

THE STATE

Versus

AGNES CHIPIKA

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J
GWERU CIRCUIT COURT 17 MAY 2017

Criminal Trial

T. Mupariwa for the state

T. Kamwemba for the accused

MAKONESE J: The 14 year old Nobert Majoni died at the hands of her mother on the 10th December 2015. The accused was upset that the deceased had consumed a certain quantity of rice which had been reserved by Sibongile Chipika for consumption the following day. The accused struck the deceased all over the body with switches and throttled him leading to his death. The accused pleads not guilty to the charge of murder and tenders a limited plea of guilty in respect of the lesser charge of culpable homicide. The state has accepted the limited plea and a statement of agreed facts have been tendered into the record of proceedings as exhibit 1. In brief the facts of this matter are as follows. The deceased was aged 14 years at the time he met his untimely death. The accused is his biological mother. Accused was aged 36 years at the relevant time. On the 9th December 2015 and in the evening hours, the accused person, her sister Sibongile Chipika, the deceased and two other children gathered for supper where rice was served. Sibongile did not finish her portion and reserved it for the following day. On the 10th December 2015, Sibongile discovered that her rice had been consumed. The deceased was the prime suspect. The deceased was quizzed over the missing rice and he failed to proffer an acceptable explanation. This led to Sibongile roping in Eunita Sibanda and Shyline Chipika to fetch some switches. The deceased was then subjected to a prolonged assault on the head, hands and legs using switches. The assault was sustained and was indiscriminate and resulted in the deceased falling unconscious. At some stage the accused throttled the juvenile with her bare

hands. The deceased died as a result of injuries inflicted in the assault despite efforts by accused and others to administer first aid by pouring water over the injured juvenile.

The post mortem report compiled by Dr Ivian Betancourt on 14 December 2015 has been marked as exhibit 2. The cause of death was undetermined due to the advanced state of decomposition of the remains.

On the evidence placed before this court we are satisfied that the limited plea has been properly made and conceded by the state. There is no evidence that the accused intended to cause the death of the deceased. The accused is accordingly found not guilty and acquitted on the charge of murder. The accused is however found guilty of culpable homicide.

Sentence

The accused is a vendor selling sweets and airtime. The accused has been convicted of culpable homicide. There exist weighty mitigating features of the case as articulated by accused's defence counsel. These shall all be taken into account. The accused is a single mother with heavy social responsibilities with 5 children. The youngest is 8 years old. At this moment the children are in the safe custody of their grandfather and grandmother. The accused has a low level of education and is not sophisticated having gone up to grade 7. She earned an average of \$60,00 per month through her activities. She spent 3 months in prison before she was granted bail and has thus already served part of her sentence. She has through her defence counsel shown genuine remorse and contrition and that is reflected in her tendering a plea of guilty to culpable homicide. The court must weigh these mitigating features against the interests of justice. Her moral blameworthiness is excessively high. She not only assaulted the child for a sustained and prolonged duration. She throttled the child and he eventually fell unconscious. The behaviour is not expected from parents. Parents stand in loco parentis to their children. Parents are the last shelter for their children. The abuse displayed by the accused in this matter is shocking and alarming. There can be no human being, let alone, a parent who would administer such rigorous physical punishment on a juvenile of 14 years. I reject the notion that it is our

tradition to chastise young children in order to correct them but subjecting them to extreme punishment. This is not acceptable in a modern society. Parents who are convicted of such offences must invariably expect custodial sentences. This court would be setting a wrong precedent if a sentence other than a custodial one were imposed. These courts would fail in their duty of upholding the sanctity of human life if a sentence of community service were imposed in this matter. The sentence this court imposes must be just and fair and must meet the ends of justice.

“Accused is sentenced to 5 years imprisonment of which 3 years is suspended for 5 years on condition accused is not within that period convicted of an offence of which assault or violence on another person is an element for which she is sentenced to imprisonment without the option of a fine.”

*The National Prosecuting Authority, state’s legal practitioners
Tavenhave, Machingauta Legal Practitioners, accused’s legal practitioners*