

THE STATE

Versus

MTHOKOZISI HADEBE

IN THE HIGH COURT OF ZIMBABWE

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

HWANGE 13 JUNE 2022

Criminal Trial

Mrs M. Cheda for the state

Ms C. Manyeza, for the accused

MAKONESE J: The facts of the matter make sad reading. The accused hails from Makhala Line, Lubimbi Village, Chief Gampu, Tsholotsho. On 19th June 2021 the deceased and her siblings who are aged 10, 4 and 3 years old followed their mother who had visited her uncle Ndumiso Tshuma who stayed in the same village. The deceased was accused's daughter. She was aged 8 years at the time of her demise. The deceased and her siblings left their grandmother's homestead, where they had been left by their mother, without the accused's permission. They went back the following day without their mother. Upon his return home at 20:00 hours the accused who was drunk woke up the deceased and her siblings. He proceeded to assault them on their faces several times with open hands. The accused had a misunderstanding with his wife. Accused then lifted up the deceased by her right leg and right hand and threw her head-long onto the mud floor. Deceased sustained a swollen forehead and lost consciousness. The accused tried to resuscitate her, but failed. She died.

The accused pleaded not guilty to the charge of murder. He pleaded guilty to the lesser charge of culpable homicide.

Dr Juana Rodriguez Gregori is a Forensic Pathologist based at United Bulawayo Hospitals. On the 26th of July 2021 and during the course of his duties he examined the remains of the deceased. He compiled a post mortem report filed under report number 719/553/21. The cause of death is listed as:

1. Spinal shock

2. Fracture of cervical vertebra
3. Assault

On marks of violence the pathologist observed an excoriation in the left hip and chest echimogosis in the partial region. There was abnormal mobility of the neck. There was a fracture of the 2nd cervical vertebra and confusion of the spine.

On the facts placed before us, we are satisfied that the accused caused the injuries that led to the death of the deceased. The accused was drunk at the time and sought to chastise his children. The accused lacked the requisite *mens rea* to bring about the death of the deceased.

In the result and accordingly accused is found not guilty on the charge of murder. Accused is found guilty of culpable homicide.

Sentence

The rights of children are protected under the Zimbabwe Constitution Amendment No. 20, 2013 in section 81. Section 81 (1) (e) provides that every boy and girl under the age of 18 years and below has the right to be protected from maltreatment, neglect or any form of abuse. Children are entitled to adequate protection by the court, in particular by the High Court as the upper guardian. The case brings to the fore the abuse of children at the hands of their parents. Every child expects protection from their parents. Parents are expected to guard against any form of abuse against their children or by any other person.

The accused has been convicted of a very serious offence. Accused who was drunk at the time the offence was committed, sought to chastise his children for a very trivial matter. Accused subjected the young girl to a most brutal and tragic assault. He lifted the deceased by her hand and leg and threw her head-long onto a mud floor. In spite of the intoxication, accused ought to have exercised restraint and self-control. The defenseless children were at the mercy of the accused. They were unable to defend themselves.

In assessing sentence, *Ms Manyeza*, appearing for the accused implored the court to impose a lenient sentence. She argued that accused has tendered a plea of guilty to the lesser offence of culpable homicide. He has spent 12 months in remand prison pending his trial. It was also brought to the court's attention that accused and his wife separated as a result of this offence. Accused is a family man with huge social responsibilities. Defence counsel

has indicated that a sentence in the region of 6 years with 2 suspended would meet the justice of the case. *Mrs Cheda*, appearing, for the state argued that a deterrent sentence must be imposed. Accused acted in a brutal manner and inflicted serious and fatal injuries on his child.

It is our view that indeed, the accused's conduct and the manner he assaulted the deceased was cruel. The accused acted recklessly. A deterrent sentence is called for.

In the circumstances and accordingly, the following sentence is deemed appropriate.

“Accused is sentenced to 8 years imprisonment of which 2 years imprisonment is suspended on condition accused does not within that period commit an offence involving violence and for which upon conviction accused is sentenced to a term of imprisonment without the option of a fine.”

Effective sentence 6 years imprisonment.”

National Prosecuting Authority, state's legal practitioners
Mhaka Attorneys accused's legal practitioners