

STATE  
versus  
TATENDA REVESAI MUSIIWA

HIGH COURT OF ZIMBABWE  
PHIRI J  
HARARE 22, 23 & 26 May 2017

### **Criminal Trial**

*D H Chesa*, for the State  
*B Hungwe*, for the accused

PHIRI J: The accused was facing

- (i) a charge of Rape as defined in s 65 C (1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] and
- (ii) A charge of murder as defined in s 47 (1) (a) of the Criminal Law (a) (Codification and Reform) Act [*Chapter 9:23*].

#### Count One

It was alleged that on 19 February, 2014 and at Marowa Village, Chief Chivero, Mhondoro, the accused unlawfully had sexual intercourse with MOREBLESSING MARUVE, a female person once without her consent knowing that she had not consented to it or realising that there was a real risk or possibility that there was a real risk for possibility that she might not have consented to it.

#### Count Two

In that on 19 February, 2014 and as Marowa Village, Chief Chivero Mhondoro, the accused unlawfully and with intent to kill struck MOREBLESSING several times on the head and fingers with a grass slusher thereby causing her instant death.

The Summary of the State case was marked as ANNEXURE “A” and the State led its case by applying that the evidence of the following witnesses be formally admitted by the Court, in terms of s 314 of the Criminal Procedure and Evidence Act;`

1. Pauline Marowa
2. Natasha Shava
3. Glory Kavitu
4. Frank Marowa
5. Progress Nyahishu
6. Andrew Saita
7. Kudakwashe Mapuranga
8. Nobert Kokerai Magidi
9. Doctor Mauricio Gonzalez

The defence counsel consented to the admission of the evidence of the aforesaid witnesses, and, the court so granted the application by the State that this evidence be so admitted as the court held that the concession was so properly made by the defence.

#### The facts

The State accurately captured and summarised the evidence of the aforesaid witnesses as follows:-

On 19 February 2014, the deceased, a form three student at Mazorodze Secondary School, Mhondoro was walking along a footpath which links Marowa Village and Mazorodze Secondary School when the accused saw her.

Accused was herding cattle, he manhandled the deceased and dragged her to a nearby Kwamura River where he raped her. After the rape the deceased revealed to the accused that she was going to report the case to her uncle.

The accused then dragged the deceased to his employer's garden where he got a grass slasher and struck the deceased several times on the head and fingers until she collapsed.

He dragged the body of the deceased into the garden, and hid it together with the deceased's bag and continued herding cattle.

At around 2000 hours on the same day, the accused returned to the garden and carried the deceased's body and bag and dumped them at a footpath junction near Kwamura River bank. The body was found the following morning. Post mortem examination was performed by Doctor Mauricio Gonzalez who concluded that cause of death was "brain damage, head injuries and skull fractures (temporo-parietal)."

On 8 March 2014 the accused fled away from Detectives whilst being interviewed at his employer's homestead and was only arrested after a tip-off at Westlea dumping site, Harare on 8 September 2016.

The State with the consent of the defence counsel, produced the confirmed warned and cautioned Statement made by the accused.

In his warned and cautioned statement the accused stated the following:-

"I admit to the allegations leveled against me. It was on 19 February 2014 at around 1400 hours when I was herding cattle in the grazing lands when I saw Moreblessing Maruve coming from Mazorodze Secondary School going home alone. I dragged her to a nearby stream where I forcibly had sexual intercourse with her. After having sexual intercourse with her, she began to cry and said she wanted to report to her uncle which made me think of murdering her. I got hold of her hand and forcibly dragged her to my employer's garden, (Mr Murwira) which was closer to the road used by Moreblessing Maruve, where I had left my slasher which I had used to cut grass in the morning of the same date. I used the slasher to strike Moreblessing twice on her face and on her fingers as she tried to block the slasher from striking her. When she fell unconscious I lifted her up and hid her in the garden. I also hid the slasher in the garden and proceeded herding my cattle. On the same date at around 2000 hours, I went back to where I had left Moreblessing Maruve's corpse and took her away for about 100 meters and left her on the road intersection near Kwamura rive a road used by many people so that she would be quickly noticed by passerby. When I left her I went back home and sleep as usual. The following day I went to the garden and took the slasher and put it in the storeroom."

The confirmed warned and court cautioned statement was admitted as evidence.

The court also admitted as evidence the port mortem report by Dr. Mauricio Gonzalez in which Doctor Gonzalez formed the opinion that the cause of death was "(a) brain damage (b) Skill fractures (temporo-parietal)."

