

THE STATE
versus
TAFADZWA SHLAMBELA

HIGH COURT OF ZIMBABWE
MAWADZE J
MASVINGO, 21 July, 2022

Assessors

1. Mrs Chademana
2. Mr Chikukwa

E. Mbavarira for the state
Ms C. Chuma for accused

Criminal Trial

MAWADZE J: This matter proceeded on a statement of agreed facts after the accused pleaded guilty to a lesser charge and permissible verdict of culpable homicide. That limited plea was accepted by *Mr E. Mbavarira* for the state. Further, the facts also show that the concession by the state is well made. A charge of murder as defined in s 47(1) of the Criminal Law (Codification and Reform) Act cannot be sustained in the circumstances.

The 49 year old now deceased was an uncle to the 29 year old accused. They both resided in the same village being Chavani Village, Chief Neshuro, Mwenezi in Masvingo.

On 21 May 2021 at around 1900 hrs the now deceased approached accused at the accused's homestead. The now deceased took issue with the place the accused had built his house. An altercation ensued.

The now deceased assaulted the accused with open hands and bricks. The accused reacted by pushing the now deceased away. In the process the now deceased hit his head heavily against a kitchen wall. Thereafter the accused took a log or a switch and assaulted the now deceased all over the body. The accused was only restrained by Stephen Hlabanani and Renias Ngara who arrived at the scene. By then the now deceased had been severely injured and was ferried to Mushava Clinic from where he was transferred to Neshuro hospital where he died the following day on 22 May, 2021.

The post mortem report by Dr Godfrey Zimbwa shows the following injuries;

“1. Irregular lacerations on right frontal area.

2. Laceration left frontal parietal arear ± 5cm, skull deep, straight with smooth edges.

3. Bruises on both feet.”

The cause of death was head injury arising from the assault.

The above are the agreed facts upon which this court should assess the appropriate sentence. A delicate balance should be struck between the mitigating and aggravating factors.

There is no doubt that this is a serious offence. It entails loss of life through violent conduct. The sanctity of human life needs no further elaboration. It is incumbent upon the courts to protect life and punish appropriately those who unlawfully cause loss of life.

The now deceased was not only older to the accused but a close relation. The accused should have acted with measured restraint.

The post mortem report shows the severity of the force used and the indiscriminate nature of the assault. Indeed the now deceased succumbed to the injuries the following day despite being hospitalised.

The prevalence of such offences in this jurisdiction calls for deterrent sentences. A fine, community service or a wholly suspended sentence would send wrongful and harmful signals to persons of like mind and society at large.

Be that as it may, the accused deserve a great measure of leniency on account of his personal circumstances and mitigating factors surrounding the commission of the offence.

The accused is a first offender. He has a wife and very young children to fend for aged 4 years and 5 years respectively. As a man of straw his manual labour is critical to the survival of his family. The accused will now have to forever live with associated stigma of taking away the life of his uncle. His relatives and society at large may forever be unforgiving.

The accused has suffered from pre-trial incarceration of a consideration period of 14 months.

The facts of the matter clearly show that the now deceased contributed to his demise. It is the now deceased who went to the accused's homestead. He did so at night. It is the now deceased who had a grievance against the accused. Surely the village head or other family members could have been roped in to try and resolve the dispute of where accused had constructed his house. It is unlikely that the accused's house had suddenly sprout out at night on this day.

The now deceased was clearly the aggressor and confrontational. He is the one who assaulted the accused first not only with hands but also with bricks. The accused like any other reasonable person was entitled to defend himself in the circumstances. The only error the accused made is that he did not defend himself in a reasonable manner but acted negligently. This is the basis of accused's criminal liability for which he should be punished.

The accused's degree of negligence is moderate in the circumstances. The bar of his moral blameworthiness is thus lowered. A minimal custodial sentence would be in order.

In the circumstances the accused is sentence as follows;

“4 years imprisonment of which 2 years 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 sentence to a term of imprisonment without the option of a fine.

Effective sentence is 2 years imprisonment.”