

THE STATE

Versus

SAVIOUS MUZEZA

IN THE HGH COURT OF ZIMBABWE

MAKONESE J with Assessors Mrs C. J Baye & Mr Shumba

GWERU CIRCUIT COURT 2 OCTOBER 2018

Criminal Trial

M. Ndlovu for the state

M. Mapfuno for accused 1

MAKONESE J: The accused appears in this court on a charge of murder. The allegations being that on the 19th May 2018 and at Steers Farm, Ngamo. Gweru the accused caused the death of Cephas Muzeza, his biological son, by striking him with an iron rod and axe several times upon his head intending to cause his death. The accused pleads not guilty. He tenders a limited plea of guilty with respect to the lesser charge of culpable homicide. The State accepts the limited plea. The brief facts of the matter as outlined in the statement of agreed facts are that on the day in question and around 0300 hours the accused was asleep in his bedroom hut with his wife Mavis Zondo. The accused was awakened by the deceased person who was violently knocking on the door demanding his money. The deceased allegedly owed the accused some money. Realising the accused's violent and aggressive conduct deceased armed himself with an iron rod and an axe before emerging from his bedroom hut. The deceased was armed with two bricks, one in each hand. He was heavily intoxicated. The accused struck deceased three times with the iron rod on the head. The accused then attacked the deceased viciously using the axe. Deceased sustained fatal injuries. He subsequently died from injuries inflicted in the assault. The post mortem report compiled by Dr S. Pesanai at United Bulawayo Hospitals under report number PM/491/490/18 reveals the cause of death as:

- (a) Extensive subarchnoid haemorrhage
- (b) Multiple skull fractures
- (c) Assault

The state tendered into the record as exhibits 3 and 4 respectively, namely, the axe and the iron rod. The axe handle has a length of 73cm, the blade is 18cm and the width of the blade at its widest part is 11cm, it weighs 1,61kg. The iron rod is 85.5cm in length, its circumference is 7cm and its measured weight is 0.9kg.

From the evidence placed before this court we are satisfied that the accused caused the death of the deceased. His conduct was negligent. There is no evidence to prove either actual or constructive intent. The only witness in this matter was accused's wife. She was inside the bedroom hut at the time of the assault. The court finds the accused not guilty on the charge of murder. The accused is however, found guilty of culpable homicide.

Sentence

The accused who is aged 78 years has been convicted of a serious offence. He pleaded guilty to culpable homicide. The accused is in the sunset of his life. He caused the death of his biological son. The stigma of causing the death to one's son shall remain a permanent scar on accused's life. This shall remain embedded in accused's mind for the rest of his life. The court accepts that there is sufficient evidence placed before the court to indicate that deceased was an aggressive individual. A day prior to this fateful incident deceased had been released from community service. He had assaulted the accused fracturing his left arm. The state tendered an extract of judgment confirming that deceased had been convicted on a charge of domestic violence for assaulting the accused sometime in 2015. Whilst the courts do not condone the use of violence, the courts must in all circumstances avoid sending elderly first offenders to prison. The accused has been in custody for at least 2 months pending his trial. He appears frail. No useful purpose will be served by sending him back to prison to serve a custodial sentence. Defence counsel sought to invoke the provisions of section 21 of the Constitution of Zimbabwe Amendment (No 20) 2013, which provides that: “ (1) *The State and all institutions and agencies of government at every level must take reasonable measures, including legislative measures, to secure respect, support and protection for elderly persons and to enable them to participate in the life of their communities*”.

Elderly persons must be treated with respect. I must point out that the rights enjoyed by elderly persons in terms of our Constitution are not absolute rights. Where elderly persons violate the law willfully they should not seek the enjoyment of the rights accorded to them by the Constitution and by society at large.

In all the circumstances of the case, however, we do not consider that an effective custodial sentence would be appropriate.

Accordingly, the accused is sentenced as follows:

“3 years imprisonment wholly suspended for 5 years on condition the accused does not during that period commit an offence of which violence is an element and for which he is convicted and sentenced to a term of imprisonment without the option of a fine.”

National Prosecuting Authority, state's legal practitioners
Mapfumo Mavesere & Associates, 1st accused's legal practitioners