

THE STATE

VERSUS

LOUIS MOYO

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
HWANGE 12 MARCH 2012

Ms N. Ndlovu for the state
Mr Mahachi for the accused

Criminal Trial

MAKONESE J: The accused was charged with the crime of murder in that on the 6 June 2011 and at Tshabanda Business Centre, Tsholotsho he did wrongfully and unlawfully and intentionally kill and murder Mpande Ngwenya a male adult aged 22 years. The accused tendered a plea of not guilty with respect to the charge of murder and accordingly we entered a plea of not guilty. The accused has however tendered a plea of guilty with respect to Culpable Homicide. The State has accepted the limited plea. The court is satisfied that the plea of guilty with respect to culpable homicide was understandingly made as accused person is legally represented. Accused is found not guilty of murder but guilty of culpable homicide.

Reasons for sentence

The accused has been convicted on his own plea of guilty with respect of culpable homicide. He was aged 16 years at the time of the offence and he is now aged 17 years. He is turning 18 years in a few weeks time. In mitigation the court accepted the following mitigating factors as highlighted by his defence counsel:-

- (1) accused is a first offender
- (2) accused pleaded guilty
- (3) accused has shown some remorse
- (4) accused was somewhat drunk at the time of the commission of the offence

- (5) The deceased was the aggressor.
- (6) The offence occurred at the spur of the time.

The defence has argued that the court should postpone the passing of sentence in terms of the Criminal Procedure and Evidence Act.

The act does not make it mandatory for the court sentencing a juvenile not to impose a custodial sentence. The discretion is left to the court to impose a suitable sentence.

In this case the court notes the following aggravating circumstances.

- (1) there was very little provocation
- (2) the accused was not under immediate attack
- (3) the attack on the deceased was totally uncalled for
- (4) the deceased was aged 22 years and a young life was lost. Crimes of this nature are on the increase and society must be protected by the courts whose sentencing must take into account the prevalence of the crime. It is sad to note that young offenders between 17 years to 25 years are committing acts of violence and lives are being needlessly lost. The sanctity of human life must be preserved. In this case the postponing of sentence will trivialise the offence and tend to reward the offender. The accused is sentenced as follows:-

8 years imprisonment with labour of which 3 years is suspended for a period of 5 years during which time the accused should not be convicted of any offence involving violence.

Effective sentence: 5 years imprisonment

*Criminal Division, Attorney General's Office, state's legal practitioners
Messrs T. Hara and Partners, accused's legal practitioners*