

THE STATE
versus
SOLOMON DUBE

HIGH COURT OF ZIMBABWE
MOYO J
HWANGE 12 NOVEMBER 2015

Miss N. Ngwasha for the state
T. Mukuku for the accused

Criminal Trial

MOYO J: The accused person faces a charge of murder, it being alleged that on 31 May 2015 and at Solomon Dube's homestead, Siyamagura village, Lubimbi 2 in Binga, he killed his mother namely Esica Dube.

The accused person offered a limited plea to a lesser charge of culpable homicide. The state accepted this plea. A statement of agreed facts was drawn and tendered by the parties. It was marked Exhibit 1. It reads as follows:

1. The deceased was aged 80 years at the time she met her death and she used to reside at her own homestead, Siyamagura village, Lubimbi 2, Binga.
2. The accused was aged 45 years at the time of the commission of the offence and resides at his own homestead Siyamagura village, Lubimbi 2, Binga.
3. The accused and deceased are son and mother.
4. On 31 May 2015 at around 1900 hours the accused was seated in his bedroom hut with Brighton Dube his son having returned from a beer drink drunk.
5. The deceased then arrived at accused's homestead to inquire from Brighton Dube who is accused's son, about the whereabouts of her cattle.
6. On arrival she found accused and Brighton Dube in the bedroom hut and she stood outside.

7. While the deceased was inquiring from Brighton Dube about the cattle accused suddenly stood up and grabbed deceased's walking stick and struck the deceased several times on the head, face and chest.
8. The deceased fell to the ground crying for help.
9. Accused fled the scene and deceased was ferried by villagers to Lubimbi clinic however she died along the way.

The post mortem report was also tendered, it was marked Exhibit 2. It gives the cause of death as brain haemorrhages multiple injuries, assault (murder). The post mortem report details extensive bruises of the chest wall and on both thighs and buttocks. There are bilateral rib fractures and a damaged lung. It further stated that severe force was used to inflict the multiple injuries and this force resulted in brain haemorrhages, rib fractures, severe muscle and soft tissue injury.

From the facts before us, the accused person is accordingly found not guilty on the charge of murder but is instead convicted on the lesser charge of culpable homicide.

Sentence

This court notes in mitigation that the accused is a first offender married with four children, he pleaded guilty to culpable homicide, he was drunk at the time, he had been provoked by the deceased's conduct of taking his cattle that he had inherited from his father, and gave them to his sister. He has told the court that he is being haunted by the spirit of his late mother and that in fact upon his arrest the villagers meted out instant justice.

What is aggravating in this case is that deceased assaulted his own mother, whom he should have respected and if ever he had problems with her conduct, he should have sought mediation from family or community elders. It is taboo and an abominable act to assault one's own parent no matter for what reason. The accused was drunk yes, but this court has been inundated with cases where lives are lost unnecessarily due to drunkenness. Beer drinking should be merry making and enjoyment of one's leisure time, but it should never be a reason for killing other people.

A life was unnecessarily lost in circumstances that did not even call for the slightest form of violence for if accused had been infuriated by his mother's conduct he should have sought dialogue. These courts frown at the loss of life unnecessarily and they have to impress upon all citizens that life is sacred through appropriate sentences. A custodial sentence in the region of 12 years could have met the justice of this case, however, the accused will live to regret being the cause of his own mother's death, and he has already told the court that the community did mete out instant justice by assaulting him, as well as that his mother's spirit is already haunting him meaning he is already suffering emotional distress. It is for these reasons that the accused person sentence will be discounted to that of 9 years imprisonment.

The accused person is accordingly sentenced to 9 years imprisonment.

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National Prosecuting Authority, the state's legal practitioners
Maronedze, Mukuku & Partners 'accused's legal practitioners