

THE STATE**Versus****LOCARDIA RANGANAI**

IN THE HIGH COURT OF ZIMBABWE

MAKONESE J with Assessors Mrs A. Moyo & Mr O.M. Dewa

BULAWAYO HIGH COURT 25 & 26 OCTOBER 2018

Criminal Trial*Mrs T. R. Takuva* for the state*Mrs M. Sibanda* for the accused

MAKONESE J: The defence of non-pathological criminal incapacity caused by an “emotional storm” is not one that is usually raised in criminal matters in this jurisdiction. In this matter the accused was aged 29 years at the time of the commission of the offence. The deceased was aged 8 years at the time she met her demise. The accused was the deceased’s mother and the two were staying at 287 Industrial Site, Plumtree. The accused appears in this court on a charge of murder. The state alleges that on the 18th of April 2011 and at Dryden Farm, Plumtree, the accused administered rat poison to Monalisa Chinosengwa (the deceased) intending to kill her or realising that there was a real risk or possibility that her conduct may cause the death of the juvenile. The accused pleads not guilty to the charge and raises the defence of non-pathological criminal capacity. She tendered a limited plea of guilty with respect to culpable homicide. The state rejected the limited plea and the matter proceeded to trial.

The state tendered into the record an outline of the state case narrating the factual background of the murder charge. The facts are largely common cause. They are these. On the 18th of April 2011 the accused left home in the company of the deceased without telling anyone and went to Dryden Farm, Plumtree. Upon arrival at the farm the accused had some bread with rat poison. She gave the deceased the poisoned bread with the intention to kill her. The deceased consumed the bread and succumbed to the effects of the rat poison and died whilst in a bushy area of Dryden Farm. The accused attempted to take her own life by consuming some quantity of the rat poison. She vomited and did not die. On the 22nd April 2011 the accused left the remains of

the deceased wrapped in a blanket in the bush and proceeded to report the incident to her neighbours who in turn reported the matter to the police. The accused was subsequently arrested on allegations of murder. The deceased's remains were conveyed to United Bulawayo Hospitals for a post mortem examination. The post mortem revealed that the cause of death was:

- (a) Asphyxia
- (b) Poisoning ingestion (rat)
- (c) Assault

Accused's neighbour, Silibile Ncube confirms that the accused had narrated to her how she had taken the deceased to the bush on the 18th April 2011 with an intention to kill the juvenile and thereafter commit suicide through the ingestion of rat poison. Silibele Ncube confirmed that when the accused approached her she was visibly sick. She was taken to Plumtree District Hospital for treatment, and later surrendered to the police.

In her defence outline the accused asserted that:

- “ ...
1. *She pleads non-pathological criminal capacity. She also asserts that there are other factors concerning the circumstance of her conduct that diminish her responsibility.*
 2. *She was incapable of appreciating the wrongfulness of her actions as she acted under non-pathological “emotional storm”. The accused and her deceased minor child were being physically, emotionally and financially abused by her husband who habitually assaulted them.*
 3. *She made a number of reports to the police and she did not get the assistance and protection of the law that she expected. Her family also refused to let her leave her husband.”*

The accused gave a warned and cautioned statement to the police. The statement was confirmed by a magistrate at Plumtree on the 4th of August 2011. The English translation of the statement is in the following terms:

“I do admit to the charge levelled against me, this happened after having problems with my husband. I left home running away from my husband who had promised to assault me together with my child. We escaped and went to the bush on the 18th April 2011 around 9 o’clock in the morning. I was in possession of rat killer that I had bought which I applied on our bread so that my child and I could eat and die as my relatives did not want me to divorce my husband. I applied poison on the bread and ate along with the child on the 19th April 2011 around 6 o’clock in the evening. The child passed away on the following day at around 3 o’clock in the afternoon. I then drank the remaining poison at around 3 o’clock on this day after realising that I failed to die after eating the bread with rat poison. Still I did not die due to the fact that the poison was now mixed with water. I stayed where my child died until I left on the 22nd of April when I regained my strength, that is when I went home where we live to tell them that I had killed the child using rat killer.”

The evidence of the state witnesses as it appears in the outline of the state case in respect of the under listed witnesses was admitted into the record by way of formal admissions in terms of section 314 of the Criminal Procedure and Evidence Act (Chapter 9:07), namely:

- (a) Slibile Ncube
- (b) John Ncube
- (c) Nevanji Mapingure
- (d) Sergeant Shepard Sibanda
- (e) Dr Langalokusa Sibanda
- (f) Constable Gracious Mhlanga
- (g) Constable Tatenda Chiutsi
- (h) Assistant Inspector Buys
- (i) Dr A R Casteiianos

