

THE STATE
versus
PROUD DLAMINI

HIGH COURT OF ZIMBABWE
MATHONSI J
HWANGE 28 JUNE 2016

Criminal Trial

Ms N Ngwasha for the state
G Muvhiringi for the accused

MATHONSI J: It would seem that we now live in a society of violent people who appear to pride themselves by the high levels of violent conduct they are prepared to scale in order to prove themselves in society. It is a society of people who spend hours on end consuming alarming volumes of potent alcoholic beverages which reduce them to lumpen elements itching to engage in unmitigated bouts of violent conduct.

When engaging in such despicable conduct those people have no respect for authority, no respect for the law, no respect for human life and indeed no respect for themselves at all. Where our young people have reached a stage where a police officer who is well known not only does not inspire them to behave themselves but quite to the contrary motivates them to prey on the police officer with all sorts of violence and weaponry, then it is time to be really afraid. The deceased was a youthful and gallant police officer who died at the hand of a criminal in the course of his duty.

There is a habit which has gained currency among young people in this country to take undue advantage of festive occasions like Christmas and new year's days to bring out their worst forms of behavior bordering on animal conduct under the guise of celebrating festive days. They consume copious amounts of alcohol and then go on a rampage victimizing others and generally being a nuisance and a law unto themselves.

On the evening of 1 January 2016, new year's day, the accused and his friend were allegedly misbehaving at Mzola 3 Business Centre Jotsholo while the deceased, a 24 year old police officer was on festive duties at the centre. The state alleges that in the *bona fide* execution of his duties, the deceased tried to execute an arrest on the accused and his friend Leo Moyo.

Urged on by members of the public who should really hang their heads in shame especially now that a police officer lost his dear life, the accused and Leo Moyo not only resisted arrest but also assaulted the police officer in public. After Leo was subdued, the accused allegedly drew a flick knife from his pocket which he used to stab the deceased twice on the chest inflicting injuries which killed him on the spot.

The accused is now facing a charge of murder in contravention of s47 of the Criminal Law Code [Chapter 9:23]. The allegations are that on 1 January 2016 at Mzola 3 Business Centre, Jotsholo, he wrongfully, unlawfully and intentionally killed Bright Virira by stabbing him twice on the chest with a flick knife. After committing the offence the accused person allegedly fled the scene but was apprehended by a member of the Neighbourhood Watch Committee, Victor Mlotshwa and seven others at his home who recovered the knife in question from the accused.

The accused has pleaded not guilty to the charge and tendered a plea of guilty to culpable homicide. He states in his defence outline that on the fateful day himself and Leo Moyo had started consuming alcohol at 11am at Mzola 3 Business Centre. Note that he changed the venue of the binge in his evidence to say, it occurred at his grandfather's homestead where he had taken a knife expecting to slaughter an animal. He said himself and the deceased had a misunderstanding which led to a fight. Note again that he changed in his evidence to say that the deceased only jumped on him unprovoked.

The accused went on to state that as he walked away from the scene the deceased assaulted him with a button stick forcing him, on the spur of the moment, to pull out a knife which he used to stab the deceased twice in self defence. Of course in his evidence he again tried to change to say that he stabbed the deceased once. The evidence of Previledge Ndlovu, Council Masuku, Joseph Mthombeni and Dr. S Pesanai was admitted in terms of s314 of the Criminal Procedure and Evidence Act [Chapter 9:07] as it appears on the state outline.

That evidence establishes the following, that:

- 1) On 1 January 2016 the accused and his friend Leo Moyo were together at the business centre as early as 1500 hours and were already misbehaving as they accosted Previledge Ndlovu and the accused had gotten hold of the witness before he was whisked away by his brother.

- 2) At about 1900 hours the deceased was trying to arrest Leo holding him by the belt while the crowd was jeering and threatening to assault him if he dared take Leo away.
- 3) Council Masuku came to the deceased's rescue by apprehending Leo and taking him to his shop.
- 4) It was after Masuku had taken Leo away that the deceased was stabbed.
- 5) Joseph Mthombeni recorded a warned and cautioned statement from the accused on 2 January 2016 when the events were still fresh in his mind in which he confessed to stabbing the deceased after he had already been informed that he was a police officer.

In addition to that admitted evidence we also have the medical evidence of Dr Pesanai who performed the autopsy on the body of the deceased and observed the following marks of violence.

- “(1) Swollen right eye
- (2) Abdomen, covered with blood
- (3) Stab wound right chest (8 x 2) cm, 16cm from clavicle 8cm from right nipple, 2cm from top of head.
- (4) Stab wound right abdomen (1 x1 x 6cm), 17cm from nipple 28cm from clavicle.”

Clearly those injuries were inflicted through the use of considerable force by someone who had an ill motive.

We do not buy the story that the accused person was defending himself when he did that. He was certainly resisting arrest and had earlier exhibited a knife which attracted the attention of the deceased. He wanted to arrest the culprit and succeeded in arresting Leo. It would seem that those who were present were prepared to assault whoever arrested Leo and succeeded in doing more than just that. He was stabbed to death.

We have also the evidence of the accused's own relatives to the effect that before he stabbed the deceased he was aware that he was a police officer. In fact according to Victor Mlotshwa the accused showed signs of wanting to draw his knife even after he had been arrested at his home.

Anyone who uses a knife on the person of another, directing the blows to the upper part of the body must foresee that death might result from that activity. We conclude that the accused person foresaw the possibility of death eventuating but proceeded notwithstanding.

Accordingly, the accused is found guilty of murder with constructive intent.

Reasons for sentence

In assessing sentence we have taken into account everything that has been said in his favour. He is a first offender who is 26 years old. He can still put his life to better use. He has seven head of cattle. He has admitted to the main element of the offence and therefore did not waste the court's time. The deceased was drunk on the day in question.

There was no premeditation in the commission of the offence. He has been in custody for six months. He grew up as an orphan and therefore lacked parental guidance.

The accused has been found guilty of murder with constructive intent and not actual intent. However there is very little that can mitigate the killing of a police officer in the execution of his duty. Under our watch our youthful people have continued to degenerate into a bunch of violent and callous individuals. As we have said when that violent conduct is now being directed to those whose task it is to uphold the law, society's revulsion at that should be reflected in the sentences that the courts impose.

It is remarkable that the accused found it necessary to carry what appears to be a very heavy and lethal weapon which should be very uncomfortable indeed in the pocket. It is clear that he wanted to derive pleasure in using it and did use it on a law enforcement officer.

We take the view that there is no choice whatsoever in this matter but to send the accused person away for a long time. That way the community may be able to breathe properly and continue with their lives.

Accordingly the accused is hereby sentenced to 25 years imprisonment.