

THE STATE  
versus  
MIRIKA JONI

HIGH COURT OF ZIMBABWE  
MAWADZE J  
MASVINGO, 26 October 2023

Assessors 1. Mr Nish  
2. Mr Gweru

### **Criminal Trial – Sentence**

*Ms M Mutumhe*, for the State

*T. Nyoka*, for the accused

MAWADZE J: The accused whom defence counsel rightly described as a God fearing and faithful to her very abusive marriage was arraigned for murder as defined in section 47 (1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. She was however convicted of contravening section 49 of the same Act [*Chapter 9:23*] on her own plea of guilty as the matter proceeded on a statement of agreed facts.

The 50-year-old now deceased who is described as a habitual abuser of his wife the accused was employed in Harare. He would be available at his rural home in Mawarire village, Chief Makore in Gutu once every year like the most enjoyed Christmas holidays. However even on such rare visits the now deceased unlike the joy associated with the Christmas holidays would bring terror, fear and abuse to his wife the accused whom he did not even materially support.

On the fateful day on 28 July 2022 the now deceased had made a rare visit to his rural home. The now deceased, his 51-year-old wife had brewed some traditional beer for sale in order to fend for herself and the children as she normally did.

The agreed facts are as follows;

The accused who had helped himself to this traditional beer most probably at no price suddenly ordered well meaning patrons at 1730hrs to leave his homestead. The accused rightly asked the now deceased as to why he was chasing away her customers. The accused would have none of it. He proceeded to the bedroom and took an axe, after spilling the whole beer

The accused fearful of her life held the axe. A tussle ensued between the two over that axe. Esnath Chinyani and Jonah Mazivakufa (no pun intended) intervened refraining the now deceased and took away the axe. Unperturbed the now deceased would not relent. He proceeded to pick a half farm brick and struck the accused on her right leg. The accused apparently had had enough of the now deceased's abuse. She in turn pushed the now deceased away. The accused picked the same half brick and struck the now deceased once on the stomach and several times on the head. The accused made good her escape from the homestead. The accused only returned the following morning. She discovered the now deceased was unwell due to the assault. The now deceased was taken to Gutu Rural hospital and then to Gutu Mission Hospital. His condition worsened and he passed on 2 days later on 30 July 2023.

As per Exhibit 1 the cause of the now deceased's death is not in issue. The following injuries were observed;

1. *Multiple facial and scalp bruising*
2. *Distended abdomen*
3. *Extensively bruised small bowel with areas of perforation*
4. *Liquid stool leakage in peritoneum. "*

The cause of death is stated as;

*"Haemorrhagic shock, peritonitis caused by blunt abdominal trauma".*

Ms Mutumhe for the state rightly conceded that she had very little to say in aggravation. Besides the unfortunate loss of life Ms Mutumhe was hamstrung to find any aggravating factors let alone to justify an effective custodial sentence.

The court heard evidence in mitigation from the accused. The accused did cut a sorrowful, subdued and tormented figure in the dock. Her thoughts seemed far away. There is no

doubt that the accused was in an abusive marriage. Her condition may be likened to that of a woman suffering from "*a battered woman syndrome*".

The accused bears the scars of domestic violence. She had healed scars on the occipital area and on her right leg. At one time she had to be hospitalised after the now deceased had severely assaulted her. It is clear the now deceased had no respect for the accused. The evidence of the accused clearly shows that she was in an unhappy, loveless and painful marriage. She soldiered on for 28 years and 5 children were born 3 of which are minors.

The accused who is a member of the ZAOGA church was hopeful that God would answer her prayers and force the now deceased to behave like a rational husband. Things never changed. The accused even as per Exhibit 4 obtained a protection order at Gutu Magistrates Court against the now deceased. This did not protect the accused. The physical abuse continued inclusive of the fateful day.

The mitigating factors far outweigh the aggravating factors in this case. The now deceased was clearly the aggressor on the day in question. He was determined to fatally attack the accused.

The accused pleaded guilty to Culpable Homicide. She is a female offender.

There is no useful purpose which would be served by further punishing the battered accused by imposing an effective custodial sentence. Indeed, justice cannot be blind to the plight of the accused. It is unfortunate a life was lost but one may venture to say if accused had not acted in the manner she did she could have been killed herself.

While the court takes due view of those who cause loss of life, this is a proper case where a wholly suspended sentence is called for;

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 the use of violence against the person of another and or negligently cause the death of another through violent conduct and for which accused is sentenced for a term of imprisonment without the option of a fine. "*

MAWADZE J

*National Prosecuting Authority, counsel for the state*

*Muzenda & Chatsama, legal practitioners pro deo counsel for the accused*