

THE STATE
versus
IRVENE MOYO

HIGH COURT OF ZIMBABWE
MOYO J
GWERU 5 FEBRUARY 2018

Criminal Trial

M Shumba for the state
W T Davira for the accused

MOYO J: Accused is charged with murder it being alleged that on 1 March 2013, he assaulted the deceased Charlton Ncube with a stone on the head resulting in deceased's death from injuries he sustained in the assault.

He pleaded not guilty to murder but offered a limited plea to the charge of culpable homicide. The state counsel accepted this limited a plea. A statement of agreed facts was drawn and tendered. It was marked exhibit 1. The post mortem report was also tendered and marked exhibit 2. It gives the cause of death as

- Subarchanoid haemorrhage
- Depressed skull fracture
- Blunt force trauma
- Homicide
- The stone that was used to assault deceased was tendered and marked exhibit 3
- The knife that deceased had on the day in question was marked exhibit 4.

The statement of agreed facts reads as follows in terms of material respects;

1. Accused is Irvine Moyo who resides in Matiye Village, Headman Madigane, Chief Sogwala in Lower Gweru and was 22 years old at that material time.

2. The deceased is Charlton Ncube who during his lifetime resided in Donki Village, Headman Madikane, Chief Sogwala in Lower Gweru. He was 23 years old at the time he met his death.
3. On 1 March 2013, in the evening at about 1945 hours, the deceased was in Dufuya Bar at Dufuya Business Centre, Lower Gweru and was drunk. The accused then arrived at this bar and had in his possession two strops which were in his trousers pocket.
4. The deceased saw these strops and snatched them from the accused. In the process, the deceased asked the accused why he had those strops during that time of the day. A misunderstanding ensued between the two as a result, culminating in a near fight. In the end, the deceased returned the strops to the accused and the two sat down, each at his own place.
5. After a short while, the deceased started dancing to some music, but eventually walked out of the bar and stood by the door. The accused also walked out of the bar intending to go home. The deceased called him but he, the accused, ignored the call, prompting the deceased to pull him.
6. The accused resisted, whereupon the deceased struck him with a fist on the mouth. The accused fell to the ground as a result of the blow. Someone in the bar tried to refrain the deceased from further assaulting the accused. The deceased then produced a knife and chased after that person but was out paced.
7. The deceased returned and while walking towards the bar, the accused picked a stone and threw it at him. The stone struck the deceased on the left side of the head, just above the left ear. The deceased fell to the ground as a result, and after a few minutes he died.
8. A report was made to the police resulting in the accused's arrest and deceased's body being ferried to United Bulawayo Hospitals where Dr S. Pesanai conducted a post mortem examination and concluded that the cause of death was;
 - subarachnoid haemorrhage
 - Depressed skull fracture
 - Blunt force trauma
 - Homicide

Post mortem number 182-182-2013 was thus compiled.

9. Accused accept the evidence of the state witnesses and contents of the post mortem report. The accused having the requisite intention to kill the deceased, but acknowledge that, through his conduct aforesaid, he was negligent in causing the deceased's death.
10. The state concedes that the accused was negligent in the way he conducted himself and in the manner he assaulted the deceased. The state acknowledges that the accused was negligent in causing the deceased's death and accepts the accused's plea of guilty to culpable homicide.

The accused person is accordingly found not guilty of the charge of murder but is accordingly convicted on the lesser charge of culpable homicide.

Sentence

The accused is convicted of the offence of culpable homicide. He is a first offender. He pleaded guilty. He was aged 22 years at the material time. It has taken 5 years for him to be brought to justice. The deceased started it all. But the fight that deceased had started was quelled down by third parties resulting in deceased leaving the premises. Accused later assaulted deceased when he saw him walking towards the bar. It is not clear as to why the accused acted in such a manner. These courts frown at the loss of life through violent means. Society is urged out there to seriously consider the continued pleas by our courts, urging people to desist from any form of violence. Violence is now the norm in our society rather than the exception. The accused person, has in his favour strong mitigation in the form of waiting for justice for about 5 years and that although he later retaliated for no apparent reason, the deceased had started the whole dispute. The accused is accordingly sentenced to 5 years imprisonment with 3 years imprisonment suspended for 5 years on condition he does not within that period commit any offence of which violence is an element, for which upon conviction he shall be sentenced to imprisonment without the option of a fine.

National Prosecuting Authority, state's legal practitioners
Mutatu and Partners, accused's legal practitioners