

THE STATE

Versus

PETER SIATOBOLO MUZAMBA

IN THE HIGH COURT OF ZIMBABWE

DUBE-BANDA J with Assessors Mr Ndlovu and Mr Bazwi

HWANGE 8 MARCH 2022

Criminal trial

Mrs M. Cheda, for the State

Ms. L. Mtombeni, for the accused

DUBE-BANDA J: The accused appears before this court facing two counts. In count 1 being a charge of murder as defined in section 47 of the Criminal law [Codification and Reform] Act Chapter 9:23. It being alleged that on the 2nd May 2021, accused unlawfully caused the death of Tedious Sibanda Siasumpa (deceased) by striking him with a log twice on the head, intending to kill him or realising that there is a real risk or possibility that his conduct may cause the death of deceased and continued to engage in that conduct despite the risk or possibility.

In count 2 it being charged with the crime of assault as defined in section 89 of the Criminal law [Codification and Reform] Act Chapter 9:23. It being alleged that on the 2nd May 2021, accused unlawfully committed an assault upon Maria Mumpane (complainant) by striking her once on the head with a log intending to cause her bodily harm or realising that there is a real risk or possibility that bodily harm may result.

In respect of count 1, accused pleaded guilty to a lesser crime of culpable homicide. The State accepted the plea of guilty to culpable homicide. In count 2, accused pleaded guilty. Defence counsel informed this court she explained the facts and the essential elements of the charge and that the plea of guilty was indeed an unequivocal admission of guilty. State counsel tendered into the record of proceedings a statement of agreed facts. The statement is before court and marked Annexure A, and it reads as follows:

The State and the Defence are agreed that the following issues are common cause being that:

1. The accused was aged 34 years at the time of the commission of the offence and he resides at Lyna Muzamba's homestead, Makore Village, Chief Siabuwa, Binga.
2. The deceased was aged 66 years at the time he met his death. He used to reside at his own homestead, Mkore Village, Chief Siabuwa, Binga.
3. The complainant in count 2 was aged 59 years at the time the offence was committed and she resides at the deceased's homestead. She was deceased's wife.
4. On the 2nd of May 2021 the deceased and his wife Maria Mumpane had prepared beer and invited people to partake in the beer while they cleared and extended their field.
5. Amongst those invited were the accused and deceased's sister, Nora.
6. At around 1630 hours while at the fields, the accused began to accuse the deceased of letting cattle that were in his custody to graze in accused's fields and advised him to return the cattle to their owners.
7. A misunderstanding then ensued. The accused then charged at the deceased and fell him to the ground. The accused then picked a log and struck the deceased twice on the head causing him to fall unconscious.
8. The complainant then rushed to the scene while Mario Muchimba restrained the accused from further assaulting the deceased.
9. The accused then charged towards the complainant and tripped and fell to the ground. The accused then struck the complainant once on the head with the log as she lay on the ground.
10. The deceased sustained deep cuts on the head. The deceased's condition deteriorated and he died at his home on the 6th of May 2021.
11. The accused person pleads not guilty to murder in respect of the first count but pleads guilty to culpable homicide in that he negligently caused the death of the deceased.
12. The accused pleads guilty to assault in respect of the second count.

The State tendered into evidence the post mortem report. It is before court and marked Exhibit 1. The post mortem report lists the cause of death as cerebral edema, encephalic contusion and head trauma. The State tendered into evidence a log (Exhibit 2). It has the following measurements: weight 2.5kg, 1.53m long, circumference (big side) 17 cm,

circumference (small side) 13 cm. According to the report the deceased was struck on the head. Under marks of violence it stated that deceased suffered contused wound in the right parietal region. The internal examination showed the scalp suffered haemorrhage infiltration in the right parietal region; skull suffered a linear fracture in the parietal region; the brain suffered cerebral edema and encephalic contusion in the right parietal region.

The facts of this case show that the accused charged at the deceased and fell him to the ground. The accused then picked a log and struck the deceased twice on the head causing him to fall unconscious. The deceased sustained deep cuts on the head. The deceased's condition deteriorated and he died.

The accused was under an unlawful attack. The attack had commenced. The accused used disproportionate force to avert the attack. Deceased was not armed with a weapon. Using a log against an unarmed person was not necessary to avert the attack. Severe force was used in striking the deceased. This caused him to suffer the injuries that caused his death.

The facts show that the injuries sustained by the deceased were caused by the accused. The post mortem report shows that the injuries inflicted by the accused caused the death of the deceased. It was objectively foreseeable or within the range of ordinary human experience that accused's actions would lead to the death of the deceased. It therefore means that the accused acted negligently by assaulting the deceased in the manner he did. A reasonable person placed in a similar situation would have avoided acting in the manner the accused did. Accused negligently failed to realise that death may result from his conduct; or realising that death may result from his conduct and negligently failed to guard against that possibility.

In the circumstances of this case, we are satisfied that the State's concession has been properly made, it accords with the facts of this case and the law. It cannot be said that the accused is guilty of the crime of murder.

In the result, in respect of count 1, the accused is accordingly found not guilty of murder and found guilty of a lesser crime of culpable homicide in terms of section 49 of the Criminal Law (Codification and Reform) Act [Chapter 9:23].

In respect of count 2, accused pleaded guilty, and we accept this his plea is an unequivocal admission of guilty. He is accordingly found guilty of the crime of assault as defined in section 89 of the Criminal law [Codification and Reform] Act Chapter 9:23.

Sentence

The accused has been convicted of two counts, i.e. the crime of culpable homicide and assault. This Court must now decide what sentence is appropriate for the offences for which he has been found guilty. To arrive at the appropriate sentence to be imposed, this Court will look at his personal circumstances, take into account the nature of the offence he has been convicted of, and factor in the interests of society.

We factor into the equation the personal circumstances of the accused which are as follows: he is 35 years old, and was 34 years at the time of the commission of these offences. He has two minor children. He cares for his elderly mother. He has no assets of value and has no savings.

We also take into account that he is a first offender. He pleaded guilty to these crimes. We factor into the equation that there was some measure of provocation and intoxication. Counsel submitted that accused is remorseful. The fact that he caused the death of his uncle and assaulted his aunt is a stigma that will follow him for the rest of his life.

On the other side of the pendulum we factor into the equation that the accused has been convicted of a serious offence. A life was ended. It is incumbent on this court to emphasize the sanctity of human life. Society frowns at the taking of another human being's life. The courts must send a loud and clear message that the killing of a fellow human being will not be tolerated. We note that the accused used excessive force on elderly people, used a log. The deceased and complainant are relatively elderly person. He fractured the skull of the deceased. This was a brutal attack. He inflicted serious injuries as depicted in the post mortem report. He assaulted complainant in count to with a log. Accused's moral blameworthiness is high.

In the circumstances only a custodial sentence will meet the justice of this case. The accused is sentenced as follows:

Count 1: 8 years imprisonment of which 2 year imprisonment is suspended for 5 years on condition the accused does not within that period commit an offence of which an assault or physical violence on the person of another is an element and for which upon conviction he is sentenced to a term of imprisonment without the option of a fine.

Count 2: 2 years imprisonment of which 1 year imprisonment is suspended for 5 years on condition the accused does not within that period commit an offence of which an assault or physical violence on the person of another is an element and for which upon conviction he is sentenced to a term of imprisonment without the option of a fine.

Sentences on count 1 and count 2 are ordered to run concurrently.

National Prosecuting Authority, state's legal practitioners
Dube, Nkala Legal Practitioners, accused's legal practitioners