

THE STATE
versus
LOVEMORE MAKOMBE

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 19 MAY 2015

Miss *N. Ngwenya* for the state
Miss *N. Ndlovu* for the accused

Criminal Trial

MOYO J: The accused person faces a charge of murder it being alleged that on 6 November 2014 at GVL Motors, Corner Harare road and Netherby Drive, in Bulawayo he slapped the deceased resulting in deceased falling and hitting his head on the tarmac. Deceased later died at the United Bulawayo Hospitals, the following day.

The parties prepared and tendered a statement of agreed facts whose material aspects read as follows:

1. That accused and deceased are cousins.
2. That on 6 November 2014 at GVL Motors, corner Harare road and Netherby Drive, the accused and deceased started quarreling and arguing over the issue of their failure to get transport to Mahatshula.
3. That the misunderstanding degenerated into a fist fight which was started by the deceased.
4. That the accused retaliated by clapping the deceased once with an open hand on his face.
5. That the deceased fell down onto the tarmac with the back of the head and got injured.
6. That the deceased, accused and one Foreman proceeded home and the deceased complained of a headache.

7. That the accused went to local shops and bought headache pills. Deceased continued to complain of a headache and around 2300 hours the deceased was rushed to United Bulawayo Hospital where he was treated and discharged.
8. That at around midnight the deceased's condition deteriorated further and he was transported to United Bulawayo Hospitals where he was admitted.
9. That deceased succumbed to injuries and died on 7 November 2014.

The statement of agreed facts was marked exhibit 1. The state also tendered an affidavit by one Constable Chikunguru the officer who identified deceased's body to the pathologist. It was marked Exhibit 2. The post mortem report was also tendered and marked Exhibit 3. It gives the cause of death as intracranial haemorrhage, skull fracture, head injury, assault.

Clearly from the facts, the accused and deceased had a misunderstanding, accused slapped deceased and deceased then fell hitting his head on the tarmac. This is an unfortunate state of affairs where deceased's death was an accident although it resulted from accused' actions. The concession by the state to the charge of culpable homicide was correctly made in our view. The accused person is accordingly found not guilty of the charge of murder but he is found guilty of the lesser charge of culpable homicide.

Sentence

Having found that there is weighty mitigation in this matter, the accused person is sentenced to 36 months imprisonment, with 18 months 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. The remaining 18 months are suspended on condition accused performs 525 hours of community service at Mahatshula Primary School.

*National prosecuting Authority's office, the state's legal practitioners
Kossam Ncube and Partners, the accused's legal practitioners*