

THE STATE

Versus

SAVIOURES NCUBE

And

SIPHETHANGANI MOYO

IN THE HIGH COURT OF ZIMBABWE

MAKONESE J with Assessors Mr J. Ndubiwa and Mr J.L.M Zulu

HWANGE 14 JUNE 2022

Criminal Trial

Mrs M. Cheda, for the state

Ms T. Chikwandire, for the accused

MAKONESE J: The accused appears in this court on a charge of murder in contravention of section 47 (1) of the Criminal Law Codification and Reform Act (Chapter 9:23). It is alleged that on the 12th of November 2020 and at Mafa Village Chief Mabhikwa, Lupane, the accused assaulted the deceased a 1½ year old baby with a stick several times thereby causing his death. The accused denies the charge of murder but tenders a plea of guilty to the lesser charge of culpable homicide. The facts surrounding the commission of this offence are summarized in a Statement of Agreed Facts which has been tendered into the record. The brief facts are that accused was aged 22 years at the time of the commission of

the offence. The deceased was aged 1½ years at the time he met his demise. Accused was a step father to the deceased. On the fateful day and around 1630 hours, the deceased's mother Siphethangani Moyo who is at large prepared porridge for the deceased. Accused fed the deceased whilst Siphethangani attended to some house chores. Deceased refused to eat the porridge. Accused took a stick and assaulted the deceased all over the body. The deceased sustained bruises all over the body. The deceased groaned and cried in pain. His condition deteriorated over night. Deceased died the following morning. The accused and Siphethangani kept the deceased's body locked in the bedroom hut the whole day. In the evening the accused and Siphethangani placed the body of the deceased in a sack. They buried the body in an ant-hill. They did not disclose the death of the deceased to anyone.

After burying the deceased, the two fled the village and left for Insuza where Siphethangani befriended one Annastacia Tshabalala. On 21st November 2020 Siphethangani confided in Annastacia on what had happened to the deceased. Annastacia reported the matter to the police leading to the arrest of accused persons. The two made indications at Mafa Village, Lupane, leading to the recovery of the body of the deceased from an ant-hill.

The accused person admits having caused the death of the deceased. He pleads guilty to culpable homicide.

The state tendered into the record a post mortem report compiled by Dr Juana Rodriguez Gregori at United Bulawayo Hospitals on the 16th of December 2020. Due to the high state of decomposition of the body the pathologist was unable to determine the exact cause of death. He however observed that only bones of a baby were brought for examination.

From the evidence led, we are indeed satisfied that the accused assaulted the deceased and wrongfully caused his death. There is no evidence before us to conclude that accused had the requisite *mens rea* to bring about the death of the deceased.

In the circumstances, and accordingly accused is found not guilty of murder. Accused is found guilty of culpable homicide.

Sentence

The rights of children are protected under section 81 of the Constitution of Zimbabwe (Amend No. 20), 2013. The abuse or maltreatment of children is not permissible in terms of our law. No parent has the right to abuse a child for whatever reason. The accused has been convicted of a serious offence. His conduct on the fateful day reflects wickedness and cruelty. After assaulting and injuring the baby accused locked up the deceased in his bedroom hut the whole day. Accused did not render assistance and ensured that the child did not receive medical attention. Under the cover of darkness accused proceeded to bury the remains of the deceased in an ant-hill. Accused and his wife took a decision to conceal this death from the neighbours. While it is an established principle of sentencing that first offenders must be treated with a measure of leniency, each case must be decided on its merits. The court does take into account the mitigating features of the case as highlighted by accused's defence counsel. The court accepts that accused is a youthful offender who deserved to be treated with leniency. The accused has spent close to two years in remand custody pending his trial. This court will take that into consideration as accused has served a portion of his sentence. Accused is credited for his plea of guilty to the lesser charge of culpable homicide. Accused has submitted himself before law and has shown a measure of contrition.

It is our view that the following is an appropriate sentence:

“Accused is sentenced to 6 years of which 2 years is suspended for 5 years on condition accused does not within that period commit an offence involving violence and for which upon conviction he is sentenced to imprisonment without the option of a fine.”

Effective Sentence: 4 years.

National Prosecuting Authority, state’s legal practitioners

Mhaka Attorneys, accused’s legal practitioners