

THE STATE
versus
BEAUTY MU TONDORO

HIGH COURT OF ZIMBABWE
MAWADZE J.
MASVINGO, 24 July 2023

Criminal Trial: - Sentence

Assessors

1. Mr Gweru
2. Mrs Chademana

E Mbavarira for the State
T Nyoka for the accused

MAWADZE J: The 22 year old female first offender took the life of her 31 year old husband through negligence.

Initially the accused was arraigned for Contravening Section 47 (1) of the Criminal Law. [Codification and Reform] Act [*Chapter 9:23*]. However counsel agreed that culpable homicide as defined in Section 49 of the Criminal Law [Codification and Reform] Act is the proper charge. The accused was duly convicted of the later charge on her own plea of guilty at the commencement of the trial.

The agreed facts in this matter are as follows,

The accused and the now deceased were husband and wife. They were residing at Village3, Nelvin Farm in Gutu, Masvingo. They had two children aged 4 years and 1½ years.

On 22 June 2022 the now deceased husband went for a beer drink. He later returned home at 22:00hrs drunk. In his drunken state he advised his wife the accused that he, the now deceased wanted to buy an axe through barter trade exchanging some maize which they had recently harvested. The accused reasoned that this was improper as the family had no enough maize for consumption. The now deceased would have none of it.

In a clear case of domestic violence the now deceased slapped the accused in the face twice. As if this was not enough the now deceased took a log Exhibit 2 which was 102cm long before it broke into two pieces and was weighing 1,460kg. The now deceased proceeded to deliver two blows on to the accused's body. The accused snatched the same log and delivered a single blow on to the left side of the accused's head. The now deceased came out worse from the assault. He was ferried to Gutu Mission hospital and then transferred to Masvingo General Hospital. The now deceased succumbed to the injuries 3 days later on 28 June 2022.

As per the post mortem report Exhibit 1 the following injury was observed by the Doctor;
“Fracture of the skull noted secondary to assault”

The cause of death is stated as head injury.

It is clear that the accused was negligent when she fatally assaulted her drunk husband the now deceased with the log Exhibit 2.

There is no doubt that the accused stand convicted of a serious offence, albeit a permissible verdict to a charge of murder. It entails loss of life through violent conduct. The matter also entails domestic violence. The loss of life cannot be overlooked. The courts have a duty to protect life.

The dispute between the accused and the now deceased was minor. The accused should have realized that her husband, the now deceased was drunk and could have simply deferred the discussion to the following day when he would have been sober.

The accused directed the fatal blow to a sensitive part of the body, the head which houses the brain. Severe force was clearly exerted as the skull was fractured.

It is therefore important that the courts hand down deferent sentences to discourage such cases of domestic violence as more and more people are losing their lives at the hands of those who are supposed to love them.

Be that as it may they are indeed very persuasive mitigatory factors. As *Mr Mbavarira* for the state conceded that he is hamstrung to ask for an effective custodial sentence, we are equally persuaded because of a number of reasons.

There are mitigating factors relating to the accused's personal circumstances and also surrounding the commission of the offence. As already said the accused at 22 years of age is a young female offender. She is of a very small stature that one would think she is a secondary school pupil.

Despite the provisions of Section 56 (5) of the Constitution which provide for equality between sexes female first offenders are generally treated with more leniency. There are indeed a number of reasons for this despite the outlawing of discrimination in Section 80 of the Constitution. The court have taken judicial notice that few females commit offences compared to men. This is borne out by the prison population for both remand and serving prisoners. Further recidivism amongst females is less compared to men. Lastly females have the intrinsic gender role of taking care of young children. *See R v Harvey 1967. RLR 203; State V Malunga 1990 (1) ZLR 124 (H); State v Gwatidzo HH 271 90.*

The accused is no exception to this. She is now the sole parent. The duty to look after their very young children aged 4 years and 1½ years falls squarely on her shoulders. It would be very difficult for her to out source this responsibility. The children would be adversely affected.

The accused has exhibited contrition. She pleaded guilty to the charge she stands convicted of.

It should weigh heavily on the accused that she took away the life of her husband and the father of her children. She will now live with the stigma that she is a murderer despite having been convicted of a lesser charge.

In relation to circumstances surrounding the commission of the offence it cannot be said the now deceased is without blame. The court does not however have the history of the marital relations between the parties. We are therefore unable to tell if this marriage was mired in domestic violence persistently.

The now deceased was drunk. His persistence to dissipate the source of livelihood of the family was clearly unreasonable. The accused was concerned about the welfare of the family.

It is the now deceased who was the aggressor. The accused delivered a single blow. To that extent therefore the now deceased contributed to his demise.

Clearly this matter calls for mercy

In the result the accused is sentenced as follows;

“4 years imprisonment wholly suspended for 5 years on condition accused does not commit within that period any offence involving use of violence upon the person of another and or negligently causing the death of another through violent conduct and for which accused is sentenced to a term of imprisonment without the option of fine”