

THE STATE
versus
RANGARIRAI MAFIGU

HIGH COURT OF ZIMBABWE
MUNGWARI J
HARARE, 22 & 26 June 2023

Criminal Trial

Assessors: Mr Barwa
Mr Kunaka

B Murevanhema, for the State
S Katsande, for the accused

MUNGWARI J: Rangarirai Mafigu, (hereinafter referred to as the “accused”) faces a charge of murder in contravention of s 47(1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*], it being alleged that he murdered Chriswell Mafigu, (hereinafter referred to as the “deceased.”)

The accused and deceased resided together at Plot 9, Range Farm, Centenary. According to the State’s allegations, on 14 November 2022, at approximately 1200hrs, an altercation between the accused and the deceased escalated into a physical fight. Sensing his own vulnerability, the accused resorted to throwing bricks at the deceased, narrowly missing him on both occasions. Subsequently, the accused picked up a hoe and threw it at the deceased striking him on the left side of his head. As a result of this blow, the deceased suffered injuries to the left side of his head, ultimately falling down and succumbing to his injuries.

The accused denied the charge of murder and instead tendered a limited plea of guilty to culpable homicide. The State accepted the plea and pursuant to this, the parties prepared a statement of agreed facts.

The agreed facts indicate that the accused and the deceased are blood brothers. On 14 November 2022, the two viciously fought after their shared bedroom had been razed to the ground by a fire lit as an act of arson. Witnesses at the scene observed the accused retaliating against the brutal attacks by the deceased. At some point he missed his target. They witnessed

him picking up a hoe and striking the deceased, who exhibited extremely violent behavior. Tragically, the deceased died instantly from the strike. The body of the deceased was ferried to St Albert's Hospital and transferred to Harare Hospital where a post mortem examination was conducted by Doctor Martinez. The postmortem which was admitted in evidence by consent as Exhibit 1 showed that the deceased died due to brain damage, global subarachnoid haemorrhage and head trauma.

The State tendered with the consent of the defence the weapon that was used in the perpetration of the offence, the hoe. The court noted that it is an ominous looking weapon. The certificate of weight states that it is 1,550 g in weight and that it is 82 cm long. The weighing certificate was subsequently marked as Exhibit 2 while the hoe was tendered as Exhibit 3.

It was agreed that the accused did not intentionally cause the death of the deceased but that he realized that by striking the deceased on the side of the head, death might occur. He however negligently failed to guard against the possibility of the deceased's death. In short, the accused agrees that he negligently caused the death of deceased.

In view of the state outline, the statement of agreed facts together with the exhibits tendered and defense counsel's unequivocal statement of accused's understanding we accepted the limited plea of culpable homicide. We are satisfied that the State's concession to accept a limited plea was proper in the circumstances.

Disposition

Accordingly we find the accused not guilty of murder but guilty of a lesser charge of culpable homicide.

Sentence

In arriving at the appropriate sentence we took into consideration the following mitigating and aggravating factors as advanced by counsels for the accused and the State and these are that:

Accused is a mature first offender. He was 28 years old when he committed the offence he has been convicted of. This being his first transgression of the law he deserves some measure of leniency.

In mitigation, the accused's personal circumstances also call for some leniency. He is an unsophisticated village man who survives on subsistence farming. He resides with his

family at the rural home and contributes to their survival. His incarceration will severely prejudice his dependents.

He will forever bear the stigma of causing the death of the deceased. Society will undoubtedly perceive him as a murderer, overlooking the fact that he was convicted of culpable homicide, because the distinction between murder and culpable homicide remains elusive to many. He will be burdened with the label of his brother's murderer, a weight too heavy to bear.

It is mitigating that once arraigned before the court he pleaded guilty to the offence of culpable homicide that he knew he had committed. He owned up to his wrong doing and as such did not waste the courts time and resources in prosecuting him. He then went a step further and openly expressed his remorse and contrition while his demeanor too depicted remorse. Due reward will be given to the accused as his plea of guilty contributed to the swift administration of justice. Witnesses were spared the trauma of having to testify against their relative, the accused in the matter of the deceased a family member's death. Testifying against a family member often leaves behind a trail of animosity and divisions within the family set up.

However, in aggravation the State counsel emphasized the importance of the sanctity of life. Indeed the court strongly condemns the loss of life, even if it is due to negligence. A life was tragically lost, and once lost, it is irreplaceable. Violent behavior will never resolve disputes. In fact it only exacerbates the problems. It is essential to convey to society that all types of conflicts should not be settled through violence. The courts have a responsibility to prioritize the protection of life.

There is no doubt about the accused's level of negligence, which both counsels agreed was gross. In fact, the accused's negligence was undeniably severe. It should have been evident to the accused that there were alternative ways to prevent the tragic outcome, despite the intense atmosphere at the scene. The accused had the option to seek for help from those around him. Alternatively, he could have run away from the scene. Regrettably he chose to strike the deceased on the left side with a hoe. As a result of the impact the deceased died of brain damage, global subarachnoid hemorrhage and head trauma. He died instantly.

Accordingly, the accused is sentenced as follows:

10 years imprisonment of which three years are suspended for five years on condition that accused does not within that period commit any offence involving violence upon the

person of another and or negligently causing the death of another and for which upon conviction he will be sentenced to imprisonment without the option of a fine.

*National Prosecuting Authority, State's legal practitioners
Hungwe and Partners, accused's legal practitioners*