

THE STATE
versus
SIMPLICIO HUKU

HIGH COURT OF ZIMBABWE
MAKONESE J
GWERU 27 JANUARY 2016

Criminal Trial

T. Mpariwa for the state
D. Charamba for the accused

MAKONESE J: One famous Jamaican reggae artist, Bob Marley once sang these popular lyrics in one of his songs:

“He who fights and runs away, lives to fight another day.”

This is what transpired in the case before us. At the time of the commission of the offence accused was aged 26 years. Everson Mushangwa (the deceased) was aged 26 years at the time he met his death. On 20 October 2013 at about 1100 hours the deceased was walking along a footpath that passes between Felix Huku’s homestead and one Chitakunye’s homestead at Chinguvo village, Chief Mapanzure, area, Zvishavane. The accused person who was seated under a shed then stood up and called out to the deceased asking him to stop as he wanted to speak to him. The deceased did not respond and continued on his way. The accused threw stones at the deceased but only hit the perimeter fence instead. The accused then went outside the yard, picked another stone and struck the deceased once on the head. Deceased fell down unconscious. The accused fled the scene. One Bezel Huku resuscitated the deceased by pouring water over him. Deceased was ferried to Mapanzure clinic where he was treated. He was later referred to Zvishavane District Hospital where he died on admission.

The accused has now been arraigned before this court on a charge of murder. He denies the charge and tenders a limited plea of guilty with respect to culpable homicide. The court entered a plea of not guilty. The state accepts the limited plea and has tendered into the record of

proceedings a statement of Agreed facts (Exhibit 1) which summarises the circumstances surrounding the offence. It is conceded by the state that prior to the fateful day and on 19 October 2013, the accused and the deceased had a misunderstanding which led to a fist fight. The accused was defeated. He chose to fight another day. It is accepted by the defence that the death of the deceased was caused by the accused striking him with a stone on 20 October 2013.

The state tendered a Post Mortem Report compiled by Dr. T. Mavurayi at Zvishavane District Hospital on 21 October 2013. The Post Mortem was admitted into evidence as Exhibit 2. The cause of death is listed as:

- a) Head injuries
- b) Stone injuries

I must indicate that the Post Mortem Report is rather scant but the findings relating to the precise cause of death are accepted. Medical Practitioners must compile detailed Post Mortem Reports that detail the nature of the injuries sustained and a full report on the examination of the remains of the deceased. This will assist the court in understanding the extent of injuries suffered and the manner in which those injuries were inflicted. This information is necessary in determining the moral blameworthiness of the accused.

The last exhibit tendered by the state is the murder weapon, the stone, which was produced as Exhibit 3. Its measured weight is 0.93kg.

From the evidence presented before the court we are indeed satisfied that the plea of guilty to culpable homicide was properly made. The concession by the state in accepting a lessor charge was in our view appropriate regard being had to the fact that there was no evidence to show that accused intended to cause the death of the deceased.

In the circumstances, the accused is acquitted and found not guilty with respect to the charge of murder. Accused is convicted of culpable homicide. In assessing an appropriate sentence the court takes into consideration all the mitigating features of the case as articulated by accused's defence counsel. The court notes that accused is a first offender who pleaded guilty to the lessor charge of culpable homicide. He did not seek to dissociate himself from the offence. It is the court's view that the accused who is a family man with the usual family responsibilities

has shown some certain measure of remorse and contrition. The accused, we have been advised paid compensation in the form of beasts to the deceased's family. The exact number of beasts paid was not immediately ascertained with the accused claiming that he paid fifteen (15) beasts, whilst witnesses interviewed by the State Counsel confirmed that only eight (8) beasts were paid. This court will not condone and encourage the payment of compensation of beasts as form of avenging spirits. This practice which the court observes is widespread is completely unlawful and amounts to extortion. The payment of compensation as a pre-condition to the burial of a deceased person as archaic and the court condemns it. It has no place in a modern society. The court will pose this question – what then happens where the offender is a man of narrow means and has no beasts or property to offer?

The court will however, take into account the fact that accused did pay those cattle and that he contributed towards the funeral expenses including the purchase of a coffin. In my view, the contribution towards funeral costs when done voluntarily helps to heal the wounds of the victim's family. It is an acknowledgment that the accused is indeed sorry for his conduct.

The court further takes into account the period of pre-trial incarceration. The accused has spent two years and three months before his trial and that should be taken into proper consideration in deciding an appropriate sentence.

The court, finds that the accused's degree of moral blameworthiness is on the high side for the reason that there was no provocation on the day of the attack. The reality of the matter, is that the accused's conduct amounts to a revenge attack and nothing else. The accused cannot be considered as a youthful person at the age of 26 years as was suggested by counsel for the defence. He should have exercised restraint and self-control. At the time he threw the stone at the deceased he was not under any form of attack by the deceased whether real or imagined. The deceased was literally walking past the accused's homestead minding his own business. This was a thoughtless attack by the accused which led to a death which could have been averted.

In all the circumstances of the case the court considers that an appropriate sentence would be as follows:

Sentence

8 years imprisonment of which 3 years is suspended for 5 years on condition accused is not within that period convicted of an offence of which violence is an element and for which he is sentenced to a term of imprisonment without the option of a fine.

Effective: 5 years imprisonment.

National Prosecuting Authority, state's legal practitioners

Chitere, Chidawanyika and Partners, respondent's legal practitioners