

THE STATE
versus
P. M. (A Juvenile)

HIGH COURT OF ZIMBABWE
MATHONSI J
HWANGE 27 JUNE 2016

Criminal Trial

Ms N Ngwasha for the state
E Mashindi for the accused

MATHONSI J: The accused person is a 15 year old juvenile and a pupil at Samende Primary School in Binga. The deceased N. M. was also a 13 year old pupil at the same school. The accused is charged with murder in contravention of s47 of the Criminal Law Code [Chapter 9:13].

The accused has pleaded not guilty to the charge of murder but tendered a limited plea of guilty to culpable homicide, which the state has accepted. The agreed facts are that on 25 November 2015 at around 1030hours the accused was playing soccer at Samende Primary School while the deceased was on the sidelines watching the game.

The deceased entered the field of play and kicked the ball. This angered the accused who approached the deceased and hit him once on the head and kicked him once on the buttocks. The deceased fell down on a hard surface and lost consciousness. A school teacher tried to render first aid but the deceased died.

According to the post mortem report of Dr Ivian Betancourt of the United Bulawayo Hospitals, the cause of death was severe cerebral oedema, universal subarchnoid haemorrhage and head trauma due to unknown circumstances.

In our view the acceptance of the limited plea by the state was properly made as it cannot be said from the foregoing facts that the accused person intended to cause the death of the deceased. It was unfortunate indeed.

In the result, the accused is hereby found not guilty of murder but guilty of culpable homicide.

Reasons for sentence

We have had the benefit of a report by T. T Zirongwe, a probation officer in Binga who recommends that the sentencing of the accused person postponed for 5 years and that he places himself under the supervision of a probation officer in terms of s351 (3) (a) of the Criminal Procedure and Evidence Act [Chapter 9:07].

For the reasons set out hereunder we shall not take that course of action. The accused person is a juvenile aged 15. He goes to school and is doing grade 6. This incident occurred at the school grounds when the children were playing soccer. He punched the deceased on the head once and kicked him on the buttocks once forcing him to the ground. Ordinarily the blows directed on the deceased would not kill a person.

Unfortunately the deceased fell awkwardly and sustained injuries from which he died. It was misfortune rather than anything else that brought about the death of the deceased. Although the accused was the vehicle through which that misfortune befell the deceased and his family, that fact on its own must have traumatised him very much. He will now live with the stigma of having taken the life of a schoolmate under very tragic circumstances. That on its own is punishment enough. According to the probation officer's report the accused is now being threatened by the victim's relatives and he is traumatised by what happened. It must be a lesson to him and other school children that resort to any form of violence against other children is unacceptable. Parents send their children to school so that they can learn and also interact with other children as part of their development during the formative years of their lives. They do not send them to be punching bags of bullies who prey on them at the slightest opportunity.

While it is the duty of this court to uphold the sanctity of human life we take the view that nothing will be achieved by sending a 15 year old school boy to any form of custody for what was in fact an unfortunate incident which should not have ended in death. It is our firm view that, as part of the reformatory thrust of sentencing, we should suspend the sentence so that it remains hanging over the accused's head as he embarks on the road to rehabilitation.

Accordingly the accused is sentenced to 4 years imprisonment which is wholly suspended for 5 years on condition he does not, during that time commit an offence involving violence for which, upon conviction he is sentenced to imprisonment without the option of a fine.

National Prosecuting Authority, state's legal practitioners
Mashindi and Company, accused's legal practitioners