

THE STATE

Versus

FRANK FADZI

IN THE HIGH COURT OF ZIMBABWE
MAKONESE J with Assessors Mr E. Shumba & Mr A. B. Mpofo
GWERU CIRCUIT COURT 31 JANUARY 2023

Criminal Trial

Ms L. Mamombe for the state
Ms F. Mrewa for the accused

MAKONESE J: The accused has been arraigned in this court on a charge of murder in contravention of section 47 (1) of the Criminal Law Codification and Reform Act (Chapter 9:22). Accused pleads not guilty to the charge of murder. Accused tenders a plea of guilty with respect to the lesser charge of culpable homicide. The State accepts the limited plea.

A statement of agreed facts has been tendered into the record by the State. The brief facts surrounding the circumstances of this offence are that on the 24th day of December 2020 at around 20:00 hours the accused arrived at his place of residence at 3116 Woodlands Phase 2, Gweru. The accused person was in a drunken state. He knocked at the door but the deceased took long to open the door. When the accused opened the door a misunderstanding arose after accused asked the deceased to explain the presence of used condoms he had found in the house. The accused also demanded to know about the Anti-Retroviral (ARV) tablets he had discovered in their residence. The accused assaulted the deceased with a baton stick all over the body severely. The accused and deceased retired to bed. On the 25th of December 2020 at round 0600 hours the accused observed that the deceased was not breathing. He poured water on her in a bid to resuscitate her. Accused realized that his wife had died. He informed one Linnet Rusere about the death. The accused fled the house and was later arrested on allegations of murder.

The remains of the deceased were conveyed to United Bulawayo Hospitals for a post mortem examination. Dr Juana Rodriguez Greegori a forensic pathologist concluded that the cause of death was;

- (a) Encephalic contusion
- (b) Head trauma

On marks of violence the pathologist observed that there were excoriations and ecchymosis on the right forehead and ecchymosis on the left hand. There was a contused wound 2cm in length between the 4th and 5th finger. There was evidence of hemorrhage infiltrate in the occipital region.

In a confirmed warned and cautioned statement dated 26th December 2020, the accused admitted causing the death of the deceased.

A baton stick used in the assault was produced as an exhibit. The deceased used the baton stick during her lifetime, and in her course of employment as a security guard.

From the evidence that has been placed before this court we are satisfied that the accused is not guilty of murder. The accused is found guilty of culpable homicide.

Sentence

The accused has been convicted of a very serious offence. This is one of those bad cases of domestic violence. The deceased in this matter was aged 26 years at the time she met her demise. In assessing an appropriate sentence the court takes into account the mitigatory features of the case as outlined by *Ms Mrewa*, appearing for the accused. The court shall take into consideration that accused pleaded guilty to the lesser charge of culpable homicide. The accused took full responsibility for his actions. Accused who was out on bail pending trial chose to attend court in order to receive his punishment. Accused is to be commended and credited for that conduct. He spent 8 months in custody before he was granted bail. Accused is a first offender. He is a family man with the usual responsibilities. The accused assaulted the deceased after discovering used condoms and ARV tablets in the house. Accused chose to take matters into his own hands and used deceased's own baton stick to indiscriminately and savagely attack her all over the body. The post mortem reveals that the cause of death was encephalic contusion and head trauma.

Accused evidently used extreme force. He acted recklessly without regard to life. After assaulting the deceased and realizing that she was dead accused fled the scene. *Ms Mamombe*, appearing for the state has submitted that a custodial sentence is called for. We are in agreement with that submission. The aggravating features of the case far outweigh the

mitigating factors. These courts have time without number indicated that the use of violence against other human beings is never tolerated. It is important to observe here that much has been said on mitigation about the accused's personal circumstances while little attention is paid to the victim's family. The loss of a young woman aged 26 years is a huge loss to the deceased's family. Deceased's children will grow up without the much-needed motherly care. Accordingly, and in the circumstances, the following is deemed to be an appropriate sentence.

‘Accused is sentenced to 8 years imprisonment.’

National Prosecuting Authority, state's legal practitioners
Gundu, Dube and Pamacheche. accused's legal practitioners