

THE STATE
versus
BLESSED MUPONDA

HIGH COURT OF ZIMBABWE
MAWADZE J
MASVINGO, 15 March 2022

Assessors: 1. Mr Gweru
 2. Mrs Chademana

E. Mbavarira, for the state
A. Gwezhira, for the accused

Criminal Trial - Sentence

MAWADZE J: It is tragic and unfortunate that this brawl by both the accused and the now deceased who were joyfully drinking beer together for the better part of the day ended up in the loss of life.

The accused was initially arraigned for murder as defined in section 47(1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] but the matter proceeded on a statement of agreed facts at the commencement of the trial. This was so as that the state accepted accused's plea to the permissible verdict of culpable homicide as defined in section 49 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. Indeed, the facts support a charge of culpable homicide rather than one of murder.

The 25-year-old accused resides at No. 1110 Zimuto Street, Mucheke A in Masvingo. He is a self confessed tout.

The then 36-year-old accused was residing at Plot number 477, Lancashire, Chikomba, in Chivhu.

The agreed facts in this matter are as follows;

On 15 January 2021 at about 1100hrs the accused was at a place called kwaVaMuzenda homestead, Zimuto Street, Mucheke A, in Masvingo. He was selling some 2 keys whisky in 750ml bottles. The now deceased approached the accused and deceased bought 750ml of the whisky. Both accused and the now deceased became drinking mates together with one Mabena and other two men from around 1100hrs until around 1700hrs.

During that day the now deceased gave accused his cellphone for it to be charged at the accused's house. At around 1700hrs the now deceased asked for his cellphone but the accused could not oblige and give him. A misunderstanding arose. The accused left the drinking place but the now deceased followed him. The misunderstanding persisted.

The now deceased started pushing the accused still demanding his cellphone. The accused retaliated by violently pushing the now deceased. The now deceased fell down with his head hitting hard on the ground.

The drunken now deceased was not deterred. He stood up and followed the accused. The accused was unimpressed and the accused again violently pushed the now deceased who again fell down hitting his head on the hard ground. The accused proceeded to give the now deceased the cellphone but by then the damage had been done. The now deceased tried to stand up but failed. The now deceased then passed on immediately.

The post mortem report shows the cause of death as;

- “1. *Encephalic Contusion.*
2. *Head Trauma.*”

It is indeed very sad that a life was lost over a seemingly trivial dispute. It is unlikely that if both accused and the now deceased were sober would have behaved in this manner.

The reality however is that once a life is lost it can not be retrieved. The sanctity of human life can not be over emphasized. The duty of the courts is to protect life.

The accused's degree of negligence was in our view moderate. The accused had no reason at all to refuse with the now deceased's cellphone upon demand. Further the accused should have realised that the now deceased was drunk and should have acted with restraint. Instead the accused reacted by violently pushing the now deceased who should have been very drunk and lacking balance. This happened twice. The now deceased would hit his head on to the hard surface

hence the fatal injuries. It is clear that the accused used severe force and was oblivious as to the consequences. A deterrent sentence is called for.

There are however a number of factors which call for leniency.

The accused is barely literate as he only did grade two. He is married with one minor child. The accused was orphaned at a tender age. His family survives on his manual labour as he realises an income of about US\$30 per month. The accused's incarceration would severely prejudice his young family moreso as he neither have savings nor assets.

The accused deserves some measure of leniency on account of his plea of guilty and that he is a first offender.

It is accepted that the now deceased was not only drunk but was the aggressor. The accused simply failed to restrain himself and decided to retaliate. Nonetheless the accused did not use any weapon. He simply reacted by violently pushing the now deceased away twice. Be that as it may the accused will now live forever with the stigma that he caused the now deceased's death.

In view of the moderate degree of negligence in this case our view is that a minimal custodial sentence is called for. In view of the serious nature of this offence which entails violent conduct and the resultant loss of a life, a fine or community service or a wholly suspended sentence would be inappropriate.

In the result the accused is sentenced as follows;

“2 years imprisonment of which 1 year imprisonment is suspended for 5 years on condition accused does not commit within that period any offence involving the use of violence upon the person of another and or negligently causing the death of another through violent conduct and for which the accused is sentenced to a term of imprisonment with the option of a fine.

Effective sentence: - 1 year imprisonment.”