

THE STATE
versus
PRECIOUS MACHIVENYIKA

HIGH COURT OF ZIMBABWE
MUTEVEDZI J
HARARE, 16 January 2024

Citation: S v Machivenyika (20 of 2024) [2024] ZWHHC 13 (16 January 2024)

Assessors: Mr Barwa
Mr Gwatiringa

Criminal Trial

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

MUTEVEDZI J: To those that are religious this case may be yet another confirmation of the Biblical admonishment that the wages of sin is death. If hell indeed exists like many Christians believe, the deceased person may well walk straight through its gates unless he made peace with his God immediately before he died. He was caught *in flagrante delicto* having sexual intercourse in the bush with Fungai Nyamurenje, a married woman. The two lovebirds' affair would qualify as adultery in terms of both our laws and Christian values. The discovery was made around 0600 hours by Fungai's husband. I am not sure but that appeared an odd hour to have an adulterous romp in the bush if there is any better one at all. To compound the 'couple's' sinful indiscretions, Fungai's husband to his credit, did not seek a violent resolution of the matter. Instead he decided to inform the accused Precious Machivenyika, who is the deceased's widow about what was going on behind her. She must have been expecting then because at the time she appeared in court she was visibly pregnant. In fact counsel advised us that she was nine months pregnant and that the baby was due any day. When she heard the scandal concerning her husband the accused was beside herself with anger. She could not countenance her husband's infidelity. She confronted him and he could not deny the allegations. She saw no reason to live and decided to take her life by ingesting *paraquat* and *roundup* herbicides which she knew were somewhere in their house. She

searched the house but couldn't find them. In the process she stumbled upon a knife described in the state papers as an okapi knife. She ran off in the direction of Fungai Nyamurenje's homestead intending to kill herself with the knife at her premises. If the deceased was not aware of the accused's intention to kill herself he must have feared that she wanted to attack his paramour. He pursued, apprehended and dragged her back home. She was still holding the knife. Along the way, she freed herself and took off towards Fungai's homestead for the second time. The deceased was equally unrelenting. He followed and caught up with her once more. They wrestled and in frustration he heavily assaulted her. She fought back with the aim to free herself and complete her suicidal mission. She grabbed the knife and stabbed the deceased on the thigh. The deceased released her and she fled towards the deceased's alleged girlfriend's homestead. The deceased stood up and ran after her for the third time. He caught up with her at Muchaneta Joko's homestead. She still had the knife. Muchaneta intervened and restrained the accused whom she locked up in her house. The deceased was bleeding profusely from the stab wound. He collapsed. Muchaneta called for help. When other villagers arrived, the deceased was quickly ferried to Concession Hospital where unfortunately he was pronounced dead upon admission. His remains were examined by a pathologist Doctor Solomon Muzenda on 5 July 2023. His conclusion was that death was due to haemorrhagic shock as a result of the stab wound.

Needless to point out, the accused was arrested and charged with murder. The prosecutor alleged that on 24 June 2023 at Iron Mask Farm in Mazoe, Precious Machivenyika with intent to kill or realising that there was a real risk or possibility that her conduct might cause death but persisting with that conduct despite realising the risk or possibility stabbed Tichaona Chikonje on the thigh. The deceased bled and died from the injuries sustained in the knife attack. The accused pleaded not guilty to murder. Her defence was that she had no intention to kill the deceased. All she wanted was for him to release her so that she could commit suicide. Her defence outline was couched in the terms already described above. She pleaded guilty to the lesser crime of culpable homicide. Prosecution accepted that limited plea. The prosecutor and counsel for the accused then drew up a statement of agreed facts which essentially amounted to the narration that the court has already recited above.

In addition the prosecutor tendered with the consent of the defence, the post mortem report which detailed the cause of death, the accused's confirmed warned and cautioned

statement and the certificate of weight which described the murder weapon. They were all duly accepted as exhibits in this trial.

We found no reason to disagree with the prosecution and the defence's views that the accused did not intend to kill the deceased. This is an assault that occurred in the heat of the moment. The accused wanted to commit suicide whilst the deceased was bent on preventing her from doing so. That she directed the stab at the deceased's leg when she could have easily targeted more vulnerable and more dangerous parts of the body illustrates her sincerity in that she did not intent to kill him but to merely extricate herself from his grip. In addition, the accused had at all material times fled from the deceased and not attacked him.

From the above facts, Precious Machivenyika accepted her negligence in the following regard:

1. She did not pay any regard to the amount force used in the circumstances she exerted when she stabbed the deceased. In the end it is clear that the force was extreme the knife severed the deceased's thigh leading to excessive bleeding which ultimately caused his death.

In view of the above concessions by prosecution, the agreed facts and an analysis of the exhibits we have no apprehension that the acceptance by prosecution of the accused's plea of guilty to the lesser charge is a well-made decision. In the premises, the accused person is found not guilty and is acquitted of the charge of murder. **She is found guilty of the lesser charge of culpable homicide as defined in s 49 of the Criminal Law Code.**

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