

THE STATE
versus
FORWARD KICHINI

HIGH COURT OF ZIMBABWE
MUTEVEDZI J
HARARE, 13 and 16 September 2022

Assessors: *Mr Shenje*
Mr Mhandu

Criminal Trial

M Mugabe, for the State
O Zimboza, for the accused

MUTEVEDZI J: The accused was arraigned before this court facing a charge of murder as defined in s 47 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] (Hereinafter the Code)]. The allegations are that on 24 December 2018, at Chireka Village, Chief Musina in Bindura, the accused assaulted Garikai Petro with fists and booted feet on the chest with the intention to kill him or realising that there was a real risk or possibility that death may occur.

The accused pleaded not guilty to murder but guilty to the lesser charge of culpable homicide as defined in s49 of the Code. The State accepted the accused's limited plea.

The agreed facts are that the deceased and the accused were neighbours. On Christmas eve in 2018 around 1800 hours, the deceased arrived at accused's homestead. He was visibly drunk and belligerent. He took out a match-box and threatened to burn down the accused's huts. The accused took away the match-box and assaulted the deceased with fists on the chest. The deceased fell but accused continued assaulting him all over the body using booted feet. He carried the stricken deceased out of his yard and left him lying down on the ground. Some good Samaritan, one Jenita Jonasi, later assisted the deceased to go to his house.

On 25 December, the deceased was found unconscious by Estery Chaitezvi. She informed others. They then all tried to assist the deceased but their help was in vain. The deceased passed on and the matter was reported to the police. That led to the arrest of the accused on the charge of murder.

The prosecutor tendered the post-mortem report compiled by Doctor Yehilyn Iglisias Serrano on the remains of the deceased on 3 January 2019 to ascertain the cause of his death. His conclusion was that death was due to mixed shock, acute haemorrhagic pancreatitis and acute pancreatitis. He also indicated that the deceased had left severe pneumonia. In addition, the prosecutor also produced an affidavit deposed to by Doctor Kudzanai Chimedza. It interpreted the medical terms which were used in the post-mortem report. The affidavit explained that:

1. Mixed shock means shock due to a combination of bleeding, pain and stress
2. Acute haemorrhagic pancreatitis means ruptured/burst pancreas with massive bleeding into the abdomen
3. Acute pancreatitis means inflammation or injury to the pancreas within less than 7 days
4. Left severe pneumonia means serious chest infection of the left side

On the basis of the above evidence, the court is satisfied that the acceptance by prosecution of the accused's plea of guilty to the lesser charge was well made. In the circumstances, the accused person is found not guilty and is acquitted of the charge of murder. He is found guilty of the lesser charge of culpable homicide as defined in s49 of the Code.

Reasons for sentence

The accused person stands convicted of the offence of culpable homicide. He is a divorcee aged 50 years. He has three minor children all dependent on him.

The court notes that the accused pleaded guilty to the charge. The court will not only reward him for that plea but equally recognizes the genuine remorse he exhibited throughout the proceedings for the unfortunate loss of life. The trauma of having contributed and caused the death of another man will certainly haunt him for the rest of his life. It is punishment on its own. In addition, he is a first offender. The law requires him to be accorded some measure of discount from the penalty the court may impose.

It is also to the credit of the accused that the assault was provoked by the deceased's belligerent and provocative conduct. In a hopelessly drunken stupor, the deceased arrived uninvited at accused's homestead. He lit a match and threatened to burn down accused's huts. The accused then assaulted him. Clearly therefore, the deceased in a significant way, invited

the assault upon himself and contributed to his death. The accused assaulted the deceased with mere hands. He did not use any weapon.

In aggravation however, the importance of human life must override all other emotions. The accused was a neighbour to the deceased. He must have known the drinking habits of the deceased in order to restrain himself from getting into the problems he now faces.

After severely assaulting the deceased, the accused did not bother to check if he was not mortally wounded. Instead, he dragged him out of his yard and left him to die. When good Samaritans finally arrived to help it was too late. If the accused had rendered assistance early it may have assisted the deceased. That lack of concern increases his moral blameworthiness.

We have not been told what help if any, the accused rendered to the deceased's family at his funeral or thereafter. That he did not do anything may signify that he treated the deceased with disdain.

In recent times, concerns about the increase of violent crime have been growing louder. The courts must be seen to be playing their part in protecting society against such violence.

In the end however, the court admits that the accused is not inherently wicked. The death of the deceased will remain an unfortunate consequence of a lack of control of emotions.

The accused is sentenced to:

“8 years imprisonment of which 3 years imprisonment is suspended for 5 years on condition within that period the accused does not commit any offence involving the use of violence upon the person of another and or negligently causing the death of another for which upon conviction he is sentenced to imprisonment without the option of a fine.”