and at the spur of the moment. In every case where human life is lost, the courts must be seen to protect the sanctity of human life.

It is our view that a lengthy prison sentence is not appropriate. In our view justice will not be served if a fine or community service were imposed. This would tend to trivialize the offence. A custodial sentence is the only appropriate sentence.

Accordingly, accused is sentenced as follows:

“3 years imprisonment of which 1 year is suspended for 5 years on condition the accused is not within that period convicted and sentenced of an offence involving violence and for which he is sentenced to a term of imprisonment without the option of a fine.

Effective sentence 2 years imprisonment.”

National Prosecuting Authority, state's legal practitioners
Majoko & Majoko, accused's legal practitioners