

THE STATE
versus
TALENT CHIDZANA

HIGH COURT OF ZIMBABWE
MAWADZE J
MASVINGO, 5 March 2020

Criminal Trial

Assessors

1. Mr Gweru
2. Mr Nish

E. Mbavarira, for the state
E.Y. Zvanaka, for the accused

MAWADZE J: The task of this court is to assess the appropriate sentence in this matter.

The 25 year old accused of Magwiro village, Headman Handizvihwi, Chivi, Masvingo was arraigned before this court for contravening section 47 (i) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] [hereinafter the Criminal Code *Chapter 9:23*].

The accused is said to have unlawfully caused the death of the 25-year-old Anold Vureya on 19 March 2019 at Chomuruvati business centre in Chivi by hitting him with fists several times on the head and also kicking him many times on the head.

The accused was however convicted of contravening section 49 of the Criminal Code [*Chapter 9:23*] on his own plea of guilty. This was after both counsel found each other and drafted a statement of agreed facts "Annexure 'A'." We also found the concession by the State in that regard to be in order. It would have been a Herculean task for the State, on the evidence available,

to prove successfully the offence of murder. This is also because among other factors the accused assaulted the now deceased using bare hands and not any other weapon except also his feet. Further, the assault took place on 19 May 2019 and the now deceased passed on 10 August 2019, some three months later after being discharged from hospital. Under such circumstances it would be near impossible to prove that the accused had the requisite *mens rea* to commit murder.

The salient facts which appear from the statement of agreed facts are as follows;

- (i) the accused and the now deceased were acquaintances. The accused sometimes would run errands like fetching water and firewood for the now deceased for a fee.
- (ii) prior to the fateful day the now deceased had given the accused RTGs\$2 as a fee for the accused to fetch firewood but the accused had not fulfilled that obligation.
- (iii) a misunderstanding then arose over the said issue between the accused and the now deceased. The now deceased demanded the refund of the RTGs\$2 paid to the accused. The accused had no money and insisted that he would rather fetch the said firewood. This was unacceptable to the now deceased.
- (iv) the accused was drinking beer on the day in question when this dispute arose.
- (v) it is the now deceased who first assaulted the accused with open hands.
- (vi) the accused retaliated using clinched fists and also kicked the now deceased on the head.
- (vii) as per the facts the accused exerted excessive force and the now deceased suffered serious injuries and had to be hospitalised firstly at Matibi Mission hospital, then was transferred to Masvingo Central Hospital and ultimately to Harare Central Hospital from where he was discharged even though his condition had not improved.
- (viii) as per the post mortem report "Exhibit I" the serious injuries suffered by the now deceased as described as follows;

- "1. *Body is wasted and dehydrated*
2. *Neck loose and hypermobile.*
3. *Bilateral hepatisation of the lungs."*

The cause of death is said to be;

- "1. *Hypostatic pneumonia*
2. *Brain and spinal trauma*
3. *Assault"*

It is in the context of these facts that this court should proceed to assess the appropriate sentence.

The offence of culpable homicide arising from violent conduct is a very serious offence. It entails the loss of life, *albeit* through negligence. The sanctity of human life remains paramount and the sacred nature of human blood cannot be over emphasised. Indeed no person has the right to take the life of another irrespective of the circumstances. In *casu* a young life has been terminated at 25 years and can not be replaced. It is saddening that this was over a very minor dispute involving a paltry RGTs\$2.

The prevalence of cases of this nature is very worrying in Masvingo. Young people, for unclear reasons easily resort to violence at the slightest provocation. There is therefore great need for the message to be sent loud and clear that such conduct is not tolerated.

It is clear from the facts of the case that the accused's degree of negligence is very high. This can be discerned from the injuries inflicted on the now deceased. The accused's moral blameworthiness is therefore very high.

Be that as it may we have not lost sight of the mitigatory factors, which include the accused's personal circumstances and factors surrounding the commission of the offence.

The accused is a young man who is still single with no family responsibilities. He is barely literate, unemployed without savings or assets.

Although I still recall that during his bail application it was intimated that he is a repeat offender, the State today has said that he is a first offender and the court should consider him as such. My only exhortation is for the State to check accused person's records so that they are properly punished. As a first offender accused deserve some measure of leniency.

The accused pleaded guilty. He did not waste the court's time or resources being prosecuted. Although witnesses were present they were saved the burden of testifying and possibly reliving this painful episode. Indeed, the accused is contrite and should be rewarded for being forthright.

In terms of Section 221(2) of the Criminal Code [*Chapter 9:23*] voluntary intoxication is not considered as a mitigatory factor where one is convicted for an offence like culpable homicide which requires proof of negligence.

The accused has suffered pre-trial incarceration for 10 months and this should be taken into account. Further the accused shall forever live with the stigma that he has the now deceased's blood in his hands. Such trauma is punishment on its own.

We have been referred to a number of cases by both counsel to assist us in assessing sentence. These include *inter alia*: -

State vs Chinanga SC 79/02; State vs Amon Vambe & Anor HH 254/16; State vs Madhomba HMA 24/17; State vs Mabonga HMA 4/18; State vs Chidhiza HMT 15/18; State vs Bongami Mhlanga HB 2/18; State vs Ruzami HH 588/19

After weighing the mitigatory and aggravating factors we believe the following sentence is appropriate;

"the accused is sentenced to 5 years imprisonment of which 1 ½ years' imprisonment is suspended for 5 years on condition the accused does not commit within that period any offence involving the use of violence upon the person of another for which the accused is sentenced to a term of imprisonment without the option of a fine.

"The effective sentence is 3 ½ years imprisonment."

*National Prosecuting Authority, counsel for the State
Saratoga Makausi Law Chambers, pro deo counsel for the accused*