

**THE STATE**

**VERSUS**

**ELIZABETH MULEYA**

IN THE HIGH COURT OF ZIMBABWE  
CHEDA J  
BULAWAYO 24 JANUARY 2013 AND 25 JANUARY 2013

*Mr Mabhaudhi and Mr Mhlanga* for the state  
*Mrs J. Magosvongwe* for the accused

Criminal Trial    Extenuating Circumstances

**CHEDA J:**        The accused has been found guilty of murder with actual intent.

In her submissions with regards to the existence or otherwise of extenuating circumstances, *Mrs Magosvongwe* for the accused submitted that the court should take into account that accused spent 1 year in prison awaiting the finalisation of this case and a further 6 months in remand prison after indictment. In addition that she was a youthful offender. She referred the court to the case of *Chininga v S SC 79/02*.

On the other hand *Mr Mabhaudi* has submitted that the fact that she was young at the time of the offence and that she was a single mother who was herself being looked after by her maternal grandmother, taken together should be held as extenuating, see *Chininga v S (supra)*.

Accused had just passed 18 years at the time of the offence. She was indeed fairly young. Youthfulness on its own without more depending on the circumstances qualify as extenuating.

In *casu* the fact that she was hardly 18 years and that she was an orphan is a point which surely should be taken into account in determining the existence or otherwise of extenuating circumstances.

She fell in love with a man at 16 years of age while in Form 3, this indeed was a premature entry into adult life with disastrous consequences.

In assessing the existence of extenuating circumstances these courts have adopted a two-pronged approach. The first approach involves the finding that the extenuating circumstances exist, but, despite their existence aggravating features far much outweigh them thereby necessitating the imposition of a death sentence.

The second approach involves the balancing at the outset of the mitigating against the extenuating features and depending on the finding a death sentence becomes unavoidable, see *S v Jacob* 1981 ZLR 1 and *S v Phineas* 1973 (1) ZLR 260 (AD) at 263..

In this instance the court has adopted the second approach wherein it weighed the mitigating against the aggravating features.

It is common cause that accused has no natural parents. She fell in love with an unnamed man when she was about 15 years of age and was in Form 3. The relationship resulted in the birth of an illegitimate child who is the subject of this case. This was an immature age for womanhood. Her reason for this adventure was to secure a marriage and according to her she thought that it was an assurance of a better life. Her reason unreasonable as it may be, in my view mitigates the gravity of this offence. These mitigation features combined with her youthfulness and her single motherhood amounts to extenuating circumstances.

I accordingly find that the accused should benefit by the finding of the existence of extenuating circumstances in this matter.

*Criminal Division, Attorney General's Office, state's legal practitioners*  
*Marondedze, Mukuku, Ndove and partners, accused's legal practitioners*