

THE STATE

Versus

OBED NCUBE

IN THE HIGH COURT OF ZIMBABWE
BERE J with Assessors Mr F. Dube and Mr T. E. Ndlovu
HWANGE CIRCUIT COURT 11 MARCH 2016

Criminal Trial

Miss N. Ngwashu for the state
G. Muvhiringi for the accused

BERE J: The accused was initially charged with the murder of the deceased who at the time she met her death was 35 years old and residing at Bemba Primary School, Tsholotsho.

The facts of this case were that on 18th of October 2015 the accused and the deceased who were lovers picked up an argument over infidelity allegations made by the accused against the deceased. The argument led to the accused assaulting the deceased initially using open hands and the accused only stopped assaulting the deceased after he had been restrained by one Shelter Moyo.

However, the accused, later on the same day resumed assaulting the deceased using a switch and was stopped by Corrinah Moyo who took the switch away. After Moyo had left the accused again assaulted the deceased and dragged her back into the room. On the 19th of October 2015 early in the morning the deceased was found dead in her room by Shelter Moyo and Corrinah Moyo leading to the arrest of the accused person.

When the charge of murder was put across to the accused he pleaded guilty to culpable homicide which limited plea was accepted by the State Counsel.

The State Counsel proceeded to tender as exhibits the sjambok that was used to assault the deceased and the post mortem report which gave the marks of violence on the deceased as

consisting of bruises and swelling around the orbital region, the face, back of head, chest walls and the abdominal wall.

The post mortem report concluded that the cause of death was due to massive subdural haematoma, traumatic intracranial haemorrhage due to assault.

Having considered the submissions by both Counsels the court found the accused not guilty of murder but guilty of culpable homicide and proceeded to consider sentence after submissions in both mitigation and aggravation.

Sentence

Our approach to sentence will largely be influenced by the following considerations.

The accused is a first offender who until the age of 43 years appears to have lived a clean life. That is commendable, the only misfortune is that he has collided with the law at the very deeper end.

The accused has fairly heavy family responsibilities in the form of his three minor children who obviously look up to him for sustenance given the unfortunate history of the accused's marital life.

We commend the accused person for having offered an unsolicited plea of guilty to the offence he has been convicted of. There must always be a reward for such acceptance of liability. It is also indicative of contrition.

In aggravation the post mortem report suggests that the deceased must have been subjected to a protracted and reckless assault. The assault was evidently indiscriminate and the decisive beatings appeared to have been concentrated on the deceased's head and were sufficient to compress and shift the midline of the brain. This coupled with massive subdural haematoma of the right parietal, temporal and frontal region of the brain underlined the seriousness of the assault.

We find it to be aggravatory that the accused as a qualified teacher has a fair level of sophistication which ought to have reminded him of the need to restrain himself. As a teacher he should have been aware of the criminal nature of his conduct.

We do not believe the sjambok used by the accused person is not a lethal instrument. Even in our prisons such a sjambok is not being used. It remains a dangerous weapon and the damage it caused to the deceased shows beyond doubt its dangerous nature as an instrument of assault.

It must have been extremely humiliating and painful on the part of the deceased to discover that the person who was supposed to protect her turned out to be her killer. We regard it as an act of cowardice for the accused to have exerted so much of his energy in assaulting the deceased instead of seeking counseling to have his misunderstandings with the deceased addressed.

It is particularly aggravating that the accused chose to be intransigent when Shelter Moyo attempted to restrain him from further punishing the deceased.

Domestic violence is on the upsurge in this country and we will be failing as a court if we do not take practical steps to curb it. Our message must go loud, clear and far to remind our people that it is animals which must be left to quarrel and fight but not enlightened individuals like the accused person.

We do have an obligation to constantly harp on the sanctity of human life each time one is lost.

Whilst the accused might look forward to a reunion with his 3 minor children and relatives, the same cannot be said of the deceased because of the permanent nature of death.

Everything said we believe the following sentence will be appropriate.

Sentence: The accused is sentenced to 10 years imprisonment 2 years of which are suspended for 5 years on condition the accused does not within that period commit any offence involving violence upon the person of another for which upon conviction he will be sentenced to a term of imprisonment without the option of a fine.

The Prosecutor General, state's legal practitioners
Dube & Company, accused's legal practitioners