

THE STATE

Versus

CLARA DUBE

IN THE HIGH COURT OF ZIMBABWE
KABASA J with Assessors Mrs C Baye and Mr E. Shumba
GWERU 24 JANUARY 2024

Criminal Trial

Ms C Hungwe, for the state
W. Hamadziripi, for the accused

KABASA J: You stand before us charged with murder as defined in section 47 (1) of the Criminal Law (Codification and Reform) Act, Chapter 9:23. You pleaded not guilty to murder but tendered a limited plea of guilty to culpable homicide which the state accepted.

The circumstances of this case are that you were married to the deceased. On 26 January 2022 you were at home when you had a misunderstanding over weeding of your maize field. The deceased then assaulted you with clenched fists. You then took a log from the fireplace and used it to assault the deceased several times on the head, hands and legs. He sustained injuries from which he succumbed. On 3 February a post-mortem was conducted and the cause of death was given as:-

- (a) traumatic shock
- (b) assault

The log you used to inflict these injuries was 0,796 kg in weight and 79 cm in length.

The law accepts that when one is under an unlawful attack they are allowed to defend themselves. There are however requirements to be met for the defence of self to be a complete defence. The law also recognises that when one is provoked and as a result of such provocation they lack the intention or realisation that their action would result in death, the provocation avails them as a partial defence to murder and reduces murder to culpable homicide. Equally where a person is acting in self-defence but the means used to avert the unlawful attack is not

reasonable in all the circumstances, the defence of self does not avail them as a complete defence but reduces a charge of murder to culpable homicide.

In accepting the limited plea to culpable homicide the state showed an appreciation of the facts of this matter and the law.

It cannot be said in the circumstances that you intended to kill the deceased or realised the real risk or possibility that your conduct may cause his death but continued nonetheless.

You are therefore found guilty of culpable homicide.

In assessing an appropriate sentence we considered the following:-

You pleaded guilty to the charge and a plea of guilty should be rewarded as it contributes to the smooth administration of justice (*S v Gunde* and Anor HH 481-23). You showed that you regret what you did and you appear genuinely remorseful.

You are a female first offender and female first offenders should be treated with some measure of leniency. (*S v Malunga* 1990 (1) ZLR 124).

You are 62 years old and you do look that age. Your age is therefore a factor that the court has to consider in coming up with a fair and just sentence (*S v Chitange* HH 578-16).

Your son told us that your marriage was not a happy one. It appears it was a 42 year marriage which was abusive to an extent that you would leave your matrimonial home for your maternal home. When this incident occurred your son told us that you had recently returned home. He is sad that he lost a father but equally sad to see you facing charges and the likelihood of being imprisoned. His impassioned plea was that you be forgiven. It is sad that people stay together for so long in an abusive relationship.

The deceased had assaulted you before you decided to use the log. He was repeating the pattern of abuse which characterised your 42 year old marriage.

Society is unforgiving and you will probably now be called “that one who killed her husband.” That is a heavy burden to carry. Emotionally you are likely to be haunted by this death. After the tragic incident you rushed to seek help for the deceased and people tried to render assistance but to no avail.

It is our view that the prison that comes with the four corners of a prison cell is probably better than the psychological prison you will endure for the rest of your life.

In aggravation we have considered that:-

A life was needlessly lost. Life is precious and the courts have time without number exhorted society to respect the sanctity of life.

You used a log and used severe force resulting in fracturing the deceased's skull as he had a fracture of the right parietal region.

Gender based violence is a scourge that has to be eradicated. A home should be a place of peace, joy and love. Yours unfortunately was not and you were also a victim of gender based violence.

In coming up with a sentence that is fair, we acknowledge that the sentence must fit you the offender, the offence and be fair to society.

At your age sending you to prison would be purely destructive. You look older than the 62 years probably due to the ravages of rural life and an unhappy and abusive marriage. The sentence ought to be blended with mercy. (*S v Rabie* 1975 (4) SA 855).

You are not being punished for your evil intent but for being careless. The punishment is therefore meant to inculcate caution and so must be educative and corrective. (*R v Richards* 2001 (1) ZLR 129 (S)). You rushed to find help after you realised that you had injured your husband. This clearly shows that there was no evil intent. With that said you are sentenced to:-

3 years imprisonment, the whole of which is suspended for 5 years on condition you do 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 you are sentenced to a term of imprisonment without the option of a fine.