

THE STATE

Versus

MARIA RUWIZHI

IN THE HIGH COURT OF ZIMBABWE

MAKONESE J with Assessors Mr E. Shumba & Mr A. B. Mpofu

GWERU CIRCUIT COURT 31 JANUARY 2023

Criminal Trial

Ms S. Mavunganidze for the state

L. Chimwaradze for the accused

MAKONESE J: The accused was aged 38 years at the time of the commission of the offence. The accused was deceased's biological mother. The deceased was aged 8 years at the time she met her death.

The accused has been arraigned in this court on a charge of murder in violation of section 47 (1) of the Criminal Law Codification and Reform Act (Chapter 9:23). The accused pleads not guilty to the charge of murder. She tendered a plea of guilty to the lesser charge of culpable homicide. The state accepts the limited plea.

On the 20th of February 2021 the accused was at Matshaya Village, Chief Sogwala, Gweru. The accused left for Cathrine Tshuma's homestead to collect the deceased who had gone to play with other children. Accused brought the deceased back home. Upon arrival, accused took the deceased into a kitchen, whereupon accused took a black tyre sjambok and assaulted the deceased several times all over the body, all the while enquiring as to why she had gone out to play without seeking authority. After assaulting the deceased, accused went out and returned a few minutes later only to discover that deceased was lying on her right side. Accused realised that the deceased had died. She died from injuries sustained in the assault.

The accused accepts that she assaulted the deceased leading to her death. The deceased's body was conveyed to United Bulawayo Hospitals for a post mortem examination. Dr Juana Rodriguez Gregori a forensic pathologist concluded that the cause of death was:

- (a) Traumatic shock
- (b) Assault

On marks of violence the examination revealed that the deceased had suffered excoriations all over the body. There was elongated ecchymoses in the back on both lateral sides of the thorax. The state tendered into the record a black tyre sjambok used in the assault. It has a measured length of 0.45cm.

From the evidence that has been presented before the court it is clear that the accused negligently caused the death of her daughter.

Accused is accordingly found not guilty of murder. Accused is found guilty of culpable homicide.

Sentence

The 40-year-old accused has been convicted of a very serious offence. She pleaded guilty to the offence of culpable homicide. She is a female first offender with 3 minor children. The youngest child is aged 2 years 3 months. In assessing sentence, the court takes into account all the mitigatory circumstances of the case as outlined by the accused's defence counsel. In aggravation it is noted the accused used extreme force and violence against her own daughter. The deceased is accused's daughter. The young juvenile looked for protection from the accused person. The accused breached the trust bestowed her upon the deceased. Deceased's protector turned out to be tormentor. Accused used a sjambok to assault the deceased all over the body in indiscriminate fashion. According to the post mortem report deceased died of traumatic shock. This indicates that the force used was severe.

It is our view that an effective custodial sentence is not appropriate in the circumstances of this case.

The accused is sentenced as follows:

“Accused is sentenced to 4 years imprisonment within 3 years suspended for 5 years on condition accused is not within that period convicted of an offence involving violence and for which she is sentenced to imprisonment without the option of a fine.

The remaining 12 months is suspended on condition accused is to perform 420 hours community service at St Martins Primary School, Lower Gweru. The community service shall be completed in 12 weeks, commencing on the 13th of February 2023.”