

THE STATE
versus
PAUNODA MATINDI

HIGH COURT OF ZIMBABWE
MWAYERA J
MUTARE, 24 March 2020

Criminal Trial – Sentence

M Musarurwa, for the State
B. N Mungure, for the accused

MWAYERA J: In this case the state accepted a limited plea of guilty to culpable homicide as defined in s 49 of the Criminal law (Codification and Reform) Act [*Chapter 9:23*]. The matter thus proceeded on a statement of agreed facts.

This is a case in which one blow to the head in a fit of rage occasioned death of the deceased. The brief agreed facts are as follows:

On 4 August 2019 at around 1600hrs and at Masimbe Business Centre, the accused person and deceased had an altercation over refusal to pay for meat partaken by the deceased. The accused who was selling braai meat was angered by the refusal of deceased to pay. The accused then picked a log and struck deceased on the head. The deceased sustained severe head injury (post mortem report exh 1 refers) from which he died. The accused thus negligently caused the death of the deceased by striking him with a log on the head.

Sentence

In reaching at an appropriate sentence we have considered all mitigatory and aggravatory factors advanced by the state and defence counsel. Accused is a first offender who pleaded guilty thereby showing he regrets the commission of the offence. The accused cannot be rewarded for negligently causing the death of the deceased but that he pleaded guilty cannot go unnoticed. In considering an appropriate sentence we have taken note of the fact that the accused is also willing to customarily compensate the deceased's family. That coupled with the funeral assistance in the form of provision of food and coffin is acceptance of having wronged. Although the gesture does not take away the criminal liability is a good moral gesture.

In aggravation is the fact that precious life was lost in circumstances where it could have been avoided. The deceased was being a nuisance but the accused ought to have exercised self-restraint and not strike him with a log on the head. The accused negligently caused the deceased's death by striking him although once, on a vulnerable part of the body the head. That the assault was not premeditated but provoked is mitigatory. However, the blow was aimed on the head thus causing the loss of life. Also in aggravation is the fact that the deceased was fairly young he was robbed of life at a prime age. The deceased left a pregnant widow who gave birth to his second child after his demise. That child will never experience father love because of \$5-00 for consumed meat which was not paid. The deceased's 2 minor children will suffer as most orphans since the father and provider lost his life at the hands of the accused. In passing sentence it is of paramount importance to consider the circumstances of the commission of the offence and seek to match the offence to the offender. In this case the degree of negligence cannot be said to be gross but ordinary occasioning loss of precious human life. Deterrence is called for not only to deter accused but likeminded people. Violence is not a solution to disputes and it must be discouraged by courts passing appropriate sentences. That the deceased brought it upon himself by being drunk, disorderly and provocative should not be lost sight of.

Thus upon weighing mitigatory factors *vis-à-vis* aggravatory factors it is our considered view that a short imprisonment sentence is appropriate in the circumstances. The accused is sentenced as follows:

3 years imprisonment of which 1 ½ year imprisonment is suspended for 5 years on condition accused does not within that period commit an offence involving the use of violence on the person of another for which he is sentenced to imprisonment without the option of a fine.

Makombe and Associates, accused's legal practitioners
National Prosecuting Authority, state's legal practitioners