

THE STATE
versus
JUSTINE WATANHUKA

HIGH COURT OF ZIMBABWE
BHUNU J
HARARE, 23, 24 and 25 September 2013

Assessors: 1. Mr. Musengezi.
 2. Mr. Mhandu.

Criminal Trial

E.W Munyoro, for the State
Ms E. Bishi, for the Defence

BHUNU J: The accused stands convicted on his own plea of guilty to a charge of culpable homicide. He initially pleaded not guilty to a charge of murder that was later reduced to the lesser charge of culpable homicide with the consent of the State.

The agreed facts are that the deceased and the accused person picked up a quarrel at a beer drink at Farm 182 Chesa Mount Darwin. The drunken brawl broke up into a fist fight in which the deceased was over powered and he fled.

He later returned to the scene armed with a brick and a stick with which he attacked the accused. He threw the brick at the accused but missed. Undeterred he advanced towards the accused and attacked him with the stick on the head. The accused sustained moderate injuries on the head. The doctor's report exh 4 shows that the accused sustained head injury, swollen eyes, bruised face and soft nose.

Upon being attacked the accused fought back and managed to disarm the deceased dispossessing him of the stick. He then set upon the deceased with the same stick culminating in the deceased's death. The post mortem report shows that death was due to severe head injuries due to assault.

Both parties are in agreement that the accused brought about the deceased's death while acting in self defence. He however exceeded the bounds of self defence in warding off

the unlawful attack perpetrated upon him by the deceased. While the law imposes a duty on the accused to flee it does not require the accused to flee in circumstances where he might expose himself to an attack from the back. The undisputed facts of the case show that the deceased was a man of a violent disposition who could easily have attacked the accused from the back had he been given any chance to do so. The accused's moral blameworthiness is therefore, of a very low degree indeed.

In assessing the appropriate sentence the court shall also take into account that the accused is a responsible family man with five minor children to look after. He is the sole breadwinner for the family. He earns about US\$1000.00 per month as a gold panner. He has pleaded guilty and has shown contrition.

On the other hand, very little can be said in favour of the deceased. All what the Court can say is that human life is precocious. It must be preserved at all costs whenever circumstances permit.

It being correctly accepted by the State that the deceased brought about his demise on himself, this Court finds that the 8 months period that the accused has already spent in remand prison is more than enough to atone for his misdemeanour. Nothing can be saved by any further punishment beyond what he has already endured.

In the result it is accordingly ordered that the accused be and is hereby sentenced to 12 months imprisonment the whole of which is suspended for a period of 5 years on condition the accused does not again within that period commit any offence involving the unlawful killing of a fellow human being.

*The Attorney General's Office, The State's legal practitioners
Muskwe & Associates, defence's legal practitioners*