A "grass slasher" used by the accused to assault the deceased was admitted, by consent, as evidence.

The court also admitted by consent, photographs depicting the partially naked body of the deceased, injuries sustained on her face, and, her clothes and books lying around the scene of the crime.

#### Nicholas Murwira

Testified. He resides at Murewa Village, Chief Chivero, Mhondoro and was the accused's employer.

He confirmed that he tasked the accused to cut some grass near his homestead. The accused took a grass slasher from the storeroom and proceeded to cut the grass.

### Sentence

In considering sentence this court has taken into account what has been submitted in both mitigation and aggravation.

The accused stands convicted of:

- “1. The charge of rape as defined in s 65 (1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*].
2. He also stands convicted of murder as defined in s 47 (1) a of the Criminal Law (Codification and Reform Act) [*Chapter 9.23*].”

This court has taken into account the fact that the accused is a youthful offender who committed the two offences. He stands convicted off an offence committed whilst he was twenty years of age.

The court has taken into account, in this regard, the submission that accused may have been immature and lacked the experience of life.

It was submitted that accused person was an orphan and accordingly he lacked parental guidance in his upbringing. He also appeared to be psychologically disturbed in that he had some anger issues associated with him.

The court accepted the submissions and observations made in respect of the case of *S v Nkomo* HC 104/13 which held that the court should take into account immaturity and lack of experience associated with youthfulness.

This court also took into account the fact that the accused admitted to commission of both crimes when he made his warned and cautioned statement, when the statement was confirmed and when he testified before this court. This was akin to the tendering a plea of guilty, and, the court gives him credit for not wasting its time and to some extent shows that he may have been contrite.

In aggravation the court takes into account the fact that the accused stands convicted of very serious crimes of violence.

The deceased was a minor school going child who was about 17 years old. She was deprived of her life.

The photographs, submitted as evidence, show a gory picture as regards how deceased met her fate. Her body was left practically naked and she had multiple injuries particularly on her

head and face. Her face showed wounds consistent with assault by the “slasher” used multiple times to assaulted her.

The murder of the deceased occurred essentially because the deceased had threatened to report the accused to her uncle. It is clear that the murder was committed in an attempt to cover up the first count of rape.

That conduct, by the accused, was well calculated and only served to aggravate the accused’s moral blameworthiness.

This court is the Upper Guardian of all minor children and it has a duty to ensure that children are protected.

This court further emphasises, as it has done on multiple occasions, that life is sacrosanct. Deterrent sentences are always called for to dissuade any like-minded persons such as the accused from perpetrating violence on defence-less children such as the accused. Violence must always be frowned upon. Heinous crimes such as rape and murder will never be tolerated by the courts and once again a very strong message must be sent to would be like minded offenders that crime does not pay.

In considering an appropriate sentence to be imposed in these circumstances the court had recourse to s 65 of the Criminal Law (Codification and Reform Act) [*Chapter 9:23*] which states;

- “(1) If a male person knowingly has sexual intercourse or anal intercourse with a female person and at the time of the intercourse-
- (a) The female person has not consented to it; and
  - (b) He knows that she has not consented to it or realises, that there is a real risk or possibility that she may not have consented to it;

he should be guilty of rape and liable to imprisonment for life or any shorter period.”

For the purposes of determining the sentence to be imposed upon a person convicted of rape a court shall in terms of subsection (2) of the aforementioned section of “the Code” among other factors take into account the following,

- (a) the age of the person raped.
- (b) the degree of force or violence used in the rape.
- (c) the age of the person who committed the rape.
- (d) whether or not any weapon was used in the commission of the rape .... etc

As regards a person convicted of s 47 of the Criminal Law (Codification and Reform Act) [*Chapter 9:23*] states that;

“Subject to s 337 of the Criminal Procedure and Evidence Act [*Chapter 9:23*] a person convicted of murder shall be sentenced to death unless-

- (a) The convicted person is under the age of eighteen at the time of the commission of the offence or
- (b) The court is of the opinion that there are extenuating circumstances in which event the convicted person shall be liable to be sentenced to death or to imprisonment for a shorter period.”

As a result of the circumstances of this case the appropriate sentence shall be as follows

- (1) For the first count of rape the accused is sentenced to nine (9) years imprisonment.
- (2) For the second count of murder the accused is sentenced to twenty (20) years imprisonment and the sentences are to run concurrently.

*National Prosecuting Authority, State’s legal practitioners  
Harare Law Chambers (Pro Deo), accused’s legal practitioners*