

THE STATE
versus
EPSON SIBANDA

HIGH COURT OF ZIMBABWE
MATHONSI J
GWERU 23 JANUARY 2017

Criminal Trial

T Mupariwa for the state
D Mujaya for the accused

MATHONSI J: The accused and the 37 year old Francis Matsaukirwa although separated in age by a decade, the accused was 47 years old at the material time in 2005, were quite unfriendly neighbours in Matsaukirwa village under Chief Chireya Gokwe North. Apparently their feud over a boundary demarcating their crop fields spiraled out of control in the full view of on lookers at noon on 26 December 2015 as they worked on their respective fields.

During what may be coined “a field rage”, the accused is said to have used a stick he held as he led his oxen drawing a plough to strike the deceased on the head. Although the two later reconciled and amicably resolved their boundary dispute, the damage had already been done. The deceased’s condition later deteriorated but not before he had exerted revenge on the accused. Lulling him to a sense of false security after resolution of the dispute, the deceased connected the accused with a fisticuff on the face for having struck him with a stick.

That proved to be the deceased’s last punch. As he continued cultivating his field, the deceased complained of a headache. His head got swollen and he died on the way to Gokwe Hospital.

As a necessary sequel to that field drama which resulted in loss of life, the accused is charged with murder in breach of s47 (1) of the Criminal Law Code [Chapter 9:23]. He has pleaded not guilty to murder but guilty to the lesser charge of culpable homicide. The state has graciously accepted the lesser plea. The statement of agreed facts contains the facts which I have summarized above. It adds the findings of Dr. S Pesanai who conducted the autopsy on the body of the deceased to the effect that the cause of death was:

1. Extradural Haematoma
2. Blunt Force Head Trauma
3. Assault

The parties are also agreed that the accused negligently caused the death of the deceased. In our view the concession by the state is well made as indeed the circumstances of the case are such that the accused could not have intended to cause the death of the deceased which death was quite unfortunate indeed.

Accordingly the accused is hereby found not guilty of murder. He is however found guilty of culpable homicide.

Reasons for sentence

In considering an appropriate sentence we have taken into account the submissions made by counsel in mitigation. The accused is a first offender. The accused was aged 47 years at the time of the offence. He is married to two wives with 8 children three of whom are minors. He is an unsophisticated villager who eked out a living through subsistence farming. He is the sole breadwinner. He paid compensation to the deceased's family, that is 10 head of cattle, 2 goats and 3 buckets of maize. This incident was unfortunate indeed but after what happened the accused and the deceased resolved their differences as neighbours but not before the deceased had exerted revenge by connecting the accused with a fist before being restrained. Accused is the one who took the deceased to hospital.

Against that is the fact that a precious life was needlessly lost as a result of the conduct of the accused. Although there was a boundary dispute it did not justify the use of a weapon directed at the head of the victim. Our people, be they rural or urban, should learn that it is

dangerous to assault a person on the head. No matter how angry one is there can be no excuse for resorting to violence in order to resolve differences.

This court has a duty to send an accurate message to society at large that all forms of violence will not be tolerated. Adults are expected to behave in a mature manner and exercise self-restraint even in the face of provocation. A term of imprisonment is called for as a seal of the court's revulsion at the unnecessary loss of life. We will however suspend a portion of the sentence in recognition of the fact that this was not an extreme case of culpable homicide and that the accused should be accorded an opportunity to dust himself up after this and reform.

The accused is accordingly sentenced to 6 years imprisonment of which 2 years imprisonment is suspended for 5 years on condition he is not, during that period convicted of any offence involving violence for which, upon conviction he is sentenced to imprisonment without the option of a fine.

Effective sentence: 4 years imprisonment.

National Prosecuting Authority, state's legal practitioners
Mawadze and Mujaya, accused's legal practitioners