

THE STATE
versus
NKOSILATHI MPOFU

HIGH COURT OF ZIMBABWE
MATHONSI J
HWANGE 27 JUNE 2016

Criminal Trial

Ms M Munsaka for the state
E Mashindi for the accused

MATHONSI J: The accused was aged 40 years at the time that his 11 year old nephew T. Z. (a juvenile) met his death on 31 July 2015 at Boy Ndlovu's homestead Mahlamvana area of Nkayi in Matabeleland North Province.

The accused is now facing a charge of murder it being alleged that on that day he wrongfully, unlawfully and intentionally killed the deceased, a male juvenile. The agreed facts are that on the fateful day the accused instructed the deceased to gather goats from the pastures and pen them. The deceased fully complied but instead of penning the goats he left them in a bushy area near their homestead.

The accused was displeased by that and took switches which he used to assault the deceased all over the body. The accused further took a leather belt and assaulted the deceased on the buttocks and the back. Thereafter the two of them retired to bed. At about 0300 hours the accused got up to relieve himself.

Upon his return the accused called the deceased but got no response. He then realized that the deceased had died. The accused reported the death at Sineke Ncube's homestead leading to his subsequent arrest. The accused person pleaded not guilty to the charge of murder but tendered a limited plea of guilty to culpable homicide which limited plea the state accepted.

The five switches which the accused person used in assaulting the deceased were produced as exhibits. All of them were fairly big. In addition the piece of leather belt which remained after the assault was also produced. All weapons used in beating up the 11 year old deceased for not penning goats.

According to the postmortem report of Dr Ivian Betancourt a pathologist at United Bulawayo Hospitals who conducted the post mortem on the body of the deceased on 5 August 2015, the deceased died as a result of severe cerebral oedema, universal subarchnoid haemorrhage, severe head trauma and multiple traumas in all the body due to beating injuries. On the skull and brain the doctor further observed:

“Multiple subgaleal haematoma, on the scalp: right frontal region and biparietal region also severe subarchnoid haemorrhage in all the brain, marked on biparietal lobe. Severe cerebral oedema. No skull fracture.”

While it cannot be said that the accused intended to cause the death of the deceased he was clearly negligent and vicious in his repeated assault of the deceased. In our view, the acceptance of the plea of guilty to culpable homicide has been properly made.

Accordingly the accused person is hereby found not guilty of murder but guilty of culpable homicide.

Reasons for sentence

In assessing sentence we have taken into account what was said by Mr *Mashindi* for the accused person in mitigation. The accused person is a first offender who offered a plea of guilty to culpable homicide. He is married with four children aged between 19 and 1 year. A subsistence farmer with no meaningful assets to his name, he is the sole breadwinner for his family. He has remained in custody since his arrest in August 2015. The killing of his nephew will obviously haunt him for the rest of his life.

It occurs to us however that Ms *Munsaka* for the state a valid point in saying that this was a typical case of child abuse. The accused sent his nephew to gather goats, which he did, but only failed to pen them. He however went on to senselessly attack him with a total of five switched of considerable size and with a leather belt.

As appears from the medical evidence, there is probably no part of the body that was not beaten up. The head, brains, back, chest, abdomen, hands, forerams, arms, thighs, legs, knees, feet and buttocks were all flogged. Totally senseless. The accused person behaved as if possessed.

It is not easy to understand what could have informed the assault of such magnitude on a young relative of the accused person who had done nothing wrong really. We cannot allow that kind of behavior on children left under the care of relatives who are supposed to show them love and kindness.

In fact the accused person must consider himself very lucky that the state has accepted his limited plea of guilty to a lesser offence. This is a borderline case in which he could have found himself convicted of a more serious offence in light of the injuries sustained by the deceased and the weapons used.

The courts will not stand akimbo while people decide to turn children into objects of warped recreation, where they use children to flex their muscles without any regard whatsoever to the fact that they are human beings as well. We have a duty to protect society including their own children by sending people like the accused person to prison so that they realize the folly of their conduct.

Accordingly the accused is sentenced as follows:

8 years imprisonment of which 1 year imprisonment is suspended for 5 years on condition he does not, during that period commit any 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