

THE STATE  
**versus**  
ARNOLD SHUMBA

HIGH COURT OF ZIMBABWE  
MATHONSI J  
GWERU 21 MAY 2018

### **Criminal Trial**

*T Mupariwa* for the state  
*V Ndlovu* for the accused

**MATHONSI J:** The accused person is charged with murder as defined in section 47 of the Criminal Law Code [Chapter 9:23] the allegations being that on 23 June 2012 he unlawfully caused the death of Taenzana Zhou, the deceased, by stabbing him twice in the stomach and once on the chest with a knife. The accused pleaded not guilty to the charge but tendered a limited plea of guilty to culpable homicide which the state has accepted.

According to the statement of agreed facts prepared by counsel the accused was aged 34 years at the time of the commission of the alleged offence. He resided at Village Mabutho, Chief Mudavanhu, Mberengwa in the Midlands Province. He is a member of the Police Constabulary Unit. The deceased was aged 22 years at the time he met his death. He resided at Village Tohwere, Chief Mudavanhu, Mberengwa. On 23 June 2012 and at about 0700 hours, the accused's wife, Raviro Zhou and Phillies Sikhala were walking to Maringambizi Secondary School through a foot path that passes through Siyabuza village.

As they neared a borehole, they observed footprints on the ground which they suspected to belong to the accused person. Raviro Zhou then indicated that judging by the footprints, it would not be a surprise if the deceased suddenly pitched up and beat Phillies Sikhala since she had turned down his love proposal. She further remarked that the accused behaved like an insane person. Suddenly, the deceased emerged from a nearby bush holding a stick. He then

indicated to Raviro Zhou that he was not mad and therefore wanted to beat her for even suggesting that he was. The deceased then assaulted Raviro Zhou thrice with a stick he was holding. He also struck her on the back with an open hand. He further struck her on the mouth with the stick. He then turned away and disappeared into the bushes.

When Raviro Zhou and Phillies Sikhala got to school, they requested some teachers to phone Raviro Zhou's husband, the accused to request him to come and collect them after school since the deceased was harassing them. After school, at about 1230 hours, Raviro Zhou and Phillies Sikhala passed by the deceased who was standing at the school sign post. The deceased followed them and ordered Phillies Sikhala to stop. He then grabbed her hand. The accused person then appeared from the front, approached the deceased and grabbed his hand. He then advised him that he was arresting him since he was a wanted person at Sandawana Police Post. Apparently, the deceased had been evading arrest over an assault case at Sandawana Police Post dating back to January 2011.

The deceased then produced a sheath knife and shook it in order to open it but it slid out of his hands, fell on the ground and separated. The deceased and the accused then wrestled. The deceased lifted the accused up and slammed him on the ground but the accused remained holding deceased's arm and they both fell to the ground still wrestling for the knife. The accused then grabbed the knife and swung it at the deceased, stabbing him twice on the stomach and once on the chest. The deceased then ran away clutching his stomach. He later passed on that day. The accused person surrendered himself to the police and handed over the knife.

On 24 June 2012, Dr Nyachowe, examined the remains of the deceased and concluded that the cause of death was cardio respiratory arrest due to massive blood loss secondary to a stab wound. The accused accept the evidence of the state witnesses and the contents of the post mortem report. He acknowledged that through his conduct aforesaid, he was negligent in causing the death of the deceased. The state conceded that the accused was negligent in the manner he assaulted the deceased, and therefore accepted accused's plea of guilty to culpable homicide.

Indeed having regard to those facts it cannot be said that the accused intended to kill the deceased at all as all he was doing was to effect a lawful arrest. For that reason the concession by the state is proper.

Accordingly the verdict of this court is that the accused is found not guilty of murder but guilty of culpable homicide.

#### Reasons for sentence

In arriving at an appropriate sentence we have taken into account what appears to be very weighty mitigatory factors set out by both counsel. This in fact appears to be a border-line case in which if properly explored the accused could have had a full defence. It is a fact that the deceased brought all this upon himself. He targeted innocent women and severely assaulted them on their way to school. Not content with that he waylaid them as they knocked off from school and had already captured one of them when the accused arrived.

The accused is a local police person who knew that the deceased was wanted in connection with another case of assault at Sandawana Police Post. He took the trouble to inform the deceased that he was under arrest for such offence. That did not stop the deceased from pulling out a knife with obvious ill-motive which he intended to use against the accused. At the same time he slammed the accused to the ground before both of them wrestled for the knife. In those circumstances not only was the accused's life in danger at the hands of a person with no respect for the law, those of his wife and Sikhala were also in danger. He definitely had to act to defend himself and two others.

In addition to that, the accused has had to pay compensation to the deceased's family in the form of four head of cattle, \$300-00 and groceries to feed mourners. We agree with both counsel that there has been an inordinate delay of 6 years, not attributable to the accused in bringing this case to court, which also weighs in his favour. The accused is married with three minor children who look up to him for sustenance.

Against that, is the fact that a human life was lost and this court has a duty to impose a sentence which recognizes the sanctity of human life. For that reason we will impose a sentence

which will remain hanging over his head as a constant reminder to avoid similar carelessness in future.

In the result, the accused is sentenced to 4 years imprisonment which is wholly suspended for 5 years on condition he does not during that period commit any offence involving violence for which he is sentenced to imprisonment without the option of a fine.

*National Prosecuting Authority, state's legal practitioners*  
*Legal Aid Directorate, accused's legal practitioners*