

THE STATE

VERSUS

MANDLENKOSI TINOFA MABHENA

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
BULAWAYO 22 OCTOBER AND 31 OCTOBER 2013

Mr T. Hove for the State

Mrs S. Matimba for the Accused

Criminal Trial

Makonese J: The accused was arraigned before this court on a charge of murder, it being alleged that on the 25th December 2011, the accused intentionally and unlawfully and with intent to kill, did stab Tulani Tinofa to death with an okapi knife. The accused person was aged 25 years at the time of the commission of the offence. He resided at Village Head Mbangiswa, Chief Mathe, Tshatshani, Kafusi Area, Guyu in Gwanda District. The deceased and accused are brothers. The deceased was aged 30 years at the time he met his death. On the fateful day the accused and the deceased had gone to Kafusi Business Centre for the Christmas celebrations.

The accused pleaded not guilty to the charge of murder and tendered a limited plea of guilty with respect to culpable homicide. The limited plea was accepted by the State. The court duly acquitted the accused on the murder charge and returned a verdict of guilty with respect to culpable homicide.

The State and defence tendered into evidence a statement of Agreed Facts marked Exhibit 1. The contents of the agreed statement of facts is in the following terms:-

- "1. On the 25th December 2011 accused was drinking beer at Kafusi Business Centre in Gwanda District.
2. Accused had in his possession an okapi knife.
3. Accused had a misunderstanding with one Meluleki Sibanda, over a pint of Lion Lager Beer.
4. The deceased intervened and tried to calm the situation but accused mentioned that Meluleki Sibanda drank his beer. He then snatched the beer from Meluleki

Sibanda.

5. The deceased took the beer from the accused and gave it back to Meluleki Sibanda.
6. Accused started beating the deceased with clenched fists. The deceased retaliated resulting in a fist fight.
7. The accused stabbed deceased on the chest with an okapi knife and ran away.
8. The accused pleads not guilty to murder.
9. The accused pleads guilty to culpable homicide.”

The State tendered into the record a Post Mortem Report by Dr S. Pesanai with the consent of defence counsel. The Post Mortem is marked Exb “2”. The cause of death as reflected in the Post Mortem Report was:

1. Left haemopneumothorax
2. Perforated heart
3. Stab wound
4. Homicide

The State indicated that the okapi knife was not availed to the State for production in court. The Court having been satisfied that the limited plea was properly made convicted the accused person of culpable homicide.

Mrs Matimba addressed the court in mitigation and highlighted that the accused was a first offender who had tendered a limited plea. He was aged 25 years at the time of the offence and had spent almost 2 years in remand prison awaiting trial. We have taken into account all the personal circumstances of the accused in mitigation as well as the circumstances surrounding the commission of the offence. The court takes into consideration that accused was highly intoxicated on the day in question having consumed alcohol and also smoked dagga. His mental faculties were therefore somewhat clouded by the combined effects of dagga and alcohol. The stabbing occurred at the spur of the moment and occurred after an altercation between the deceased and accused. The accused felt that he was provoked but nonetheless he clearly overreacted. The deceased who happens to be accused’s sibling was stabbed whilst trying to restrain the accused. The accused acted unreasonably. He fled the scene after the stabbing and even tried to abscond out of the country into Botswana. His efforts were however in vain. He was arrested and is now facing the law and ultimately the consequences of his conduct. The moral blame worthiness of the accused person is diminished by his drunkenness. On the other hand the court ought to ensure that justice is done. The accused killed his brother in tragic circumstances. A life was needlessly lost and the courts have always emphasised the

sanctity of human life. In arriving at an appropriate sentence the court must balance the interests of justice and society in general and those of the accused person. The court will take note of the period the accused has spent in prison whilst awaiting his trial as well as other mitigatory features. The court observes that the stab wound was very deep as it caused a perforation of the heart. The stab wound is described in the Post Mortem Report as being 4 x 2cm and situated 6cm from the left nipple and 12 cm from the midline and 45 cm from top of head. What is inescapable is that accused plunged the okapi knife into the left chest cavity of the deceased with a high degree of force and with fatal consequences. We accept that the accused will be haunted by the fact that he killed his own brother for the rest of his life.

In the result, an appropriate sentence would be as follows:-

10 years imprisonment with 3 years suspended for 5 years on condition the accused is not within that period convicted of an offence of which violence is an element and for which he is sentenced to a term of imprisonment without the option a fine.

Effective sentence: 7 years imprisonment.

Attorney General's Office for the State
Lazarus and Sarif Accused's Legal Practitioners