THE STATE

Versus

STEWART MUNYAPWA

IN THE HIGH COURT OF ZIMBABWE
KABASA J with Assessors Mr. Mabandla and Mr. Mashingaidze
BULAWAYO 16 NOVEMBER 2023

Criminal Trial

K. Shava, for the state
D. Nyaningwe, for the accused

KABASA J: The accused appeared before us on a charge of murder as defined in section 47 of the Criminal Law (Codification and Reform) Act [Chapter 9:23]. He pleaded not guilty but tendered a limited plea of guilty to culpable homicide. The state accepted the limited plea.

A statement of agreed facts was produced and marked Annexure A. These facts are to the effect that the accused who was 32 at the time and the deceased who was 61 were husband and wife. On 15 January 2022 they were together at Nkosibusise Business Centre in Trenance Bulawayo where they were drinking beer.

They subsequently left after imbibing the whole day and proceeded home. On the way a misunderstanding ensued when the now deceased wanted to go back to the business centre. The accused assaulted her with open hands and a switch and left her whilst he proceeded home. The following day he retraced his steps and found the now deceased dead where he had left her.

A post-mortem report conducted by Doctor Juana Rodriguez Gregori gave the cause of death as traumatic shock from an assault.

The facts therefore show that the deceased met her death at the accused's hands. The issue is whether the accused set out to kill and achieved that result or he foresaw the real

possibility that death could result from his conduct but continued nonetheless resulting in the deceased's death.

The facts show that the two had been happily imbibing and set off for home in that same happy mood until the deceased decided to retrace her steps so as to go and imbibe more. A switch and hands were used in the assault. None of these can be described as lethal weapons. The assault itself was not protracted to give rise to a finding that the accused must have foreseen that death could result.

The state's acceptance of the limited plea was therefore an appreciation of the facts and the law.

The accused was careless in not guarding against the deceased's death. He was therefore negligent.

He is accordingly found not guilty of murder but guilty to culpable homicide as defined in section 49 (a) of the Criminal Law Code.

Sentence

Culpable homicide has a presumptive sentence of 3 years. This is not a minimum mandatory sentence. The court retains the discretion to impose a fair sentence having regard to the mitigatory and aggravatory factors.

In mitigation we considered that the accused is a first offender who showed remorse by pleading guilty to the lesser charge of culpable homicide. He has 2 minor children and also responsible for his deceased brother's 4 children.

The deceased was his wife, her death is likely to affect him for a long time to come. He assisted with US$ 300 to cover the burial expenses.

The stigma of being labelled a 'murderer' is likely to affect him psychologically.

He has been in pre-trial incarceration for close to 2 years as he has been in custody since 16 January 2022.

In aggravation we considered that he left the deceased throughout the night after assaulting her. He did not care enough to ensure she was attended to or even take her home.

He was content to sleep at home leaving his wife in the open where she was left to die like an unwanted animal.

Had he sought help for her chances are she would not have died.

The assault was uncalled for. The deceased was almost twice the accused's age. Her decision to go back to this business centre ought not to have attracted a beating as if she was an errant child who needed to be disciplined.

Gender based violence is a cancer that has insidiously infiltrated society and calls to end gender based violence seem to be falling on deaf ears.

A life was needlessly lost. Life is a gift to be treasured because once lost it cannot be regained. No one should have to lose their life at the hands of another, especially a loved one who must cherish and protect them.

The deceased's children will live with the knowledge that their mother's life was snuffed out by a man who should have been her protector.

A custodial sentence is called for, one which will fit the offence, the offender and is fair to society (*S* v *Zinn* 1969 (2) SA 537).

An appropriate sentence should be educative and corrective (*R* v *Richards* 200 (1) ZLR 129 (S).

Whilst imprisonment is called for it need not be harsh. The imprisonment of the mind which the accused is most definitely going to endure is far worse than the imprisonment which comes from the four corners of a prison cell. The court should not approach sentence with a vengeful attitude.

That said the appropriate sentence to which the accused is accordingly sentenced is 4 years imprisonment of which 1½ years imprisonment is suspended for 5 years on condition the accused does not within that period commit an offence of which an assault or violence on the person of another is an element and for which upon conviction he is sentenced to a term of imprisonment without the option of a fine.

Effective: - 2½ years imprisonment

National Prosecuting Authority, state's legal practitioners
Webb, Low & Barry Inc. Ben Baron & Partners, accused's legal practitioners