

THE STATE**Versus****PERFECT FIKILE MOYO**IN THE HIGH COURT OF ZIMBABWE
BERE J with Assessors Mr J. Sobantu & Mr T.E. Ndlovu
HWANGE CIRCUIT COURT 29 JUNE 2017**Criminal Trial***Mrs C. Gorerino*, for the state
T. Nkala for the accused

BERE J: The accused in his case was initially charged with the murder of the deceased in violation of section 47 (1) of the Criminal Law Codification and Reform Act Chapter 9:23. The accused denied the charge of murder and offered a limited plea of guilty to culpable homicide prompting the state and the defence to come up with a statement of agreed facts which is to the following:

- “1. The accused was aged 21 years at the time of the commission of the offence and he resides at Leonard Mpofu’s homestead, Gwabazabuya line, Tsholotsho.
2. The deceased was aged 42 years at the time she met her death. She used to reside at Kefasi Mhlupheki’s homestead, stand number 25, Acute and Crews, Nyamandlovu.
3. The deceased was mentally incapacitated.
4. Accused and deceased were not related but accused was employed as a domestic worker at deceased’s homestead where they both lived.
5. On the 3rd of March 2017 and at around 0200 hours, the accused and Washington Moyo were from Nyamandlovu Business Centre where they had been drinking beer when they met the deceased at the gate of their homestead.
6. Deceased indicated that she wanted to collect her bag which she had left along the road and proceed to Filabusi.
7. Accused ordered the deceased to go back to her room and sleep as it was late in the night.
8. A misunderstanding ensued with the deceased insisting on going to Filabusi that night.
9. Accused then assaulted the deceased with open hands several times on the face causing her to fall to the ground.

10. Accused went on to kick deceased several times all over the body while she was on the ground. Washington Moyo tried to refrain the accused from further assaulting the deceased but accused insisted on taking deceased to her room.
11. Accused then ordered Clever Moyo to fetch a switch while he continued assaulting the deceased with open hands and booted feet.
12. Accused went on to use the switch taken from a peach tree to assault the deceased several times all over the body ordering her to stand u and go to her room.
13. Accused then dragged deceased to her room where he left her lying on the floor.
14. The deceased was found dead in the morning by Clever Moyo.
15. The accused person pleads not guilty to murder but pleads guilty to culpable homicide in that he negligently caused the death of the deceased.”

The switch which was used in assaulting the deceased as well as the post mortem report were submitted by consent as exhibits I and II respectively.

The post mortem report gave the cause of death as:

1. Extensive subarachnoid haemorrhage
2. Severe head injury
3. Blunt force trauma head
4. Assault

Having considered the circumstances under which the deceased lost her life we are satisfied that the accused be found not guilty of murder but culpable homicide.

Sentence

In assessing sentence in this matter we are guided by the following factors in both mitigation and aggravation.

In mitigation we do accept that the accused person is young first offender, only aged 21 years. On the day in question the accused had partaken of alcohol and therefore his faculties must have been affected.

The accused has been kept in custody for 3 months before this case was concluded.

Perhaps, the most significant factor in mitigation of sentence is that this offence was committed with noble intentions of trying to discourage the deceased from wandering in the middle of the night especially given her mental incapacitation.

We have also considered the switch which was used by the accused person. The accused must have been convinced that he was merely chastising the deceased to keep her indoors.

In aggravation we have considered the disparity in the ages between the accused person and the deceased. The deceased was almost twice the age of the accused and could have qualified for the accused's mother. Under normal circumstances the accused would not be expected to assault someone of the age of his own mother using a switch like the accused did in this case. It demonstrates total lack of respect.

The accused's colleague pleaded with him not to continue assaulting the deceased but the plea fell on deaf ears.

The assault on the deceased was protracted and there can be no doubt that the accused behaved irrationally in the circumstances. The accused had a duty to look after the deceased.

In the final analysis we think that the following sentence is appropriate:

Sentence: The accused is sentenced to 5 years imprisonment 2 years of which is 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.