

THE STATE
versus
OWEN MAVEDZENGE

HIGH COURT OF ZIMBABWE
MATHONSI J
BULAWAYO 20 JULY 2017

Criminal Trial

W Mabaudhi for the state
J Ndubiwa for the accused

MATHONSI J: At the material time the then 28 year old accused person was a taxi operator in Beitbridge. He has been brought before this court facing a charge of murder as defined in s47 of the Criminal Law [Codification and Reform] Act [Chapter 9:23] it being alleged that on 12 July 2016 he struck the deceased Takunda Tagwireyi with a stone on the forehead inflicting an injury from which he later died a day later at United Bulawayo Hospitals.

The state further alleges that at about 0100 hours on 12 July 2016 the accused person picked up the deceased and his friend Tafara Musikavanhu in his taxi. They asked to be taken to Mbedzi Business Centre in Beitbridge. When they arrived at that destination a misunderstanding arose between them over payment of the fare after the deceased's friend Tafara Musikavanhu failed to raise the requisite fare of \$1-00 or R10-00 at the time the two alighted from the accused's taxi. The accused is said to have picked up a stone and struck the deceased on the forehead causing him to fall. He also assaulted Tafara with stones.

The accused person pleaded not guilty to the charge of murder but tendered a limited plea of guilty to culpable homicide. The state gracefully accepted that limited plea. The agreed facts are that both the accused and the deceased were aged 28 years at the time. They were not related and did not know each other prior to the commission of the offence. On 12 July 2016 the deceased and Tafara Musikavanhu approached the accused at Beitbridge rank and requested to be ferried in his taxi to Mbedzi Business Centre, a distance of about 5km.

The accused agreed to ferry them and the deceased sat in the back seat while Tafara occupied the front passenger seat. They agreed on a fare of R10-00 per person or \$1-00 for both of them. Upon arrival at their destination one of the two only paid R10-00. As a result there was a misunderstanding over the outstanding amount. It was during that misunderstanding that the accused picked up a stone which he threw at the deceased aiming in his general direction since it was at night. The accused did not see where the stone hit the deceased and only threw one stone. The accused however accepts that the deceased died as a result of the injuries he sustained after he threw a stone at him. He further admits that he was negligent in throwing the stone at the deceased the way he did.

Considering the circumstances under which the deceased was injured and indeed the findings of the doctor who performed the post mortem, it is our view that the concession by the state has been properly made. According to the post mortem report, the cause of death was severe cerebral oedema, subdural haematoma, skull fracture due to beating.

It cannot be said by any stretch of the imagination that the accused intended to cause the death of the deceased. He was however negligent in the manner in which he conducted himself.

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

Reasons for sentence

In assessing an appropriate sentence we take into account the following mitigating factors. The accused is a first offender who was aged 28 years at the time he committed the offence. He has been in custody for 8 months. He is married with three minor children. He appears to have cooperated with investigations throughout signifying remorsefulness and contrition. He now has impaired hearing on his right ear after being beaten up in prison.

It is significant that the deceased and his friend brought about the events which led to this unfortunate loss of life. They appear to have been drunk on the day in question and reneged from a transportation agreement the parties had entered into. This court takes judicial notice of the fact that taxi drivers have been victims of attacks by passengers especially at night. This may

have hardened the accused's resolve on the night in question and led him to lose self control and become violent and aggressive towards the deceased person.

However there is no running away from the fact that a life was lost under very tragic circumstances. It is a loss of life which could really have been avoided if the accused person had exercised some degree of self-restraint. The parties were squabbling over a very small amount. He had been paid R10-00 and surely it would not have been the end of the world if he had just let go. As it is now all he achieved was to exert revenge but did not gain anything out of that misadventure which only resulted in an unnecessary loss of life.

We therefore have a duty to penalize the accused person in order to drive home the point that resort to violence for whatever reason is unacceptable and should be avoided at all costs. This court has repeatedly counseled against such conduct and will continue to do so until we rid society of the scourge of violence which has cost this country a lot in human capital. We must cultivate a culture of utmost respect to human life.

In recognition of the weighty mitigating factors, we will suspend a portion of the sentence so that it remains hanging over the accused person as a constant reminder that he should in future proceed with solomonic wisdom when confronted with a similar situation.

Accordingly the accused is hereby sentenced as follows:

8 years imprisonment of which 2 years imprisonment is suspended for 5 years on condition he does not, during that period commit any offence involving violence for which, upon conviction, he is sentenced to imprisonment without the option of a fine.

Effective sentence: 6 years imprisonment.

*National Prosecuting Authority, the state's legal practitioners
Mashayamombe and Co. Attorneys, respondent's legal practitioners*