The State case

The state led *viva voce* evidence from one witness, **Johnson Chinosengwa**. He testified that the accused was his wife before the commission of this offence. The marriage relationship terminated following the death of the deceased and the subsequent arrest of the accused. The witness confirmed that the deceased was his daughter. He informed the court that on the fateful day it was independence holiday. He left home around 11 am leaving the accused and deceased behind. He went to a location where independence celebrations were being held. The witness

stated that he had no misunderstanding with the accused on that particular day, although they were having problems over her pregnancy. The witness indicated that the dispute over the pregnancy was caused by the accused's intense mood swings, and bouts of anger. In his own words, the witness stated that he thought the accused was afflicted by evil spirits. When the witness returned home around 6pm both accused and deceased were gone. The accused had taken away all their belongings. The witness tried to search for the accused with all her relatives but to no avail. On the 22nd of April 2011 the accused then came back reporting that she had killed their daughter Monalisa. The accused was arrested by the police on murder allegations. The witness was subjected to intense cross-examination. He denied that he had physically and emotionally abused the accused. He admitted that he had been dragged to the maintenance court over his failure to maintain the deceased. The witness emphatically denied that on the fateful day he had threatened to assault the accused and the deceased. In spite of these denials, the court noted that the relationship between the accused and the witness was not a happy one. The parties had not stayed together under one roof for an extended period of time. From the time of their marriage around 2002, the parties appeared to have lived apart for most of their marriage.

The state closed its case without calling any further witnesses.

The defence case

The accused, **Lorcadia Ranganai**, elected to give evidence under oath. She largely adhered to her defence outline. She maintained the version of events as detailed in the confirmed warned and cautioned statement. She described her relationship with her husband as a difficult and unhappy union. During the entire duration of their marriage relationship, she spent most of her time away from her husband. She lived with her mother for some time. At some stage she lived with an uncle before moving to Botswana where she took up employment as a maid. She returned to the country around December 2010. In April 2011 she was five months pregnant. Accused says that she was regularly and routinely abused and assaulted by her husband. She indicated that she did not report most of the incidents of domestic violence against her with the police. Accused testified that her relatives insisted that she should remain with her husband. She

averred that she was so traumatised by her husband's abusive tendencies that she decided to commit suicide and kill her daughter as well. She reasoned that if she were to die she did not want the deceased to remain alive and endure further abuse at the hands of her husband. The accused confirmed that she planned to kill herself and the deceased. She confirmed that she went and purchased rat killer poison. She decided to lace some bread with the rat poison and then give the deceased to eat. She would then also ingest the poison and die. The plan however, went horribly wrong. Her daughter ate the poison and succumbed to the effects of the poison and died. The accused claims that although she ingested the rat poison it was mixed with water and after she consumed the poison she vomited. She fell unconscious but did not die. When she regained strength she decided to go and alert her neighbours about what had happened. The accused was taken to hospital for treatment. She was later surrendered to the police. Accused led police detectives to the scene of the crime, where the remains of the deceased were recovered wrapped in a blanket. The accused also led to the recovery of the empty sachets of rat poison at the scene. The remains of the deceased were taken to Plumtree District Hospital, before being transferred to United Bulawayo Hospitals for a post mortem examination.

Analysis of evidence – Defence of non-pathological criminal incapacity

As indicated earlier in this judgment most of the facts are largely common cause. It is not in dispute that accused killed her daughter by causing her to eat bread laced with rat killer poison. The evidence before the court supports the accused's assertion that she attempted suicide by taking rat poison. What is in issue is the accused's intention and criminal liability at the time she committed the offence. Our law broadly recognizes two forms of defence on a charge of murder. The first group relates to the mental element and capacity to commit the crime. The second group relates to the unlawfulness of the act. The second group of defences tends to justify or excuse the act.

In this matter, the accused admits that her avowed intention was to cause the death of the deceased. She undertook all the preparatory work and purchased the poison. She then planned the method of administration of the poison and bought some bread. She then moved to the

execution stage of the offence. She left the home to some bushy area at Dryden Farm. She administered the poison. The deceased ingested the laced bread and died as a result of the effects of poison.

Ms M. Sibanda, appearing for the accused has implored the court to accept that as a result of the emotional and physical abuse the accused suffered at the hands of her husband, the defence of non-pathological criminal incapacity should be available to the accused. She argued that the accused may only be found guilty of culpable homicide due to diminished responsibility. In support of her argument she relied on the South African case of; *Eadie v The State* SCA-19-2001. In this matter the appellant had killed the deceased by beating him to death in circumstances popularly known as “road rage”. The appellant admitted that he assaulted and killed the deceased. His defence was one of temporary non-pathological criminal incapacity resulting from a combination of intoxication and provocation. The appellant argued that he could not distinguish between right and wrong. The appellant’s defence had been rejected in the lower court. The appeal was dismissed by the Supreme Court of Appeal. The reasoning of the court was that his defence was not available, and the court held that an accused can only lack self-control if he was acting in a state of automatism.

