

THE STATE

Versus

DUMISANI NYONI

IN THE HIGH COURT OF ZIMBABWE

MOYO J with Assessors Mr A.B Mpofu and Mr W.T Matemba

GWERU 16 MAY 2022

Criminal Trial

M. Ndlovu, for the state

Z. Tapera, for the accused

MOYO J: The accused person faces a charge of murder, it being alleged that on the 6th of June 2020, he assaulted the deceased Sibongile Chareva with a whip and switches all over the body, resulting in her sustaining fatal injuries and thereby causing her death. The accused tendered a limited plea to culpable homicide. The state accepted the limited plea. A statement of agreed facts was drawn and tendered. It was marked Exhibit 1. It reads as follows:

1. Dumisani Nyoni (hereinafter called the accused) is a juvenile and was aged 14 years at the time of commission of the alleged offence. He resides with his father at Village Ndure, Chief Chireya, Gokwe South in the Midlands Province.
2. Sibongile Chareva (hereinafter referred to as deceased) resided at Village Ndure, Chief Chireya, Gokwe North during her lifetime. She was aged 5 years at the time she met her death.
3. The deceased was the accused's niece.
4. On the 6th day of June 2020 and at about 0600 hours, the deceased was left in the custody of the accused by his father, Kudakwashe

Nyoni. By then the deceased was asleep in a kitchen hut. When the deceased woke up later on, she had messed herself with faeces and urine.

5. The accused then asked the deceased to go outside the kitchen hut and after a short while she returned and entered the kitchen hut. The accused then took a whip from the floor and struck the deceased with it several times all over the body.

The accused then armed himself with a switch and proceeded to strike the deceased with it several times on the stomach.

6. The accused then took the deceased to the fields and while there he took a switch and continued assaulting the deceased whilst aiming the blows on the legs and stomach several times. Then he dragged her home where he took a bucket of water and washed her and at that time the deceased could not stand on her own, had difficulties in breathing and was unable to walk.
7. The accused's brother, Whisper Nyoni then rushed to a neighbor to seek help. The deceased had sustained a cut on the forehead, swollen lips and was bleeding from the mouth.
8. The matter was reported to the police who later arrived and ferried the deceased to Gokwe Hospital where she was certified dead by Dr Chikara.
9. Post mortem examination was conducted on the 8th June 2020 by Dr Juana Rodriguez Gregori. The Doctor concluded that the cause of death was;

- a) Encephalic contusion
 - b) Head trauma
10. The accused accepts the evidence of the State witness and contents of the post mortem report. The accused person denies having requisite intention to kill in the form of *dolus directus* or *dolus eventualis*. Rather the accused person acknowledges that through his conduct aforesaid, he was negligent in causing the death of the deceased.
11. The State concedes to the fact that the accused person was negligent in the manner he assaulted the deceased and therefore accepts the accused person's plea of culpable homicide.

Also tendered were the accused's confirmed, warned and cautioned statement, the accused's birth certificate which gives his date of birth as 16 April 2006.

- the post mortem report,
- the probation officer's report
- The whip and the switches that were allegedly used in the commission of the offence.

They were all duly marked.

From the evidence before us, the accused person is found not guilty of murder but is instead convicted on the lesser charge of culpable homicide.

Sentence

The accused is convicted of culpable homicide. He is a first offender. He pleaded guilty to the appropriate charge. He has shown remorse. He was in his immaturity trying to discipline the deceased. He is not sophisticated when one looks at the probation officer's report. He was charged with a duty that was beyond his capacity, that is himself being a minor but given a responsibility to look after the deceased.

It is unfortunate that a life was lost in these circumstances. However, society should not burden the immature with duties that are far beyond their scope as in this case. This would have been avoided had deceased been left in the care of a mature and responsible adult. It would then be unfair to give accused a custodial sentence in the circumstances being punished for failing to play a role that was beyond him and that should not have been his in the first place. This speaks to the nature of the home that the accused lives in wherein there is no proper administration of roles.

It is for these reasons that accused will be sentenced to a non-custodial sentence.

The accused is accordingly sentenced to 3 years imprisonment wholly suspended for 5 years on condition accused does not within that period, commit an offence involving violence on the person of another, whereupon conviction he shall be sentenced to imprisonment without the option of a fine.

*National Prosecuting Authority, state's legal practitioners
C. Mugabe and Partners, accused's legal practitioners*