

THE STATE
versus
SAMSON MUHWATI
and
TICHAONA PETRO

HIGH COURT OF ZIMBABWE
MUTEVEDZI J
HARARE, 5 JUNE 2024

Assessors: *Mr Mhandu*
Mr Gwatiringa

Criminal Trial

D.H. Chesa, for the state
V, Vhera, for the first accused
M.S. Katsande, for the second accused

MUTEVEDZI J: The two accused persons Samson Muhwati and Tichaona Petro are both married to the deceased, Aldrin Chinorwadza's sisters. They were therefore brothers-in-law to him. In most African cultures such relationships usually come with immense respect reciprocated by both sides. It was not the case with the accused persons and the deceased.

[1] The prosecutor alleged that on 17 May 2023 at night, in fact around 2020 hours, the deceased stormed the first accused's homestead. He had a stone to grind with the first accused because he had information that the first accused was ill-treating his (accused's) sister. Fortunately, when he arrived, the first accused was not home. He decided to be patient and waited for the first accused. During that wait, the second accused arrived. He had also been told that the deceased had earlier in the day also descended on his homestead hurling insults. He inquired what the deceased had been looking for. A misunderstanding ensued. It soon turned into a fist fight. In the midst of the fight the first accused arrived at his homestead. He joined in the fight and assaulted the deceased with fists and booted feet. The second accused kicked the deceased on the mouth before leaving the scene. In between a knife was used to stab the deceased

on the left side of the chest. The deceased later succumbed to the injuries leading to the charge of murder against the accused.

- [2] At their trial the accused both pleaded not guilty to the murder but pleaded guilty to the lesser crime of culpable homicide. The prosecutor accepted their limited plea.
- [3] The statement of agreed facts tendered by the prosecutor and counsels for the accused persons differs from the initial allegations. It states that both accused arrived at first accused's homestead at the same time. They had been warned that the deceased had been looking for them; that he was agitated and belligerent. He had been patiently waiting for them at first accused's homestead.
- [4] Soon after their arrival the deceased wasted no time. He shouted profanities at the first accused. He indicated that the first accused had been abusing his sister on many occasions and that the abuse had become a concern for their entire family. The family was frustrated that the police were not taking any action despite reports having been made to that effect.
- [5] The first accused and the deceased then engaged in a physical fight. The brawl dragged in the second accused. In the heat of the fight, the deceased drew out a knife and threw it in the direction of the first accused. It missed. The first accused picked it. He hurled it back at the deceased. Despite being thrown randomly, the knife found its target.
- [6] The knife pierced a wound on the left side of the deceased's chest. He fell to the ground and cried out in pain. Fortunate Mavhunga who is the first accused's sister tried in vain to assist the deceased.
- [7] In the meantime, both accused had fled to Givemore Mukombodzi's homestead from where they received the news that the deceased had sustained mortal injuries from the fight. They voluntarily surrendered themselves to the police and were arrested.
- [8] The weapon allegedly used for the commission of the offence was confiscated by the police. It weighed 150 grams and its blade was 24 centimetres long.
- [9] The post-mortem examination which was carried out by Doctor Ephraim Sunhwa showed that the deceased had died from hemopneumothorax, pericardial tamponade, and penetrating chest trauma. Both the knife and the autopsy report were admitted as exhibits by the court with both accused's consent.
- [10] As already said, both accused argued that they had neither the intention to cause the death of their brother-in-law nor did they realise that there was a real risk or possibility that their actions could result in his death. They however accepted the

allegation that they had negligently caused it. They admitted that it was negligent to continue fighting the deceased in the dark especially after realising that he was wielding a knife which could be used in the fight. Further they continued having a physical brawl with him when they had realized that he was not in the right frame of mind, was agitated and incensed over the alleged abuse of his sister by the first accused person.

[11] All circumstances having been taken into account; the court was satisfied that the prosecutor's acceptance of the accused's plea to the lesser charge of culpable homicide was properly made.

[12] It is on that basis that the accused are both acquitted of the charge of murder but are both found guilty of culpable homicide as defined in s 49 of the Criminal law (Codification and reform) Act [*Chapter 9:23*].

MUTEVEDZI J:.....

National Prosecuting Authority, state's legal practitioners
Tamuka Moyo Attorneys, first accused's legal practitioners
Tanyanyiwa and Associates, second accused's legal practitioners