Mrs Takuva, appearing for the state, argued that the defence of non-pathological criminal incapacity was not available on the facts of this matter. In support of her stance she cited the case of *The State v Dorcas Duma* H-170-03 (unreported). The facts of the case in that matter are remarkably similar to the case before us. In that matter the accused killed her two and half year old son by administering poison to him. The accused denied the charge and tendered a limited plea of guilty to the lesser charge of culpable homicide. The state rejected the limited plea. The accused was also in an abusive relationship. The accused tried to take her life in a suicide attempt by taking poison. She survived. The child did not. The accused relied on the defence of provocation and argued that the cumulative effect of the abuse and provocation excused her conduct and that she could only be convicted of culpable homicide. In her judgment MAKARAU J (as she then was) dismissed her defence and at page 7 of the cyclostyled judgment state thus:

“The facts of the matter before us show that the accused was subjected to abuse over some 5 years. She did not react violently towards her abuser. She did not even react in direct response to the latest battering but in general despair and resignation over her plight. She decided to terminate her life, taking the life of the deceased as well.”

The defence of non-pathological criminal incapacity was also dealt with in the case of *The State v Noami Ncube & Anor* HB-100-02. In that matter the accused admitted that she had hacked the deceased with an axe but with no intention of killing him. The deceased was accused’s husband. She had struck him with an axe on the neck whilst he was asleep. She claimed that she wanted to fix him. She argued that she was incapable of appreciating the wrongfulness of her actions and that she acted under non-pathological “emotional storm”. The accused averred that she had been subjected to a sustained period of mental and physical abuse by her late husband. She chronicled that her husband drank alcohol to excess and that from the inception of their marriage he verbally and physically abused her. This had led her to suffer thus non-pathological “emotional” storm. In that matter KAMOCHA J, rejected the defence and indicated that her actions were not consistent with those of a person who acted sub-consciously. He held that her actions revealed that she had criminal capacity. Consequently, the defence was not available to her.

The issue of criminal capacity to act voluntarily is dismissed by the author J. Burchell, in *Principles of Criminal Law* 5th edition at page 75, where the following is stated:

“Strictly speaking there are two stages in assessing the requirement of voluntariness. First, is the accused capable of controlling his or her conscious well, and secondly, was the conduct in fact controlled by his or her conscious well? If the first question is answered in the negative, there is no need to examine criminal liability any further. The first question involves a subjective inquiry into criminal capacity, defined as the ability to appreciate the wrongfulness of conduct (the cognitive element) and the ability to act in accordance with this appreciation (the conductive element) ...”

We find ourselves faced with almost the same set of circumstances as in the two cases referred to. The accused was by her own admission aware that her act of taking the life of her 8 year old daughter was unlawful. She had no right to take the life of her daughter. She had no excuse for terminating the life of another. Whatever emotional; or physical abuse she suffered at the hands of her husband did not excuse her conduct. The defence of non-pathological criminal

incapacity does not apply. The accused possessed the necessary mental capacity to bring about the death of the victim. She was not suffering from any mental incapacity. She confirmed that she hoped to die as well by committing suicide. She did not. In the absence of any recognizable defence excusing the conduct of the accused, we are compelled by law to find her guilty of murder with actual intent. She admits that she meant to cause the death of the deceased. She achieved that objective. The deceased lost her life. Unfortunately for the accused she failed to take her own life. In the circumstances we are satisfied that the state proved its case beyond reasonable doubt. In the result, and accordingly the accused is found guilty of murder with actual intent.

Sentence

In assessing an appropriate sentence this court shall take into consideration all the mitigatory features of the case as highlighted by accused's defence counsel. This court takes into account that the accused is a first offender. She was aged 29 years at the time of the commission of the offence. She was in an abusive relationship. From the accused's testimony she never really had a happy married relationship. The court finds as mitigating circumstances the following:

- (a) that the accused was in an abusive relationship
- (b) that the accused was routinely abused physically and emotionally by the husband
- (c) although the murder itself was premeditated there was emotional and psychological trauma brought to bear upon the accused
- (d) the accused is a female first offender
- (e) the accused admitted committing the offence and appeared genuinely remorseful for her conduct
- (f) there has been a considerable delay of 7 years in the finalisation of this case.

This court however, notes that the correct message must be sent to society, that women who find themselves in abusive relationships should seek counsel. The notion that suicide is the only escape route out of an unhappy relationship cannot be countenanced. The courts have a duty to protect the sanctity of human life. The right to life is protected under section 48 of the Constitution of Zimbabwe Amendment (No.20) 2013. To take away the life of one's child for

whatever excuse will not be sanctioned or encouraged by these courts. Women who suffer the “battered woman syndrome” (BWS) ordinarily may, not raise the defence lack of criminal incapacity when they direct their anger and frustration, not at their abuser, but at their minor child, or some other third party. In this case the loss of life was unnecessary and unjustified.

In the circumstances, and for the foregoing reasons, the accused is sentenced as follows:

10 years imprisonment of which 3 years is suspended for 3 years on condition accused is not within that period convicted of an offence of which violence is an element and for which she is convicted and sentenced without the option of a fine.

Effective sentence: 7 years imprisonment.

National Prosecuting Authority, state’s legal practitioners
Vundhla-Phulu & Partners, accused’s legal practitioners