

THE STATE

Versus

KHULULANI NCUBE

IN THE HIGH COURT OF ZIMBABWE
MOYO J
HWANGE 12 MARCH 2014

Ms N. Ngwasha for the state
Mr G. Muvhiringi, for the accused

Criminal Trial

MOYO J: The accused person is charged with the crime of murder in that on the 10th day of December 2013, and behind Bhulane Bottle store Gwitshi Business Centre, Nkayi, the accused killed Jaison Ncube. The accused pleaded not guilty to the charge of murder and instead tendered a limited plea to culpable homicide. The state counsel properly conceded to this plea. The statement of agreed facts was tendered before this court and was marked Exhibit 1, it reads thus:-

- “1. Accused resides at Zenzo Ncube’s homestead, Gwitshi, Nkayi and was aged 27 years at the time of the commission of the offence.
2. The deceased was aged 29 years at the time he met his death and he used to reside at Magibi Ncube’s homestead, Gwishi, area Nkayi.
3. The two were not related.
4. On the 10th of December 2013 and at around 2100 hours the accused and deceased were at Bhulane Bottle Store Gwitshi Business Centre Nkayi drinking beer.
5. Accused approached deceased and asked for dagga.
6. Deceased refused and this did not go down well with the accused person who punched deceased and deceased retaliated with fists.
7. The two were restrained from fighting by Mordecai Ncube and Qhubekani Ncube.
8. Accused picked a half farm brick and struck the deceased once on the forehead.
9. The deceased fell to the ground and lost consciousness and sustained a deep cut on the forehead.
10. Deceased was ferried to his homestead and accused fled the scene.
11. Deceased passed away before he was ferried to the hospital.
12. The accused person pleads not guilty to murder but pleads guilty to culpable

homicide in that he negligently caused the death of the deceased.”

The post-mortem report was tendered and marked Exhibit II. It provides the cause of death as

- (1) brain damage
- (2) depressed compound skull fracture
- (3) assault head injury.

The half brick that was used was tendered and marked Exhibit III, its weight is 880g, length 13cm, and width 10cm. The post-mortem report states that very severe force was used and that the tendered brick is consistent with the injuries suffered by the deceased.

I accordingly find the accused not guilty of the crime of murder but I proceed to convict him of the charge of culpable homicide.

In sentencing the accused person were have considered that he is a first offender, he pleaded guilty, he has no notable property to his name, he is a peasant farmer and is unemployed, he is also married with one child and has an expectant wife. He also takes care of his sickly mother. He was intoxicated at the time. Defence counsel however, properly conceded that only a custodial sentence would meet the justice of this case.

In aggravation are the circumstances in which this offence was committed, a life was lost under circumstances that were very unfortunate. The accused person, asked for dagga from the deceased, the deceased rejected accused’s request. A fight then ensued at the instance of the accused. The accused was the instigator. He asked for dagga and was not given then according to him the deceased had to be assaulted. This shows accused’s lack of respect for other people. As if that was not enough, the accused after being restrained by Mordecai and Qhubekani Ncube, still decided to get a brick, a life endangering tool, and aimed it at the deceased’s forehead a vulnerable part of the human anatomy. This was brutal and uncalled for. The post mortem report states that very severe force was used and that the bone was exposed. It is very unfortunate indeed that a man sitting quietly smoking his dagga would die in this manner. Where you get killed for what is yours, where you get killed for saying No, the court must certainly send a message loud and clear out there, that this court as the protector of all rights, including the right to life, will frown at instances in which people’s lives are ended for no reason at all. The deceased died for no reason at all and this should be condemned in the strongest

of terms.

I accordingly sentence the accused person to 10 years imprisonment of which 3 years imprisonment suspended for 5 years on condition the accused person is not within that period, convicted of an offence of which violence is an element.

Criminal Division, Attorney General's Office, state's legal practitioner
Dube and Company, accused's legal practitioner