

THE STATE

Versus

LAMECK NDLOVU

IN THE HIGH COURT OF ZIMBABWE

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

HWANGE 7 JUNE 2022

Criminal Trial

Mrs M. Cheda for the state

Ms T. Chikwandare for the accused

MAKONESE J: The accused appears in this court facing a charge of murder in contravention of s47 (1) of the Criminal Law Codification & Reform Act (Chapter 9:23). The allegations being that on 22nd March 2013 and along Kazhana Road, Khatshana Village, Chief Mabhikwa area in Lupane accused struck the deceased once with a log on the head intending to cause his death. The accused denies the charge of murder. He tenders a limited plea of guilty to the lesser charge of culpable homicide. The state accepts the limited plea.

The background facts surrounding the commission of the offence are summarized in a statement of agreed facts tendered into the record. The accused was aged 32 years at the time of the commission of this offence. The deceased was aged 43 years at the relevant time. Deceased resided in the same village with the accused. On 22nd of March 2013 and at around 0200 hours, the accused, the deceased, Dumisani Ncube, Nhloniphani Sibanda and Mkhululi Maphosa were travelling home on foot from Matshalani Bus stop. They had just disembarked from a bus. Along the way the deceased and the accused lagged behind. They then had a misunderstanding over some long outstanding debt which deceased owed accused. The accused picked a log and struck deceased once on the head causing him to fall. Bloody froth came out of the deceased's mouth and ears. The deceased was ferried to Mpilo Central

Hospital for treatment. He later died on the 2nd of July 2013 as a result of injuries sustained in the assault.

The state has tendered into the record of proceedings a post mortem report compiled by Dr I. Jekeny a pathologist based at Mpilo Central Hospital. The report was prepared after an examination of the remains of the deceased on 3rd July 2013. The report was filed under post mortem report number 171/123/2013. The pathologist concluded that the cause of death was:

1. Brain damage
2. Head injury
3. Assault

On marks of violence the post mortem reveals that there were scars on the left side (healed), bed sores on the right trochanteric (buttock) region. On other remarks, the doctor concluded that the brain damage sustained during the assault resulted in the death. The deceased developed a condition known as quad paresis (partial) paralysis of all four limbs as a complication of the brain damage. The bed sores can occur in a patient with brain damage.

The state indicated that the log used in the assault was not recovered and therefore could not be produced as an exhibit.

On these facts placed before the court, we are satisfied that the single blow to the head of the deceased resulted in his death. We find that there is insufficient evidence to conclude that accused had the requisite *mens rea* to bring about the death of his victim. We make a finding that accused negligently caused the death of the deceased. In the result, the accused is found not guilty of murder. Accused is found guilty of culpable homicide.

Sentence

There is an increasing number of cases of violence committed following petty misunderstandings. The courts will impose sentences that should send a clear message that the use of violence in resolution of disputes is not tolerated. The deceased in this matter has been convicted of a serious offence. The court shall take into account all the mitigatory factors of the case as outlined by accused's defence counsel. Accused was aged 38 years at the time of the commission of this offence. He is the sole breadwinner for his family with the usual family responsibilities. Accused has tendered a plea of guilty on the lesser charge of culpable homicide. He has not wasted the court's time and will be credited for that. Accused has shown a certain measure of remorse and is contrite. The state has urged the court to impose a sentence that would meet the justice of the case. A log was used in the assault. Only one single blow delivered on the head led to fatal injuries. The post mortem report indicates that the deceased sustained brain damage that led to complications leading to his death. Accused must have used severe force in striking the deceased. He was clearly reckless in directing the blow at the victim's head. The accused showed no care for human life. There has been no real explanation for his reckless conduct.

In the result the following is deemed an appropriate sentence:

“Accused is sentenced to 10 years imprisonment of which 2 years is suspended for five years on condition accused does not within that period commit an offence involving violence and for which upon conviction he is sentenced to a term of imprisonment without the option of a fine.

Effective – 8 years imprisonment.”

National Prosecuting Authority, state's legal practitioners
Mhaka Attorneys, accused's legal practitioners