

THE STATE

Versus

SIFELANI DUBE

HIGH COURT OF ZIMBABWE
MOYO J with Assessors Mr J Sobantu and Mr M Ndlovu
BULAWAYO 16 AND 17 MARCH 2021

Criminal Trial

B Maphosa, for the state
G Sengweni, for the accused

MOYO J: The accused faces a charge of murder, it being alleged that during the month of August 2020 and at house No. 1798 Nketa 8, accused stabbed the now deceased Ocean Kudakwashe Mahachi with a knife once on the head resulting in the deceased dying at a later date from the injuries sustained in that assault.

The accused person pleaded Not Guilty to the charge of murder, but instead tendered a limited plea to a charge of culpable homicide. The state counsel accepted the limited plea and the parties drew a statement of agreed facts. It was tendered into the court record and marked Exhibit 1, it reads as follows:-

The State and the Defence agree that the following are common cause being that:

1. The accused was aged 44 years at the time of the commission of the offence. The deceased was aged 36 years at the time he met his death. The accused and deceased were friends.
2. On the date unknown to the prosecutor but during the month of August 2020 and at around 0600 hours, the deceased was sleeping in a room at House Number 1798 Nketa 8, Bulawayo with one Armstrong Gumede and Mthokozisi Mzacana.
3. The accused proceeded to where the deceased was sleeping and engaged in a fist fight. In the process the accused produced a knife and stabbed the deceased once on the head. The deceased then produced a screw driver and their friends stopped the fight and disarmed both of them of their weapons.

4. Both the deceased and the accused went their way. The deceased never sought any medical treatment.
5. It was on the 5th of September 2020 when the deceased was attending a burial of a friend at Mvutshwa Cemetery when he collapsed and died on the spot.
6. It was discovered that the deceased had a wound on the head. His body was certified dead by Doctor Kusano who was also attending that burial.
7. The matter was reported to the police and investigation led to the arrest of the accused.
8. A post mortem report was conducted by Doctor Juana Rodriguez Gregori who concluded that the cause of death was
 - (a) Subarachnoid Haemorrhage
 - (b) Head trauma
9. The accused will state that his actions were negligent when he assaulted the deceased as outlined. Further he had no intention of killing the deceased.

Wherefore the accused will plead NOT GUILTY to murder but GUILTY OF CULPABLE HOMICIDE.

Those were the material respects of the statement of agreed facts. The post mortem report was also tendered and marked Exhibit 4. It gives the cause of death as:

- subarachnoid haemorrhage
- head trauma

From the evidence before us, accordingly the accused is found not guilty on the charge of murder and is instead found guilty on the lesser charge of culpable homicide.

Sentence

The accused is convicted of culpable homicide. He is a first offender, he pleaded guilty to the charge. He is a family man and a breadwinner. Accused however acted in an abominable manner on the fateful day. He accosted deceased at his place of residence, a fight ensued, he was armed with a knife a lethal weapon on its own. He then stabbed deceased once on the head a vulnerable part of the body. Deceased of course did not seek medical attention, resulting in his later death. We can only surmise that perhaps the damage would have been lesser had he sought medical attention. The lack of information on what could

have happened to deceased had he sought treatment obviously works in accused's favour. Accused would have been sentenced to about 7 years imprisonment. However, his plea of guilty and that he is a first offender would mean that he is also eligible for a portion of the sentence to be suspended seeing he is a first offender. What makes accused's case very bad is arming himself with a knife, that is seriously aggravating in the circumstances, it would have been different if accused had used something he had just picked in the heat of the moment. Carrying a knife around is in itself aggravating. It plays to the notion that we now live in a violent society where people find it fashionable to move around with lethal weapons. Such conduct must be discouraged especially where a life has been lost in violent circumstances.

The accused is accordingly sentenced to 7 years imprisonment with 2 years imprisonment suspended for 5 years on condition that 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.

National Prosecuting Authority, state's legal practitioners
Sengweni Legal Practice, accused's legal practitioners