

THE STATE
versus
ZVISINEYI RUPIYA

HIGH COURT OF ZIMBABWE
MUTEVEDZI J
HARARE, 18 June 2024

Assessors: *Mrs Chitsiga*
Mr Chakvinga

Criminal Trial- sentencing judgment

Mupini, for the state
T Duve, for the accused

MUTEVEDZI J: The inevitability of death is a phenomenon that every human being learns to live with. Unfortunately, more often than not, the circumstances which ultimately lead to one's death vary. In this case, the deceased person Joyce Chikomo was killed for gossiping. The offender, Zvisineyi Rupiya caught the deceased and her friend enjoying a hot rumour which was doing the rounds in a farm compound that the accused had had sexual intercourse with her paramour called Abraham Saramba. For that romp, so the story went, she had been paid five United States dollars. When the offender confronted the gossipers, the deceased unapologetically told her that indeed she was the subject of their gossip. A brawl ensued which resulted in the deceased being shoved to the ground and kicked on the ribcage. She sustained injuries which in the end caused her death.

[1] At her trial for the murder of the deceased, the offender accepted responsibility for the death but argued that she had had no intention to kill her when the assault took place. The prosecutor accepted that argument. The court also took the view that she hadn't had any intention to kill. We therefore acquitted her of the charge of murder but convicted her of the lesser crime of culpable homicide in contravention of s 49 of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].

[2] In her submissions in mitigation counsel for the offender argued that she is a young woman aged only twenty-four years. Her husband is alleged to have deserted her soon

after the commission of the offence. She has one child who is aged six years. In the aftermath of her arrest for the murder she could not immediately secure her freedom on bail. She spend three months in detention and as such she suffered pretrial incarceration. The minor child was taken into the custody of relatives. She is the sole breadwinner for the minor. The court was therefore urged to exercise leniency when sentencing her.

[3] Counsel also motivated us to consider what led to the fight between the offender and the deceased. The offender was a married woman yet the deceased and her friend were spreading rumour that she had had sexual intercourse with another man who lived in the same community as them. In a lot of ways, that amounted to provocation.

[4] In addition, counsel pointed to the offender's contrition which she exhibited soon after realising her mistake. For instance, she assisted the deceased to seek medical care. She pleaded guilty to the charge of culpable homicide. She is therefore genuinely remorseful. A further argument was that the offence which the offender committed has led to her stigmatisation in the community she comes from. Everyone views her as being responsible for the deceased's death. That amounts to punishment on its own.

Aggravation

[5] In aggravation, the prosecutor argued and which argument we accepted, that however the deceased died, the bottom line is that she died at the hands of the offender. Section 48 of the Code emphasises the sanctity of human life. No one is permitted to precipitate the end of another's life. We equally accept that much as the offender may claim to have been provoked by the gossip perpetrated by the deceased and her friend, she had all the opportunity to walk away from the scene particularly after pushing the deceased to the ground or to seek other means through which to resolve the dispute. Instead, she chose violence.

[6] The needless loss of this life brought with it other unintended consequences. The deceased was the only breadwinner for her children. Two of them dropped out of school soon after her death. The aunt who is looking after them is struggling for her own survival. She has no means to look after the children. She depended on the deceased for hers and their elderly parents' upkeep. The youngest of the children was only two years old when the deceased died. She will most likely never live to remember her mother. She will live a very complicated life.

The law

[7] Unlike murder, where the offender is punished for his/her intention, in culpable homicide convictions, punishment is meted out for the carelessness exhibited by the offender. In the case of *S v Richards* 2001(1) ZLR 129 to which the prosecutor referred us, the Supreme Court set the two crimes apart in the following terms:

“The accused is not being punished for his evil intent, for he had no intent at all, but for being careless. The function of punishment in this situation is not so much to punish wrong doing as to inculcate caution in the citizenry and encourage attentiveness...”

[8] The lesson from the above dicta is that despite the loss of human life the courts must not be easily swayed to impose sentences approximating those of murder in culpable homicide cases unless the circumstances demand so.

[9] In this case, it is clear that the offender was provoked and simply thought that she was venting her anger on the deceased. Her misjudgement was calamitous.

[10] We also noted from the autopsy report that the doctor said that the deceased was a frail woman. Even without having concluded so, the results of the postmortem illustrate that the deceased may have been afflicted with other underlying causes.

[11] In the end we deem it necessary to balance the mitigation submitted on behalf of the offender against the aggravation put forward by the prosecutor. Our view is that the propositions appear to cancel each other and leave the scale level. The offender's degree of negligence was ordinary, she rendered assistance to the deceased when she was injured and contributed to her seeking medical assistance.

[10] The statutory punishment for culpable homicide is a fine of up to level 14 or imprisonment for life. We however already intimated the undesirability of equating this negligence crime to the intentional murder. The Sentencing Guidelines provide for five years imprisonment as the presumptive penalty where there are aggravating circumstances. As already pointed out there are sufficiently weighty mitigatory circumstances in this case. As such much as the court must send the correct message that human life will always be protected it will not serve any practical purpose to sentence the offender to an unduly lengthy prison term. Yet the offender cannot possibly escape some form of imprisonment.

[11] Against the above background, the offender is sentenced to **3 years imprisonment of which 1 year imprisonment is suspended for 5 years on condition the offender does not within that period commit any offence involving violence on the person of**

another or involving the negligent killing of another for which she is sentenced to imprisonment without the option of a fine.

Effective 2 years imprisonment.

*National Prosecuting Authority, State's legal practitioners
Dube Manikai & Hwacha, accused's legal practitioners*