

THE STATE

Versus

NOTHANDO NDLOVU

IN THE HIGH COURT OF ZIMBABWE

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

HWANGE 6 JUNE 2022

Criminal Trial

Mrs M. Cheda for the state

Ms C. Manyeza for the accused

MAKONESE J: The accused, a female who was aged 19 at the time of the commission of the offence has been arraigned in this court on a charge of murder in contravention of s47 (1) of the Criminal Law Codification and Reform Act (Chapter 9:23). The deceased was a female aged 15 years at the relevant time. The accused pleads not guilty to the charge and tenders a plea of guilty with respect to the lesser charge of culpable homicide. The state accepts the limited plea. The background facts to the matter are summarised in a statement of agreed facts tendered into the record. The state and defence are agreed that accused was aged 19 years at the time the offence was committed and she resided at Bhekani Village, Ntabazinduma. The deceased was aged 15 years and resided at the same village. The deceased and accused's young sister Ntombizodwa were having an affair with same man, one Thabelwe Ndlovu. On the 6th of July 2021 the deceased together with her friend Sifiso Dhlamini were at Thabelwe's homestead looking for firewood. At the same time accused and her young sister Ntombizodwa arrived at the same homestead to collect baby clothes. A verbal exchange erupted between accused and the deceased over the accused's affair between Ntombizodwa and Thabelwe. On 7th July 2021 while on their way to the grinding mill the accused who was in the company of Nobukhosi Mangaba and Ntombizodwa met the deceased and Sifiso Dhlamini. The accused stopped the deceased and asked her why she had insulted her over Thabelwe. Before deceased could answer, accused stopped the deceased and they fought until Wallace Munyedzi restrained them. Deceased picked a brick and struck accused on the back and ran away. Later that day, after returning from the grinding mill, accused followed deceased to Sifiso's homestead. Accused found Sifiso applying dye on deceased's hair. She waited for them to finish. After deceased's hair

had been dyed, Sifiso, sensing danger, offered to accompany deceased's home but accused stood up and closed the gate. Accused started assaulting the deceased with open hands. Deceased picked a stick but accused dispossessed her of the stick and used it to assault deceased on the shoulders. Deceased then suddenly, pulled out a black kitchen from her under garments and stabbed accused on the left side of the stomach. Accused grabbed the knife and stabbed deceased once on the upper side of the left breast.

Deceased screamed and ran into the bedroom and fell on the ground, groaning in pain. Deceased fell unconscious and bled profusely. Sifiso called Pauline Ncube a neighbor for assistance and they both tried to render first aid but the deceased had already died.

The state tendered a post mortem report compiled by Dr Juana Rodriguez Gregori after examining the remains of the deceased. The report concluded that the cause of death was:

1. Acute anemic
2. Cardiac laceration
3. Stab wound

On marks of violence the pathologist observed an incised wound penetrating into the thoracic cavity 1cm in length. The wound was located on the left side of the anterior thorax at the level of the 5th costal.

A medical report compiled by Dr Hodzi Hazvinei Kawotha at United Bulawayo Hospitals on the 26th of October 2021 confirms that the accused did suffer a stab wound. The injury observed was a 1cm scar on the right side of the lower back. That injury was consistent with a stab wound caused by a blunt instrument.

The state tendered as an exhibit, a black kitchen knife used in the commission of the offence. The knife has a blade 13cm long. The length of the handle is 11cm. The width of the blade at its widest point is 2cm. The width of the blade at the narrow end is 2cm. The weight of the knife is 0.058 grams.

The last physical exhibit was a stick. The stick is 94cm in length and weighs 0.22 grams.

From the evidence placed before the court we are satisfied that the accused did cause the death of the deceased. There is however, insufficient evidence to show that the accused had the requisite *mens rea* to bring about the death of the deceased. It is our finding that death was caused by the negligence of deceased.

In the result, the accused is found not guilty on the charge of murder. The accused is found guilty of culpable homicide.

Sentence

The accused is a juvenile first offender who was aged 19 years at the time she committed this offence. The sentencing discretion of the court in this matter involves a delicate balancing of the interests of society and those of the accused. The general rule is that youthful first offenders must be spared the rigors of prison life. The accused in this matter is a youthful first offender. She has been convicted of a serious offence. The courts have always reiterated that the sanctity of human life is of paramount importance. For that reason, unless circumstances exist, that militate against the imposition of a custodial sentence, such offences as the present one, would always attract prison sentences. It has been submitted by *Ms Chikwandare*, appearing for the accused, that the accused has had a difficult upbringing. Both her parents have mental challenges. The accused has lacked parental guidance from a young age. The accused admits assaulting the deceased with a knife. It has not been lost to the court that the murder weapon was introduced to the scene by the deceased. The deceased kept the kitchen knife under her under- garments possibly to defend herself against accused's persistent and aggressive tendencies. Besides the knife, the deceased brought onto the scene a stick which she attempted to strike the accused with. What emerges from this case is that accused and deceased were bitter rivals over a lover on Thabelwe. The conduct exhibited by the accused is that of an immature and bitter person who held grudges and was vindictive.

Mrs Cheda, appearing for the state, has urged the court to impose an effective custodial sentence against the accused. In support of her contention she cited the case of *S v Dezy Ncube* SC-14-87. That matter involved a married woman who had been married for 14 years. The deceased woman was having an affair with her husband. On the evening of 2 June 1984 her husband and the deceased were sitting around a fire outside Achulu Flats in Bulawayo, listening to music from a discotheque. The appellant was looking for her husband to get some money from him. She had brought a knife with her, because she said, she was

afraid of being attacked by the deceased and her friends. She thought she might find her husband, a jazz lover, at this disco. As appellant came upon them, her husband and the deceased embraced each other and kissed. She thereupon drew her knife and plunged it into the neck of the deceased, severing the jugular vein and piercing the lung. The deceased died shortly thereafter. The appeal court accepted that there was extreme provocation. It substituted the sentence of 9 years to 5 years imprisonment for culpable homicide.

In this matter, the accused is a young female first offender. It is my view, that the court should be sensitive to the need to achieve justice both for society, the victim, and the accused. The sentence must save the ends of justice. A sentence with a rehabilitative approach is called for. In my view, sending the accused to prison would destroy her future. The prison environment would further harden her. Female first offenders must be treated with leniency. Each matter must however be treated on its own merits. The accused is evidently remorseful and contrite. It has been submitted by defence counsel that accused spent 8 months in prison before her release on bail. The time she spent in prison must have served as a lesson to the accused to reflect upon her conduct. The sentencing discretion of the court must be exercised by taking into account the personal circumstances of the accused and the peculiar circumstances surrounding the commission of this offence. I do not consider it fit, and appropriate to impose a custodial sentence.

In the result the following is deemed to be an appropriate sentence:

“Accused is sentenced to 3 years imprisonment of which 1 year is suspended for 5 years on condition accused is not within that period convicted of an offence involving violence and for which upon conviction she is sentenced to a term of imprisonment with the option of a fine. In addition, the remaining 2 years is suspended on condition accused performs 840 hours community service at Cowdray Park Police Station, Bulawayo on conditions set out by the Community Service Officer.”

National Prosecuting Authority, state’s legal practitioners
Mhaka Attorney, accused’s legal practitioners