

THE STATE
versus
ZVISINEYI RUPIYA

HIGH COURT OF ZIMBABWE
MUTEVEDZI J
HARARE, 6 JUNE 2024

Assessors: *Mrs Chitsiga*
Mr Chakvinga

Criminal Trial

Mupini, for the state
T. Duve, for the accused

MUTEVEDZI J: Joyce Chikomo (the deceased) and Zvisineyi Rupiya (the accused) stayed in bliss at a farm compound in the farming areas of Bindura. The serenity in the area was rocked on 7 September 2023 around 1700 hours after the deceased confronted the accused who was in conversation with one Beauty Mutyambizi. The deceased wanted to know what the two were discussing. Taking no prisoners, the deceased said they were discussing the rumour which was circulating in the area that the accused had had sexual intercourse with her neighbour called Abraham Saramba and was paid USD \$5 for the service. The accused then slapped the deceased once with open hands. She fell. The accused followed up by kicking the deceased on the ribcage with booted feet before Beauty restrained her. The deceased was later taken to Bindura Hospital from where the doctors observed that her injuries were life threatening. They referred her to Parirenyatwa Hospital. She died on 25 September 2023. The accused had been charged with assault emanating from the fight at the farm compound. Needless to say, it was then upgraded to murder after the unfortunate demise of the deceased. It resulted in the accused being arraigned before this court facing that charge in terms of s 47 (1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

[1] At her trial, the accused pleaded not guilty to murder. She protested that she did not intend to kill the deceased. She however admitted having negligently caused the death of the deceased. In other words, she pleaded not guilty to murder but

pleaded guilty to the lesser charge of culpable homicide. The prosecutor accepted the limited plea.

- [2] A statement of the facts agreed to was drawn by the prosecutor and counsel for the accused.
- [3] In it, the following issues were salient. What led to the fracas between the accused and the deceased is as has already been stated in the introduction to this judgment except to emphasise that in addition to the slapping with open hands, the accused admitted that she also pushed the deceased until she fell. She then kicked the deceased on the ribcage and only stopped after being restrained by Beauty.
- [4] To show that the accused did not intend to kill the deceased or realised that there was a real risk or possibility that death could ensue, the prosecutor and counsel also agreed that after the fight the deceased had actually sought financial assistance from the accused to go and seek medical help. She required USD \$27. The accused raised USD \$12 and gave the deceased.
- [5] The deceased was first attended to at Bindura before being referred to Parirenyatwa where she unfortunately couldn't make it. She passed on around 2000 hours on 25 September 2023.
- [6] After her death, an autopsy was carried out by Doctor Robert Guillen. It revealed that the deceased had died of pneumonia, left haemothorax and rib fractures.
- [7] From the above precis, the prosecutor admitted that the accused did not intend to cause the deceased's death. He also admitted that the accused had been provoked into assaulting the deceased not only by the rumours which the deceased was peddling that she had committed adultery with Abraham Saramba but that she had actually prostituted herself because she was paid USD \$5 for the sexual intercourse.
- [8] The accused further admitted that she acted negligently in that she had failed to pay regard to the amount of force that she used at the time she assaulted the deceased and failed to realise that the part of the deceased's body which she targeted was sensitive and vulnerable. She kicked her on the ribcage resulting in fractures to the ribs.

[9] It was against the above background that the court was satisfied that the state's acceptance of the accused's plea to the lesser charge of culpable homicide was properly arrived at.

[10] Having said the court orders as follows:

- a. The accused is found not guilty and is acquitted of the charge of murder
- b. The accused is however found guilty of the lesser charge of culpable homicide as defined in s 49 of the Criminal Law (Codification and Reform) Act.

MUTEVEDZI J:.....

*National Prosecuting Authority, state's legal practitioners
Dube, Manikai & Hwacha, accused's legal practitioners*