



IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
SENTENCE-REHEARING CASE NO. 09 OF 2016

THE REPUBLIC
V
ADANI SONYEZANI BANDA

Coram: Hon. Justice M L Kamwambe
Mr Malunda of counsel for the State
Mr C. Chithope of counsel for the convict
Mr Nicholas Phiri, Official Interpreter
Mrs Pindani, Court Reporter
Mrs Mswoya, Secretary

JUDGMENT

Kamwambe J,

The convict, Adani Sonyezani Banda was arrested on 7th July, 1998 for causing the death of Mulumbenji Jamu at Madimbo Village in Mchinji district. He was convicted of murder by the High Court sitting at Mchinji and was sentenced to suffer the mandatory death penalty on 18th November, 2002.



Brief facts are that the convict disagreed with the 70 year old deceased because she was preventing him to sell a piece of land. On the material day he bought two tubes of lethal insecticides called 'termic' which he poured into locally brewed beer known as 'kachasu' which the deceased was going to drink. After drinking the beer, the deceased complained of stomach ache and died the following day. The convict was only arrested on 5th of August, 1998 as the villagers thought they would sort out the matter among themselves.

In **Francis Kafantayeni v The Attorney General, Constitutional Case No. 12 of 2005(unreported)** the Constitutional Court declared the imposition of the mandatory death sentence unconstitutional, hence this re-sentencing exercise. This time around the court is sanctioned to hear the convict on the assessment of sentence in mitigation. The court would hear the State as well on the aggravating factors. In **McLemoce Yasini v The Republic MSCA Criminal Appeal No. 29 of 2005(unreported)** the court of Appeal ordered that the Director of Public Prosecutions should bring back all applicants in the Kafantayeni case and all other convicts sentenced before the Kafantayeni case.

The maximum sentence of death should be reserved for the worst of worst offenders. In the **Republic v Jamuson White**, Criminal Case No. 74 of 2008 (unreported) the court emphasised that the death sentence must be reserved for the rarest of the rare cases:

"The offence must have been committed in decrepit and gruesome circumstances, meticulously planned and intentioned and that the accused is highly likely to offend again to justify his total removal from associating with other persons even in prison. He must be a threat to society so much so that society would, without thinking twice approve his elimination from planet earth. The

motive for the killing must be so heinous so as to cause a deep sense of society abhorrence and condemnation that such human being does not qualify to live."

This court would consider the fact that the convict was a fairly young person at 24 and was a first offender. Youthful age is a strong mitigating factor as the convict is taken to be inexperienced in life. **See R v Felix Madaliso Keke** Confirmation Case No. 405 of 2010. He stands the advantage of being a first offender as this shows that he was a good citizen who avoided conflicting with the law. Courts are advised not to look at how ghastly the killing was but to consider all the circumstances of the case including the individual circumstances of the convict. However, the public must be protected from those that are likely to continue to be a threat to society, even in prison.

He has already spent 18 years in prison and the court will take this into consideration. Courts are entitled to consider possible reform and adaptability or re-integration. One way is considering convict's conduct in prison being his new environment. The courts should be left to determine how much weight to attach to this post-conviction conduct. Even if a person had good character before committing the crime, if he demonstrated detestable character while in prison, the court will be reluctant to show lenience on the convict as he has developed character difficult to reform. You, of course, leave the prison authorities at the appropriate time deal with remission of sentence as mandated. That does not concern the court.

It is a sound principle that it is always for the prosecution to prove beyond reasonable doubt that death is the appropriate sentence. This burden never lies on the defence. In this case the prosecution has not suggested that death sentence be

maintained. It has not even suggested for a life sentence. So this case is not one of the worst of the worst of murder offences. I should, however, admit that the murder was intentioned and planned. When the convict said he was going to look for medicine, he did not really mean to help but to delay any assistance that would come by the deceased to prevent her death. Hence, it took him long time to fetch medicine.

I have also said in the past that courts in Malawi should not lose sight of the sub-standard conditions in our prisons which is a further punishment on its own. Humane conditions and conditions which are not degrading are to be enforced otherwise all custodial sentences may prove to be unconstitutional. Findings in the case of **Gable Masangano v Republic Constitutional Case No.15 of 2007** is case in place. Their human rights guaranteed by the Constitution are observed in default by government, and with this knowledge, some measure of lenience in sentence will not be outrageous.

The convict's confession to the crime at the village level and also at the police as a show of co-operation could be considered in mitigation by looking at the totality of the circumstances. The court is at liberty to decide judicially how much weight to attach to this co-operation. Sometimes confessions are made not as a sign of remorse or need to co-operate, but due to lack of any other explanation. In short, circumstances may have forced him to confess.

The convict's pre-crime record appears to be impeccable. He was a good boy reliable in the community. He was hard working so that he feeds his family being the first born. This led him to drop out of school. It looks like this was a one off criminal incident that he committed. I should imagine how much the conduct of the

deceased affected him to lead him into such nefarious act of killing.

Not much consideration will be given to the plight of the convict's mother by taking care of the convict's children. The circumstances do not require to show lenience for this family burden.

In view of what I have stated above and to show that regardless of some strong mitigating factors, to show that he did quite a despicable thing as he could not employ other means, I sentence him to suffer 28 years of imprisonment from the date of incarceration.

Pronounced in Open Court this 4th Day of April, 2016 at Zomba District High Court



M.L. Kamwambe

JUDGE