

THE STATE**Versus****GLADYS MUTOPA**

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J with Assessors Mr Matemba and Mrs Baye
GWERU CIRCUIT COURT 23 MAY 2017

Criminal Court

Shumba for the state

Ms L. Makande for the accused

MAKONESE J: The accused who was aged 56 years at the time of this offence appears in this court on a charge of murder. It is alleged that on the 30th November 2008 and at village Matavire, Chief Chireya, Gokwe, accused did wrongfully and unlawfully kill and murder a female juvenile Linda Mutopa, then aged 8 years. The accused pleads not guilty to the charge and tenders a limited plea of guilty with respect to culpable homicide. The state accepts the limited plea. The brief facts of the case as contained in the state of agreed facts (exhibit 1) are that on the date in question accused resided with the deceased who was her granddaughter at her homestead. In the early hours of the day accused left her home to fetch some water, leaving the deceased and her siblings behind. Later in the day the accused returned home and learnt that the deceased had consumed groundnut seed which had been reserved for planting. The accused confronted the deceased and demanded to know why she had consumed the groundnuts. The deceased remained silent and accused slapped her in the face. The accused proceeded to hold the back of the deceased's hand, hitting the head against the kitchen wall. The deceased fell to the ground unconscious. Despite attempts to render assistance to the deceased she died as a result of injuries sustained in the assault. The matter was reported to the police leading to the arrest of the accused. The accused's body was ferried to Mpilo Central Hospital for a post mortem examination. A report compiled by Dr I. Jekonya under report number 548/543/2008 reveals that the proximate cause of death was: (a) Brain haemorrhage; (b) head injury; (c) assault.

On external and internal examination the pathologist observed that the body was in an advanced state of decomposition. The post mortem report has been marked as exhibit 2.

We are satisfied that from the evidence presented to this court, the accused negligently caused the death of the deceased. The accused, however, did not have the requisite *mens rea* to bring about the death of the juvenile.

We accordingly find the accused not guilty in respect of the charge of murder. The accused is found guilty of culpable homicide.

Sentence

The accused was aged 56 years old at the time of the commission of the offence. Time has moved on. Accused is now aged 65 years. Accused appears old and frail. She is poor sighted. It has been submitted on her behalf that she has two minor grand children to look after. She takes care of an elderly sister who is mentally challenged. The mitigating factors of this case far outweigh the aggravating features. The court would be failing in its duty if it lost sight of the weighty mitigating factors that have been placed before the court. The matter has taken an inordinately long time to finalise. In spite of the fact that the accused is partly to blame in this matter because she could not be located at some stage during 2010, nonetheless the accused's constitutional right to a fair and speedy trial has been violated. The accused has waited for 9 years for her trial. The accused has pleaded guilty and shown remorse and contrition. She will forever live with the stigma of having caused the death of her grandchild. The accused has gone through emotional and mental trauma for the period she has awaited trial. We are informed that accused has been in remand prison for almost three months awaiting trial since her indictment. She appears distraught and weak. It is the view of this court that nothing will be achieved by sending the elderly female first offender to prison. The courts have a duty to uphold the sanctity of human life but in the same breath this court has to be alive to this stark reality of the accused's physical condition at this stage. A custodial sentence would be wholly inappropriate.

This court therefore sentences the accused as follows:

“4 years in prison wholly suspended for 5 years on condition accused is not within that period convicted of an offence involving violence and for which she is sentenced to a term of imprisonment without the option of a fine.”

*The National Prosecuting Authority, state’s legal practitioners
Masawi & Partners accused’s legal practitioners*