

STATE
versus
SINCEWILE GUMBERE

HIGH COURT OF ZIMBABWE
MUZENDA J
MUTARE, 21 and 23 September 2021

Criminal Trial (Murder)

ASSESORS: 1. Mr Mudzinge
2. Mr Chipere

Mrs J Matsikidze, for the State
Ms T. P Jaricha, for the accused

MUZENDA J: The accused is deceased's first son and both used to reside together at Mutero Village, Chief Nyashanu Buhera. Sometime in 2001 accused's father died when accused was 7 or 8 years old. According to accused his father was killed by deceased who was arrested by the police but later released. At the time this offence was committed deceased had customarily married Mr Madhunguza and had three other children with him. On 14 July 2019 accused was squatting by the fire outside the hut smoking dagga when deceased arrived around 1900 hour coming from a traditional beer drink. She was jovial and entertaining herself with a dirge. Accused felt annoyed by the singing of the deceased. He instructed deceased to stop singing. Deceased responded by asking accused what wrong she had done to him by singing at her own homestead. She continued singing. Accused pulled a glowing firewood from the fireplace weighing 1,43 kg, pushed the deceased twice and struck her on the head with it. As she lay down he kicked her with feet and continued to hit her further with a log resulting in the log breaking into 3 pieces. Deceased died instantly and a post-mortem examination concluded that the death was a result of brain injury and skull fracture. Accused was charged of Murder as defined in s 47(a) or (b) of the Criminal law (Codification and Reform) Act, [*Chapter 9:23*]. He pleaded not guilty to Murder but tendered a limited plea of guilty to Culpable Homicide. He admitted to all the facts outlined above herein and added that deceased was singing on top of her voice and that she was drunk. Accused stated further that he saw deceased bidding farewell to a man who was in her company and boasted that no one would never chase her from

her home. In his defence outline he averred that deceased disturbed his sleep. In principle accused contends that he was provoked by deceased's attitude and actions which led him to assault her. He admitted that he acted in anger and did not consider or plan his actions before acting on them.

Most facts and evidence in this matter are basically incontrovertible and accused's own evidence and testimony flows plainly and in tandem with that of the state. On the day in question accused brutally assaulted his mother repeatedly and she died instantly. The post-mortem report shows multiple fractures on the skull and bruises of the deceased's body and the accused's defence of provocation unfortunately crumbled under cross-examination by the state. He ended up virtually admitting to all the essential elements of the charge of murder. Accused admitted that he believed that deceased killed his father through a brutal assault. He believed that deceased was using evil spirits on him as a curse and the whole village was aware of that. On the day in question he was not provoked by deceased but that he smoked dagga to gather courage and avenge his father's death by killing the deceased. Hence he chose a dangerous weapon and targeted deceased's head and crushed it. When she fell down he did not stop he continued assaulting her. He admitted during questioning by the state that he actually intended to kill the deceased to avenge his father's death.

The accused had no choice because facts before us show that deceased, a defenceless woman was viciously and brutally assaulted on a vulnerable part of the body and she sustained fatal injuries which unavoidably led to her death. The question of intention is undoubtedly clear for it can be inferred from the circumstances of the manner the deceased was assaulted. Questions put to the accused also further clarified the issue of *mens rea*. We are satisfied that the accused had the requisite *mens rea* to cause the death of the deceased. Accordingly accused is found Guilty of Murder with actual intent as charged.

Sentence

In arriving at the appropriate sentence the court will take into account what has been submitted in mitigation and aggravation. When a mother is pregnant she cannot foretell what the womb will produce at birth. A mother enjoys giving birth but what that child will become in life is the enigma of life. Lucky mothers bear doctors, engineers, lawyers, presidents of countries and companies, teachers and other great people, but the unfortunate one like the deceased in this matter at birth ululate for their tears for giving birth to murderers, crooks, drug abusers and rapists, worse when such a child accounts for the demise of one who gave birth to

him. Society at large resents such an uncultured, immoral and dastardly reprehensible behaviour which becomes a seed of an avenging spirit for accused's generation and more to come. Accused is a major who abused deceased's hospitality to house and feed him. He could not allow deceased to enjoy the comfort of her homestead and more aggravating in this matter is that the murder was committed during domestic violence where women are treated like punch boxes. Accused was not drunk and had actually come back from a church service. I will take into account that accused had been in prison for a period of 2 years and generally by pleading guilty and admitting to a number of factors in this case shows an element of contrition. However the aggravating aspects far outweigh the mitigatory aspects.

Accordingly accused is sentenced to 25 years imprisonment.

National Prosecuting Authority, state's legal practitioners
Mubata Chigadza & Associates, accused's legal practitioners