

THE STATE
versus
RATWELL CHAKWIZIRA

HIGH COURT OF ZIMBABWE
MAWADZE J
HARARE, 15 December 2016

Assessors: 1. Mr Gweme
2. Mr Barwa

Sentence

H Muringani, for the State
J Mafume, for the accused

MAWADZE J: The accused was arraigned on a charge of murder as defined in s 47 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] but later pleaded guilty to the charge of Culpable Homicide as defined in s 49 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*]. The limited plea was accepted by the state. The trial commenced before us on 11 November 2014. A total of 10 witnesses were lined up by the state but the evidence of 8 witnesses was accepted by consent in terms of s 314 of the Criminal Procedure and Evidence Act [*Chapter 9:07*]. The only witness who gave *viva voce* evidence on 11 November 2014 was the investigating officer Detective Sergeant Design Tsikayi. The matter was then postponed to allow Dr Mildred Marongwe who carried out the post mortem to testify as the accused had put into issue certain findings in the post mortem report. The said doctor was said to be now in Botswana and it became impossible to have the said doctor available. The contentious issue was whether the accused had struck the now deceased twice with an axe as alleged by the state or just once as per accused's version. On 15 December 2016 both the state and the defence found each other on the contentious issue as the state conceded that accused struck the now deceased once with the axe. The evidence of

the doctor was therefore admitted in court. Further, both the state and the defence agreed that accused should be convicted of a lesser charge of culpable homicide.

The facts giving rise to this charge are as follows:

The accused and the now deceased were husband and wife respectively. They had been married since 2007 and had 6 children. They resided at No. C 2 Alaska in Chinhoyi and were engaged in tobacco farming at Plot 38 Bunya Farm, Chinhoyi which belonged to one Tichaona Mutsvangwa.

On the fateful day they both spent the day at the plot and later on their way home they quarrelled over the now deceased's infidelity. The now deceased admitted having an extra marital affair and seemed unapologetic about it. In a fit of rage accused who was carrying an axe struck her once on the head with the axe and she died instantly. The accused took their child which was strapped on now deceased's back and went home where he hid the axe. The accused in a bid to cover up for the offence reported the now deceased as missing person. The deceased's body was found in the bush on 22 September 2013 and through police investigations the accused was arrested. The accused then owned up to this heinous act.

In terms of s 239 (1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] provocation is a partial defence to the charge of murder. It is also a mitigatory factor. The state accepts that the accused was provoked hence his conviction on a charge of culpable homicide.

In assessing sentence we have indeed accepted that the accused was greatly provoked by the now deceased's infidelity. This is worsened by the fact that the accused's wife seemed unrepentant. It is therefore understood that accused lost self-control and fatally struck his wife. We however hasten to add that people should learn to exercise restraint even if provoked and not resort to violence especially leading to loss of life. We all err and cannot be punished with death for our transgressions.

It is in accused favour that he has suffered from pre-trial incarceration period of about 4 years. We accept that pre-trial incarceration has no benefits like post-trial incarceration which include rehabilitation and discount or reduction in sentence.

The accused pleaded guilty to the charge. This means that he did not waste the court's time. As already outlined the accused virtually did not challenge the evidence of the state. All the state witnesses did not testify except the one who did so more as a formality.

The accused is a 37 year old first offender. He has a large family of 6 children to look after, more so as he is now a single parent. At the time of his arrest the youngest child who

was on deceased's back was 2 years old. The eldest child was about 20 years old. Accused is of no means with neither savings nor assets. We accept that accused has apologised for his conduct thus showing contrition. He will live forever with the stigma that he killed his wife.

The accused discovered while in prison that he is HIV positive and is currently on ARV treatment. He also believes he was infected with the HIV virus due to his wife's infidelity. While accused is being treated the conditions in prison are difficult.

The offence of culpable homicide arising from violent conduct remains a very serious offence which invariably attracts a custodial sentence. This court has the duty to protect the sanctity of human life as enshrined in our constitution. Human blood is both sacred and precious hence once a life is lost it cannot be replaced. The accused should learn to control himself and resort to lawful means to resolve problems.

While adultery is frowned upon by humankind from time immemorial it can never be the basis to take one's life. There are other legal remedies to deal with such an issue.

The accused was callous and brutal in the manner he took away the life of his wife. He struck her with an axe on the head instantly killing her. Accused had the temerity to simply take the baby strapped on the deceased's lifeless body and abandon her body in the bush. Thereafter accused raised false alarm that his wife was missing. He only owned up after the discovery of the deceased's body.

In our view a custodial sentence is not avoidable.

In the result the accused is sentenced to 8 years imprisonment of which 3 years imprisonment are suspended on condition the 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
Mupanga Bhatasara Attorneys, pro deo counsel for the accused