

THE STATE
versus
LIVIOUS NCUBE

HIGH COURT OF ZIMBABWE
MOYO J
HWANGE 5 NOVEMBER 2018

Criminal Trial

Mrs C Gorerino for the state
T Chimusaru for the accused person

MOYO J: The accused person faces a charge of murder. It being alleged that on 8 January 2017 he assaulted the deceased who was his 7 year older step daughter, several times, resulting in her dying from the injuries sustained in the assault.

The accused has pleaded not guilty to murder but has offered a limited plea to culpable homicide. The state counsel accepted the limited plea, both parties then prepared a statement of agreed facts which was tendered and marked exhibit 1. It reads as follows:

1. The accused was aged 40 years at the time of the commission of the offence.
2. The deceased was aged 7 years at the time she met her death.
3. Accused and deceased both used to reside at Livious Ncube's homestead, Moya village, Tiki area, Lupane.
4. Accused was deceased's step father.
5. On the 8th of January 2017 at around 0800 hours, the accused assaulted deceased with a stick several times all over the body for having damaged keys to one of the huts.
6. Accused further assaulted deceased with clenched fists several times on the head and face questioning her as to why she was crying.
7. At around 1300 hours during the same day deceased fell unconscious.

8. Accused prepared a fire in the bedroom hut and put some water to heat up with the intention of applying warm compress on the injured parts on deceased.
9. Accused held deceased, as accused was applying the warm compress, deceased accidentally sat in the hot water and she sustained burns on her back.
10. On the 11th of January 2017 and at around 22 hours the deceased was found dead by accused who then alerted other villagers.
11. 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 post mortem report was also tendered and it gives the cause of death as subarachnoid haemorrhage, head injury, assault.
The accused person is accordingly found not guilty of murder but is instead convicted of the lesser charge of culpable homicide.

Sentence

The accused person is convicted of culpable homicide. He is a first offender, he pleaded guilty, has shown contrition.

However, the accused person ruthlessly beat up a defenceless 7 year old child. His conduct went overboard and cannot be held to have been in the spirit of discipline. If in fact was child abuse. These courts frown at the loss of life through violence. The usual sentence for such a matter with the present facts would be about 7 years imprisonment. The accused was already spent 2 years in pretrial incarceration

It is trite that an accused's sentence must be discounted with the period he has already spent in custody prior to trial.

It is for these reasons that the accused having spent almost 2 years imprisonment is accordingly sentenced to 5 years imprisonment.

*National Prosecuting Authority, state's legal practitioners
Mashindi and Associates' accused's legal practitioners*