

**THE STATE**

**Versus**

**BRIGHTON MUGWISI**

IN THE HIGH COURT OF ZIMBABWE

BERE J with Assessors MR W.T. Matemba & Mrs C.J. Baye

GWERU CIRCUIT COURT 2 OCTOBER 2017

**Criminal Trial**

*M. Shumba* for the state

*A. Chihiya* for the accused

**BERE J:** In this case the accused Brighton Mugwisi was initially charged with the offence of murder in violation of section 47 (1) of the Code having been called upon to plead to the charge, the accused offered a plea to culpable homicide which led to a compilation of the statement of agreed facts which reads as follows:

- “1. The accused is Brighton Mugwisi who resides in Mugwisi Village, Chief Nhema in Shurugwi and is not employed. He was 29 years old at the material time.
2. The deceased is Lawrence Chaitezvi, who during his lifetime resided in village Jamba, Chief Nhema in Shurugwi. He was 32 years old at the time he met his death.
3. On 5 November 2011, the accused and the deceased were at Shamba Business Centre, Shurugwi, drinking beer. At one stage, the deceased went to the bar to collect some beer and on his way out, met the accused.
4. The accused then alleged that the deceased had at one point spilled his beer. A misunderstanding arose between the two as a result of that allegation.
5. The accused pushed the deceased who then fell and hit his head against the floor of the verandah. The accused proceeded to strike the deceased on the head with a bottle once. The bottle broke into pieces as a result.
6. The deceased stood up and staggered towards his home, but unfortunately died before arriving there.

7. The matter was reported to the police resulting in the deceased's body being ferried to United Bulawayo Hospitals where Dr S. Pesanai conducted a post mortem examination on the 7<sup>th</sup> of November 2011. He concluded that the deceased had died as a result of;
  - Asphyxia, Aspiration, subdural haematoma; homicide  
Post mortem report number 903-896-2011 was compiled.
8. Accused accepts the evidence of the state witness and contents of the post mortem report. The accused denies having the requisite intention to kill the deceased, but acknowledges that, through his conduct aforesaid, he was negligent in causing the deceased's death.
9. The state conceded that the accused was negligent in the way he conducted himself and in the manner he assaulted the deceased. The state acknowledges that the accused was negligent in causing the deceased's death and accepts the accused's plea of guilty to culpable homicide."

Having carefully considered the circumstances surrounding this case the court found the accused not guilty of murder but guilty of culpable homicide.

### **Sentence**

In assessing sentence we take into account the heavy family responsibilities thrust upon the accused's shoulders as highlighted to us by his counsel.

It is desirable that these cases be completed within the shortest possible time. Both the state and the defence are agreed that, simple as it is this case has taken 6 years to be completed. We take it as highly mitigatory that the accused has been traumatised for the past 6 years owing to the delay in finalizing this case.

That this offence occurred when both the accused and deceased were under the influence of alcohol has not escaped our minds. It must be regarded as mitigatory.

The accused person is a first offender who has offered a plea of guilty and co-operated with the police and this must seriously be taken into account for purposes of sentence.

In aggravation we will take into account that once again life was lost in undeserving circumstances. A moment of madness on the part of the accused person led to the death of the deceased.

Whilst the accused has pleaded with the court to be spared the agony of a prison term to give him a chance to discharge his family responsibilities sight must not be lost that the deceased's life, having been lost, that has created a permanent scar in his own family as his death has permanently robbed his family of his presence.

It was wrong for the accused to resort to violence to try and resolve what clearly was a minor misunderstanding with the deceased.

These drinking places are meant for merry making and the engagement of normal social intercourse and they should never be converted into boxing arenas or sources of violence.

We have been urged to consider the imposition of a non-custodial sentence in this case. We do not believe this sentence is appropriate in this case given that a bottle was used in assaulting the deceased and generally the circumstances under which the deceased lost his life. Such a sentence would send the wrong message out there. As a court we have a concomitant duty to protect society from the ills of violence. This is not a case deserving the sentence advocated by the defence.

Our unanimous view is that a prison sentence be imposed. Accordingly the accused is sentenced as follows:

7 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.

*National prosecuting Authority*, states' legal practitioners  
*Messrs Makonese & Associates*, accused's legal practitioners