

THE STATE  
**versus**  
KHULEKANI MOYO

HIGH COURT OF ZIMBABWE  
MOYO J  
HWANGE 9 NOVEMBER 2015

**Criminal Trial**

*Mrs S. Gorerino* for the state  
*G. Muvhiringi* for the accused

**MOYO J:** The accused person is charged with murder it being alleged that on 14 May 2005 at Bhamala stream in Tsholotsho, the accused killed Sibangilizwe Ndlovu.

The accused person pleaded not guilty to the charge of murder but offered a limited plea to a charge of culpable homicide.

The state counsel accepted that limited plea and tendered a statement of agreed facts drawn and signed by both parties. The statement of agreed facts was marked Exhibit 1 and it reads as follows:

1. Accused was aged 24 years at the time of the commission of the offence and resides at Major Ndlovu's homestead, Dugwi Line, Tsholotsho.
2. The deceased was aged 28 years at the time he met his death and he used to reside at his own homestead, Sebule line Tsholotsho.
3. The accused and deceased were not related.
4. On 14 May 2005 at about 2200 hours the accused, deceased, Buzani Moyo, Agent Ndlovu and Geniva Sibanda were coming from a beer drink at Dugwi Business centre Tsholotsho.
5. Along the way accused and deceased had an argument over deceased calling them "Bafana" meaning "Young boys."
6. The accused told the deceased he was being disrespectful and deceased went onto to slap the accused.
7. Accused picked a stone and threw it at deceased.

8. The stone hit deceased on the right jaw and he fell down and died.
9. Accused left the deceased lying on the ground and went to his homestead.
10. The accused person pleads not guilty to murder but guilty to culpable homicide in that he negligently caused the death of the deceased.

The post mortem report was also tendered and marked Exhibit 2, it gives the cause of death as (i) head injury  
(ii) skull fracture  
(iii) assault

The accused person is accordingly found not guilty on the charge of murder but is convicted of the offence of culpable homicide.

#### Sentence

The accused person is convicted of the offence of culpable homicide. He was aged 24 years at the time the offence was committed, he is a first offender, he offered a plea to this charge, he is married with two minor children. He was intoxicated at the time, the deceased was the aggressor.

However, this court should not lose sight of the fact that life is sacred and that the sanctity of life should be held paramount by all citizens. The court should actually frown at the loss of life through violent means. Although deceased was the aggressor, he slapped the accused, and there was absolutely no need for accused to resort to a stone which is a dangerous weapon. Guided by the decision of the Supreme Court in *S v Sibanda* SC 245-13 wherein the accused convicted of culpable homicide in that, he accidental while chopping firewood, lost his aim and axed the deceased who was seated nearby was sentenced to 6 years imprisonment with 4 years suspended on the usual conditions, we find that a sentence that befits the circumstances of this case, is a sentence in the region of 8 years.

The accused person is accordingly sentenced to 8 years imprisonment.

*National Prosecuting Authority*, state's legal practitioners  
*Muvhiringi C/o Dube and Company*, accused's legal practitioners