

THE STATE**Versus****NJABULO NCUBE****IN THE HIGH COURT OF ZIMBABWE**
BERE J with Assessors Mr J. Sobantu and Mrs A. Dhlula
BULAWAYO 28 – 29 MARCH 2017**Criminal Trial***K. Ndlovu* for the state
Ms M. G. Ndlovu for the accused

BERE J: In this case the accused was initially charged with the crime of murder of one Siphelile Ncube on 8th of December 2016, the offence having been committed at Mandalay Compound, at Mandalay Farm, in Umguza in the Province of Matabeleland North.

The accused offered a limited plea to the offence of culpable homicide which was accepted by the state and the matter proceeded on the strength of a statement of agreed facts summarised as follows:

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

1. The accused person (Njabulo Ncube) resides at Mandalay Compound, Mandalay Farm in Umguza. He was 28 years old at the time of the commission of the offence.
2. The deceased was 36 years old at the time he met his death and he also used to reside at his home at Mandalay Compound during his lifetime.
3. On the 8th day of December 2016, at around 2200 hours, the accused person was gambling and drinking with his friends Donald Nyoni and Vasco Mpofu at the verandah to Mandalay Store.
4. The deceased who was drunk came to Mandalay Store and found the three still gambling. On arrival, the deceased began to shout at the trio and also took possession of US\$10,00 which was on the gambling floor.
5. A misunderstanding then ensued between the accused and the deceased. The accused person angered by the deceased's utterances, then got up and picked a wooden log which he had been sitting on and using as a stool and struck the deceased once on the back of the head with it.

6. The deceased collapsed to the ground and lost consciousness. When he regained consciousness he made his way to his home.
7. On the following morning the 9th of December 2016, the deceased's condition deteriorated and he died in his sleep.
8. Post mortem report number 1120/1108/2016 compiled by Doctor Roberto Trecu after his examination of the deceased's remains lists the cause of deceased's death as:
 - i) Subarachnoid hemorrhage
 - ii) Severe head trauma due to blunt trauma.
9. The accused person was then arrested and charged with the murder of the deceased.
10. The accused person pleads Not Guilty to the offence of murder but pleads Guilty to that of Culpable Homicide in that he negligently caused the death of the deceased when he hit him at the back of his head with a log."

Sentence

In our approach to sentence we will consider and accept the following factors in mitigation and aggravation.

The accused is a 1st offender who seems to have fully appreciated his mistake by offering an unsolicited plea of guilty to culpable homicide.

The accused has the usual family responsibilities which must be looked at in connection with other relevant factors.

Both the accused and the deceased appeared to have been heavily influenced by alcohol hence their unusual conduct.

The mild provocation by the deceased must be regarded as highly mitigatory. We accept however that the accused's reaction was clearly disproportionate to the provocation.

The accused has been kept in custody for close to 4 months whilst awaiting the conclusion of this matter.

In aggravation we do accept that from the facts of this matter life was needlessly lost, as the misunderstanding could have been easily resolved without shedding blood.

We are concerned with the manner in which the accused, at the slightest provocation chose to behave in the manner he did which ultimately cost the deceased's life.

We urge our citizens to respect the need to preserve human life because once lost it cannot be replaced. The accused can look forward to a reunion with his relatives and family after the completion of his punishment but the same cannot be said of the deceased whose life the accused cut short in undeserving circumstances.

Everything considered we feel that the following sentence is appropriate.

6 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 violence upon the person of another and for which upon conviction the accused will be sentenced to a term of imprisonment without the option of a fine.

*The Prosecutor General, state's legal practitioners
Ncube & Partners, accused's legal practitioners*