

THE STATE

Versus

VUSUMUZI DUBE

IN THE HIGH COURT OF ZIMBABWE
MOYO J with Assessors Mr T.E Ndlovu and Mr W. Zulu
HWANGE 6 OCTOBER 2021

Criminal Trial

B Tshabalalai, for the State
G Muvhiringi, for the accused

MOYO J: The accused faces a charge of murder it being alleged that on the 12th of June 2020, accused assaulted the deceased Thokozani Tshuma at a beer drink with a knobkerrie on the ribs resulting in his death on the 14th of June 2020. Accused denies the charge but offers a limited plea to the charge of assault.

The following were tendered into the court record

- State Summary
- Defence outline
- Accused's warned and cautioned statement
- post mortem report plus the Doctor's affidavit
- the knobkerrie that was allegedly used in the commission of the offence

They were all duly marked.

The evidence of the following witnesses was admitted into the court record as it appears in the State Summary

- Norman Moyo
- Bhekumuzi Moyo
- Sergeant Sibanda
- Doctor Gregori

Stephen Tshuma gave *viva voce* evidence for the state. Accused gave evidence for the defence. The facts of the matter are largely common cause in that the accused and deceased were at a beer drink with the 1st state witness and other patrons. Accused had his beer in a container enclosed with a sack. Deceased kicked that container and spilled accused's beer causing accused to strike him on the left side of the abdomen per the testimony of Stephen Tshuma. The accused said it was on the ribs and not the abdomen. Stephen Tshuma was a credible witness. I say so for he also admitted to facts favourable to the accused. He admitted that accused could not have intended to kill deceased because of the nature of the assault and that accused did assist deceased get medical assistance. He is not a witness who wanted to nail the accused at all costs. He admitted that there was an altercation between deceased and his in-laws but that deceased was never assaulted. This witness was present when deceased was assaulted and confirms that it was on the side of the abdomen below the ribs cage. It was also his evidence that deceased went out and they heard him groaning barely 10 minutes after he had been struck by accused. In fact he fell down outside soon after the assault, he never managed to go anywhere after the strike by the accused.

On the other hand accused said deceased had been assaulted by his in laws, no date is given as to when this transpired but he was not there, he cannot tell us

the nature of the assault or the extent of the injuries sustained in that assault. It is just a rumour that he heard. On this point the court can only accept Stephen Tshuma's testimony because he is the one who witnessed that event and told the court that deceased was never assaulted.

Defendant's counsel submitted that accused should be found guilty of assault as the post-mortem report talks of marks of violence on the thoracic cavity. The Doctor did not say that the deceased only sustained injuries on the thoracic cavity. In fact the Doctor's conclusion on the injuries to the abdomen are consistent with the evidence of Stephen Tshuma the eye witness whom we have found credible.

It is also common cause that deceased fell and groaned and had to be ferried to the hospital soon after accused's strike. The rib cage and the area below the rib cage that was pointed to by the witness can easily be stated one for another. Below the rib cage is clearly in the same area as the rib cage since a person does not have clear demarcations as to their anatomy. This area pointed to by the witness is near or around the rib cage and one cannot hold that against the witnesses. It would only be a problem if accused struck deceased on the rib cage and he died from injuries in the head a distinct part of the body away from the other. In this case clearly accused struck deceased on the left side of the abdomen or rib cage as it were and he did sustain fatal injuries on that same side around that area. In fact deceased was incapacitated soon after the assault by the accused. There could be no other reason for his demise. It is for these reasons that accused is found Not Guilty of murder but is convicted on the lesser charge of culpable homicide.

Sentence

The accused is convicted of culpable homicide. He is a first offender. He pleaded guilty to assault. He assisted deceased's relatives. He is contrite. The deceased was the aggressor. Accused acted unreasonably but he used a knobkerrie handle and struck deceased in the abdomen which is generally not considered a vulnerable area. This incident is most unfortunate. A life was however, unnecessary lost. Beer drinks should be places of fun and not violence. The case is a very unfortunate borderline case.

Accused is sentenced to 3 years imprisonment with 1 year imprisonment suspended for 5 years on condition accused is not within that period convicted of an offence involving violence whereupon conviction he shall be sentenced to imprisonment without the option of a fine. The remaining 24 months imprisonment are suspended on condition accused performs 480 hours of Community Service at Lupane Clinic.

National Prosecuting Authority, state's legal practitioners
Mvhiringi & Associates, accused's legal practitioners