

THE STATE  
versus  
BRIGHTON BHASIKITI

HIGH COURT OF ZIMBABWE  
MAWADZE J  
MASVINGO 12 & 17 NOVEMBER, 2020

**Assessors**

1. Mr Nish
2. Mr Chikukwa

**Criminal Trial - Sentence**

*E. Mbavarira*, for the State  
*R.S. Makuasi*, for the Accused

MAWADZE J: All the ingredients of marital infidelity, sheer brutality, extreme provocation and youthful naivety are present in this matter. This matter went through all the motions of a criminal trial up to its logical conclusion. The State seemed unprepared to accept the accused's limited plea to a lesser charge.

The accused was arraigned for murder as defined in s 47(1) of the Criminal Law (Codification and Reform) Act, [*Cap 9:23*]. In his well taken defence accused raised the partial defence of provocation thus offering a plea to a lesser charge of culpable homicide as defined in Section 49 of the Criminal Law (Codification and Reform) Act, [*Cap 9:23*].

The State called all its witnesses and the accused gave evidence. The Damascene moment dawned on *Mr Mbavarira* for the State and he realised that he had no evidence at all to rebut the

accused's version of events and to spurn the limited plea offered by the accused. This concession was only made by *Mr Mbavarira* in his closing oral submissions.

In our view the concession is well taken and informed by the available evidence. The accused was thus convicted of contravening section 49 of the Criminal Law (Codification and Reform) Act, [*Cap 9:23*] which is culpable homicide.

The uncontroverted facts in this matter are as follows;

The then 20 year old accused who was employed by Hippo Valley estates in Chiredzi was residing with his 17 year old wife (the now deceased) at Farm 6 Compound, Hippo Valley Estates, Chiredzi. They had customarily married and started to stay together in January 2019. No children had been born out of this union. The evidence available does not show that this was a troubled "marriage" or union.

On the night of 13 August, 2019 at around 20.00 hrs the very youthful couple retired to bed as usual in their room. In the early hours of 14 August 2019 at about 01.00 hrs the accused who was employed as a general hand woke up going to the sugar cane fields to cut cane. He had a sugar cane machete. After working for about 1½ hours none of his colleagues joined him and he decided to stop cutting cane believing that there was a possible a wage dispute. The accused returned to his house.

Upon entering his room his wife was not present. He briefly waited for her. She did not return. As per the accused the wife normally suffered from chronic stomach problems. The accused decided to check for her at the nearby toilet. The moon was about to set.

The accused approached the garden near the toilet. The shock of his life awaited him. He saw two silhouettes of people being intimate the "missionary style". Upon getting closer his fears were confirmed. It was his wife on top of man he could not identify having sexual intercourse. In a fit of rage the accused struck his wife twice or thrice on the head causing her to fall off the man. The said man woke up and started to wrestle with the accused. During this fight the accused was cut on the throat possibly with a knife (he has visible healed scars). The paramour managed to wrestle free and made good his escape without being identified.

Meanwhile the accused's wife (the now deceased) had woken up and also took a knife from their residence. She stabbed the accused twice in the abdomen and fled.

The enraged accused chased after her wielding the machete. The now deceased entered one Albert Chitsa and Sotian Nzenza's (no pun intended) room with the accused in hot pursuit. The occupants of the room woke up after realising that accused was attacking his wife and they fled. The accused caught up with his wife, the now deceased, as she tried to run out of the room and indiscriminately struck her on the head and face with a machete killing her instantly. The photographs Exhibit 4(a) to (e) show the ghastly injuries inflicted on the now deceased. The accused fled and was arrested at Collin Saunders hospital in Triangle where he had sought medical treatment.

All this detail is necessary for one to understand how this court arrived at what it believes is a fair and just sentence. This was indeed not an easy matter to assess the appropriate sentence taking into account the evidence provocation, accused's age, deceased's age and the brutal manner the accused took his wife's life.

In terms of s 239(1) of the Criminal Law (Codification and Reform) Act, [*Cap 9:23*] the defence of provocation can at most be partial defence to a charge of murder. It is without doubt that this defence is available to the accused. The facts of the matter speak for themselves. We were also referred to the case of *State v Ishmael Ngwanda* HH 30-06 (although it is quite distinguishable from the facts of this matter).

The sanctity of human life is always paramount. No person has the right to take the life of another whatever the circumstances unless in clear situations provided for by the law. For obvious reasons public policy in our criminal jurisprudence demands that the defence of provocation should only be a partial defence to the charge of murder. It is therefore the cardinal duty of this court to protect life.

The manner in which the accused viciously attacked his defenceless 17 year old wife with a machete exhibits a very high degree of brutality. The machete itself Exhibit 2 is a lethal weapon. Several blows were directed on the now deceased's head and face with reckless abandon. The now deceased's cries for mercy fell on deaf ears. The accused could not be restrained by his neighbours. In fact he threatened to also harm them. Indeed he simple acted like a man possessed by some demon.

It is important that from a moral and principled point of view the accused should be punished. The courts should encourage all citizens to control their temper and use well established

legal means to resolve disputes no matter how unpalatable or provoking the situation may be. This message should be sent to the accused and the public at large. Thus a wholly suspended prison term would send wrongful and harmful signals to the public especially in crimes of passion.

The court is however quite mindful of the mitigatory factors in this case.

Just like the now deceased, the accused is a youthful first offender. In general accused deserves to be treated with some measure of leniency. Youthfulness denotes immaturity, recklessness and lack of experience especially in matters of the heart like marital infidelity and disputes. Thus the accused could not simply withstand the situation which confronted him. The apparent confusion, anger and lack of self-control are therefore well within human experience especially taking into account his age.

The accused is barely literate and clearly unsophisticated. He was employed as a general hand and has limited means.

It is in accused's favour that his family paid compensation of 5 cattle, 12 goats and five sheep out of the 20 cattle demanded by the deceased's family. This gesture is well normal and understood within the context of African and traditional custom. It is also a mitigatory factor.

Upon his arrest the accused fully co-operated with the police. In court he virtually pleaded guilty to the lesser charge he was subsequently convicted of. This is clearly a sign of contrition. Indeed the accused said with hindsight he regrets his conduct.

The accused suffered from pre-trial incarceration of 1 year and 3 months.

In our view a proper assessment of both the mitigatory and aggravatory factors demands that the accused be sentenced to a minimal custodial sentence. The following sentence is therefore appropriate;

*“7 years imprisonment of which 2 years imprisonment is suspended for 5 years on condition the accused does not commit within that period any offence involving assault, or the use of violence upon the person of another or unlawful killing of another human being for which the accused is sentenced to a term of imprisonment without the option of a fine.  
**Effective: 5 years imprisonment”***