

THE STATE
versus
JAMES MATOLI MULEYA

HIGH COURT OF ZIMBABWE
MOYO J
BULAWAYO 21 AND 22 JULY 2016

Criminal Trial

Ms S Ndlovu for the state
T Ndlovu for the accused

MOYO J: The accused person faces a charge of murder, it being alleged that on 25 July 2002, he stabbed the deceased Hendrick Ndou with an okapi knife, resulting in deceased later dying from the assault.

He has pleaded not guilty to the charge of murder but has instead, offered a limited plea to the charge of culpable homicide. The state has accepted the plea to the lesser charge.

Both parties then drew and tendered a statement of agreed facts which was marked Exhibit 1 and reads as follows:

1. The accused was aged 42 years at the time of the commission of the offence. The deceased was aged 25 years at the time he met his death.
2. On the 25th of July 2002 at around 2100 hours the accused, deceased, Vudzisani Moyo and Tapson Ndou were drinking “tototo” together.
3. At around 2100 hours the accused stood up and left unceremoniously for his homestead. This did not go down well with the deceased who started shouting at accused as to why he was leaving but accused kept on walking without responding.
4. The deceased got up, followed and caught up with accused some 23 meters away from where they had been drinking.

5. Accused and deceased had an argument which resulted in accused stabbing the deceased with an okapi knife on the left femoral area of the thigh.
6. The deceased limped back to where Vudzisani Moyo and Tapson Ndou were, the two witnesses then carried deceased to his homestead where he later died on the same night.
7. The accused will state that his actions were negligent when he stabbed the now deceased on the thigh. Further he had no intention of killing the now deceased.
8. Wherefore the accused will plead not guilty to murder but will plead guilty to the lesser charge of culpable homicide.

The state counsel also tendered the post mortem report which was marked Exhibit 2 and it gives the cause of death as a laceration, 4cm long and 5cm deep in the left femoral area haemorrhage and shock, bleeding from cut in the left femoral area.

From the facts before court we are satisfied that the essential elements of the offence of murder are non-existent, we accordingly find the accused person not guilty on the charge of murder, but we convict him on the lesser charge of culpable homicide.

Sentence

The accused person is convicted of culpable homicide. He is a first offender, is aged 56, he is a family man of illhealth, he has been waiting for justice for 14 years. The accused person could have been prosecuted at the age of 42 and he would have done time while he was still a lot younger. He has waited for justice until late in his life, the deceased was also the aggressor, both were intoxicated and cumulatively the accused person has spent about 1 year 6 months in prison, that is, 14 months while on remand, and another 3 months on indictment. He pleaded guilty and did not waste the court's time. The accused person could have been given a sentence in the region of 8 -10 years' imprisonment but for the weighty mitigation in his favour, regarding the delay to bring him to justice, and the period he served prior to conviction, he deserves a lesser sentence.

The accused person is accordingly sentenced to 5 years imprisonment wholly suspended for another 5 years on condition the accused person is not within that period committed of an offence of which violence is an element, whereupon conviction he shall be sentenced to imprisonment without the option of a fine.

National Prosecuting Authority, state's legal practitioners
Sansole and Senda, accused's legal practitioners