

THE STATE
versus
PRECIOUS MACHIVENYIKA

HIGH COURT OF ZIMBABWE
MUTEVEDZI J
HARARE, 19 March 2024

Assessors: Mr *Kunaka*
Mr *Mhandu*

Criminal Trial- sentencing judgment

T M Havazvidi, for the State
A Muvirimi, for the accused

MUTEVEDZI J: This is yet another case of a life lost through domestic violence, a cycle which appears to continue unabated. The offender, Precious Machivenyika negligently caused the death of her husband. She stabbed him with a knife. He bled to death from the injuries sustained. The irony of it all is that the offender stabbed the deceased in a brawl in which he wanted to prevent her (the offender) from taking her own life. The deceased was embarrassed by his own infidelity. Just before his death he had been caught red-handed being intimate with someone else's wife. The husband of his paramour had then proceeded to report him to the offender who on hearing the unbearable news thought that she had nothing to live for. She found a knife in their house with which she intended to end her life. She ran out of the house in the direction towards the homestead of the woman who was in love with the deceased. He gave chase and caught up with her. In the ensuing commotion, the offender stabbed the deceased who was rushed to hospital but died on admission thereat.

This court has previously stated that in culpable homicide cases, it is imperative for the court to ascertain an offender's degree of negligence in order to properly assess sentence. In this case, the circumstances as outlined above clearly show that the offender was bent on taking her own life. She became livid that the deceased wanted to prevent her from accomplishing her desire. She stabbed him in the stupid hope that he would release her. He did not. But as is clear, that negligence can only be bracketed in the category of ordinary negligence.

In his submissions in mitigation on behalf of the offender, Mr *Muvirimi* disclosed startling revelations about the offender's upbringing. He said from childhood the offender lived a troubled and complicated life. Her father suspected that she was not his child. In fact, her paternity was so openly talked about that she could not take it any more. She ran away from her supposed father's homestead to go and live with her maternal grandmother. She dropped out of school when she was in form three due to financial difficulties. She opted for marriage, an avenue which thought would offer her a sanctuary from her never-ending problems. She was wrong because the marriage would only bring her more misery. She got into that marriage in the year 2001. It lasted until 2015 after being blessed with three children born in 2002, 2006 and 2013. All the children are not yet self-sufficient. They stay with their maternal grandmother. After her first marriage failed, the offender then got married to the deceased in 2018. As already said, he was unfaithful and that led to even worse problems for her. He was involved in several extra marital relationships with women who resided in the same community. He openly admitted to those affairs. He at times became violent when confronted about the affairs. One such incident led the offender to report a case of domestic violence at Mazoe Police station. These issues have not been controverted by prosecution. The offender can easily fall into the category of battered women.

When this tragedy struck, the offender was employed by a company called Trust Me Security as a security guard. She lost that job after she committed this offence. It is a punishment on its own. In addition, at the time she was convicted of this offence, the offender was nine months pregnant by the deceased. We could not sentence her because she was expecting any day. She has since given birth but the coming of the baby simply made her situation worse. The deceased and her did not have a house of their own. They stayed in a mine compound. They have since been evicted therefrom. The family is basically homeless at the moment.

Mr *Muvirimi* equally urged the court to consider that the offender is a female first offender who readily admitted the offence she had committed. She is remorseful and is aware that her actions prematurely ended a life. He referred the court to authorities such as *S v Malunga* 1990(1) ZLR 124 (H) and *S v Felistas Shingirai* HMA 20/23.

In aggravation, Ms *Havazvidi* for prosecution, argued that the court should not lose sight that a life was lost and that the sanctity of human life cannot be overstated. She further argued that the offender used considerable force to stab the deceased with a lethal weapon. Much as that is correct, the court however notes that the offender thrust a single blow aimed

at the deceased's leg which was not a vulnerable part of the body. It was unfortunate that ultimately her actions resulted in the death of the deceased.

When all is said and done, it is clear that the mitigating factors in a good measure outweigh those which aggravate the crime. A general reference to the range of sentences previously imposed by the courts in similar cases illustrates that the courts have always viewed the loss of life as deserving serious censure against those who perpetrate such offences. See the cases of *S v Boniso Sibanda* HB 239/20 and *S v Edward Gumbo* HB 119/18 where sentences in the range of three (3) years effective imprisonment were imposed.

It is against the above background that the court generally agrees with the suggestion made by prosecution that taking everything into account, a sentence in the region of two years effective imprisonment will meet the justice of this case. In the circumstances, the offender is sentenced to **5 years imprisonment of which 3 years imprisonment is suspended for 5 years on condition the accused does not within that period commit any offence involving violence on the person of another or involving the negligent killing of another for which he is sentenced to imprisonment without the option of a fine.**

Effective sentence - Two (2) years imprisonment.

National Prosecuting Authority, the State's legal practitioners
Muvirimi Law Chambers, the offender's legal practitioners