

THE STATE

vs

STEWART GANDA

HIGH COURT OF ZIMBABWE
MAWADZE J
MASVINGO, 16TH September, 2019

Criminal Trial - Sentence

Assessors

- 1. Mr Gweru**
- 2. Mr Chikukwa**

T. Chikwati for the State
M. Mureri for the accused

MAWADZE J: This matter mirrors what has gone wrong in our society.

It is taboo in our culture for a child to lay a hand on his or her parents. The accused's conduct in this matter does not only fall foul of the sixth commandment which says; "*thou shall not murder*" but mostly importantly the fifth commandment which says; "*honour your father and mother, that your days may be long upon the land which the LORD your GOD is giving you.*"

The 31-year-old accused is the biological son of the 63-year-old now deceased. Initially the accused was arraigned for murder as defined in s 47(1) of the Criminal Law (Codification and Reform) Act, [Cap 9:23]. However, the State and the defence found each other and agreed that the charge of culpable homicide as defined in s 49 of the Criminal Law (Codification and Reform) Act, [Cap 9:23] is the appropriate charge. The matter therefore proceeded on a statement of agreed facts.

The agreed facts are that both accused and the now deceased who resides in Ganda Village, Chief Mazuru, Gutu, Masvingo had spent the whole day drinking traditional beer. Towards sunset they proceeded home together and on their way they had a misunderstanding. The now deceased indicated that accused's late mother was a prostitute and that accused was not his biological son. This incensed the accused who proceeded to attack the drunken now deceased. The accused assaulted the now deceased with a switch all over the body until he fell down. As the now deceased lay down the accused kicked him with booted feet all over the body and left him lying down as accused proceeded home to sleep.

It is not clear as to whether the now deceased died that same day or the next morning when his body was discovered. The now deceased has several injuries on his body. The post mortem report indicates the following;

- “1. skull deep laceration on left temporal area ± 5 cm long, irregular edges*
- 2. laceration right temporal area ± 4 cm*
- 3. partial amputation of right ear*
- 4. multiple face, scalp and neck bruises*

The cause of death is said to be “severe head injury”.

The accused proceeded to his uncle Kainos Ganda the next morning and revealed what had happened. Thereafter he handed himself to the police who attended the scene of crime but did not recover any weapons.

In assessing sentence, a proper balance should be struck between the mitigatory and aggravatory factors.

We have considered the accused's personal circumstances. The accused's wife and two minor children aged 6 years and 3 years respectively survive on his manual labour as he is unemployed. They will be greatly inconvenienced if he is incarcerated.

We noted that the accused has some disability on his left hand as his middle finger is missing. It was accidentally amputated when he was employed and he indicated that he cannot longer have full use of that left arm.

As a first offender the accused deserves to be treated with some measure of leniency more so as he pleaded guilty to this charge. No resources were therefore wasted in carrying out an unnecessary trial and the three State witnesses present were quickly excused. We have no doubt that the accused is contrite.

The accused suffered from pre-trial incarceration of about 5 months as he failed to raise bail money he had been granted. Indeed, the accused shall forever live with the shame and stigma that he took away the life of his own father. This may be very traumatic as his relatives and society may be very unforgiving.

There is no doubt that the accused was provoked. It was improper for his own father to disown him and to call accused's late mother a prostitute.

Be that as it may the accused's moral blameworthiness remain high. As already said the now deceased is the accused's father. It is important that the accused should have controlled his temper. It was improper for him to viciously attack his 63-year-old drunk father in that manner.

We are unable to agree with *Mr Mureri* that that voluntary intoxication in this case is a mitigatory factor. this is so on account of s 221 of the Criminal Law (Codification and Reform) Act, [Cap 9:23] which provides as follows;

“(2) *Where a person is charged with a crime requiring proof of negligence, the fact that the person was voluntarily intoxicated when he or she did or omitted to do anything which is an essential element of the crime shall not be a defence to any such crime nor shall the court regard it as mitigatory when assessing the sentence to be imposed.*” (my emphasis)

The assault itself was clearly indiscriminate and brutal as can be seen from the post mortem report. We cannot discount some attempt by accused to cover up the crime initially as no weapons used were found at the crime scene. Indeed, severe force was used and some blows were directed at this vulnerable part of human anatomy.

In our view the sanctity of human life cannot be overemphasised. Human blood is sacred. A message should be send clearly that those whose resort to violence causing loss of life will be severely punished. The prevalence of cases of this nature remain worrying to this court.

In the result the accused is sentenced as follows:-

“10 years imprisonment of which 2 years imprisonment is suspended for 5 years on condition the accused does not within that period commit any offence involving the use of violence upon the person of another for which the accused is sentenced to a term of imprisonment without the option of a fine.

Effective sentence :8 years imprisonment.”

National Prosecuting Authority, counsel for the State

Matutu and Mureri, pro deo counsel for the accused