

THE STATE  
versus  
EDMORE WERUDZANI

HIGH COURT OF ZIMBABWE  
MAWADZEJ  
HARARE, 6 November 2015

Assessors: 1. Mrs Shava  
2. Mr Msengezi

### **Sentence**

*B Taruvinga*, for the state  
*Ms M Dunatuna*, for the accused

MAWADZEJ: This is yet another case in which the deceased lost her life at the hands of her spouse.

The accused was initially facing a charge of murder as defined in s 47 (1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] but was convicted in his own plea of guilty of charge of Culpable Homicide as defined in s 49 of the Criminal Law Codification and Reform Act [*Chapter 9:23*] after the state and the defence agreed that culpable homicide is the appropriate charge.

The accused and the deceased were husband and wife and they had 4 children aged 17 years, 14 years, 7 years and 1 year 4 months respectively. They were residing at Maxton Farm Compound in Shamva.

The agreed facts are that the deceased who was the wife on 14 October 2014 visited her younger sister at Wadzanai Township and left the children in the custody of the accused. The children then asked for money to buy food from the accused and the accused proceeded to sell a bucket of shelled maize which was in the house. The accused instead squandered the money drinking beer. The deceased upon her return the next day in 15 October 2015 took issue with the accused and an argument ensued. The accused then left to go drink beer and

only returned home at sunset and asked for food. This incensed the deceased who resumed her insults towards the accused in front of their children using profanity in her insults. The accused was provoked by this and he took a piece of wood which was glowing from the fire place and struck the deceased with it once on the head ordering her to stop the insults. The deceased was injured and was ferried to Shamva Hospital on 16 October 2014. The condition of the deceased did not improve and on 18 October 2014 accused accompanied the deceased to Eden Surgery. The deceased was attended and discharged. However on 19 October 2014 the deceased passed on at Maxton Farm Compound in Shamva. The post mortem report shows that death was due to head trauma, epidural haematoma and skull fracture due to assault.

In arriving at the appropriate sentence we have considered accused's personal circumstances and other mitigatory factors.

The accused is 39 years old and has now the sole responsibility of looking after the 4 children. All the 4 children are currently being looked after by accused's relatives. The accused is an unemployed peasant farmer with neither savings nor assets. This means that the accused's dependants survive on accused's manual labour.

It is in accused's favour that he has suffered from the pre-trial incarceration period of 1 year and 7 days. In fact the accused has been in custody from the time of his arrest to date. Pre-trial incarceration is a very important mitigating factor which the court should seriously consider. See *S v Mutakwa & Another* 2000 (1) ZLR 393 (H).

We have taken note of the fact that the accused through his defence counsel Ms *Dunatuna* has profusely apologised to the court and extended the apology to the deceased's relatives and society at large. In our view this is a sign that accused is contrite and that accused has experienced self-introspection.

The accused would forever live with the stigma that he caused the death of his wife. It would not be an easy task for the accused to explain this to his children. The society would always point at the accused as the cause of his wife's death. The accused was not even able to pay his last respects to his wife when she was buried as he had been arrested. In our view this is punishment on its own and such an experience will always weigh heavily on accused's conscience.

The accused has indicated that he is willing to pay some compensation to his in-laws for negligently causing the deceased's death. Although the accused's offer lacked any

meaningful detail such a gesture would be appreciated in the African culture.

It is in accused's favour that he has pleaded guilty to the preferred charge of culpable homicide. This should attract a discount in the sentence we are to impose. See *S v Munechawo* 1998 (1) ZLR 129 (S). As a result of accused's plea of guilty we have been able to finalise this matter in a short space of time. The accused saved his children the trauma of giving evidence in this case. The state has expended less resources in prosecuting the accused. It is therefore clear that a plea of guilty is an important mitigating factor. See *S v Katsaura* 1997 (2) ZLR (H); *S v Sidat* 1997 (1) ZLR 487 (S).

It is clear from the agreed facts that the accused was to some extent provoked by the insults hurled at him by the deceased who used profanity in her insults. To some extent the provocation was prolonged as the accused initially left for the beer drink but the insults resumed upon his return. These insults were hurled in front of the couple's children.

We have considered in accused's favour that he delivered a single, albeit a fatal blow. After realising that he had seriously injured his wife the accused frantically looked for help by taking the deceased to Shamva Hospital and then to Eden Surgery. The accused's efforts came to nothing as the now deceased later died.

Culpable homicide arising from the circumstances of this case remains a very serious offence. This court has the important duty to uphold the sanctity of human life. It is disheartening that cases of domestic violence are very prevalent. In most of these cases brought before this court, life is needlessly lost. Once a life is lost it cannot be replaced. This court should therefore play its role in ensuring that human life is respected. A clear and loud message should be sent that violence is not tolerated and that where a life is lost the courts would descend heavily on the offenders.

In terms of s 221 (2) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] it is not a mitigatory factor that the accused was voluntarily intoxicated. This is not a proper case for which the court can impose the sentence of an option of a fine or community service. There is great need to pass deferent sentences in cases of domestic violence resulting in loss of life.

Accordingly the accused is sentenced as follows;

5 years imprisonment of which 2 years imprisonment are suspended for 5 years on condition accused does not commit within that period any offence involving the use of violence upon the person of another for which the accused is sentenced to a term of

imprisonment without the option of a fine.

*National Prosecuting Authority*, state's legal practitioners  
*Chivore & Partners*, accused's legal practitioners