

THE STATE

Versus

CARRINGTON MOYO

IN THE HIGH COURT OF ZIMBABWE

BERE J with Assessors Mr T.E. Ndlovu & Mrs E. Chazanga

HWANGE CIRCUIT COURT 9 NOVEMBER 2016

Criminal Trial

Miss N. Ngwasha for the state

G. Muvhiringi for the accused

BERE J: In this case the accused was initially charged with the deceased's murder but after consultations that took place between the State and the defence it was decided to have a statement of agreed facts which spoke to admission to culpable homicide as opposed to murder. The statement of agreed facts reads as follows:

“The State and Defence are agreed that the following issues are common cause being that:

1. The deceased was aged 35 years at the time he met his death and he used to reside at his own homestead, Forests line Lupane.
2. The accused was aged 18 years at the time of the commission of the offence and he resides at Amos Moyo's homestead Foresta Line, Lupane.
3. The accused and deceased are not related.
4. On the 25th of December 2015 in the evening the accused and deceased were at a Christmas party at Belmore Sibanda's homestead.
5. At around 2100 hours commotion broke out which led to Belmore Sibanda switching off the radio and telling the people to leave.
6. The deceased began to chase people away from the homestead and proceed to arm himself with a dropper.
7. The deceased got to where accused was outside the yard.
8. An argument ensued with deceased accusing the accused of being resistant.
9. The deceased assaulted accused with a dropper on the back.
10. The accused who was armed with a knobkerrie struck deceased once on the head with it.
11. The deceased collapsed and was taken home and was later taken to hospital.
12. The deceased died on the 28th of December 2015.

13. The accused person pleads not guilty to murder but pleads guilty to culpable homicide in that he negligently caused the death of the deceased.”

Pursuant to the statement of agreed facts the state tendered the post mortem report which described the marks of violence as a bruised right frontal and parietal areas.

The post mortem report further revealed that the deceased’s skull had a 10cm long fracture to the right parietal frontal area. The brain had massive right parietal and fronto-temporal epidural haematoma (10 x 8 x 6cm) with brain depression. The cause of death was given as epidural haematoma and skull fracture as a result of assault to the head.

After assessing the submission by counsel the court found the accused guilty of culpable homicide.

Sentence

In sentencing the accused person we are enjoined to consider the following factors in mitigation and aggravation.

In mitigation we are quite conscious of the fact that the accused is a youthful offender and a first offender. The accused was 18 years old at the time of the offence and is now 19 years old.

Youthful offenders cannot be treated as mature persons as they are always haunted by immaturity. We have also accepted that the accused and the deceased may have been drunk since the evidence suggests the people were at a Christmas Party and on 25 December 2015.

It is quite mitigatory that the deceased was the first to attack the accused with a dropper and the accused reacted by hitting the deceased in turn with a knobkerrie thereby causing serious injuries on the deceased’s head as captured in the post mortem report. Clearly the accused’s reaction exceeded the bounds of self-defence as the retaliatory attack was aimed at the most vulnerable part of the human body.

We accept that the conduct of the deceased must have provoked the accused person and forced him to react in the manner he did. The only error by the accused was to use excessive force on a very sensitive party of the human anatomy.

In aggravation, we are particularly concerned by the disparity in ages between the accused and the deceased. The deceased qualified to be of the same age with the accused's own father but the accused had the tenacity to hit back the deceased. Under normal circumstances the accused was expected to just run away and not to seek revenge. He should have exhibited more respect for the elderly.

The fact that the accused was himself partaking beer is cause for concern. He had elevated himself to the level of above youthfulness.

By his conduct the accused has deprived the deceased's children of a breadwinner. We are concerned in this country that it is the youthful offenders who appear to have a greater proportion of crimes of violence and our view is that we have an obligation to nip this conduct before it gets out of hand.

There might be no better way of dealing with this challenge than passing deterrent sentences to discourage people like the accused and others of a like mind.

The accused is sentenced to 6 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 and for which upon conviction shall 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*