



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
HOMICIDE CASE NO. 61 OF 2015**

THE REPUBLIC

V

PETERSON KAMPIRA

CORAM: HON. JUSTICE M.L. KAMWAMBE

Mr Salamba of Counsel for the State

Mr Chinguwo of Counsel for the Accused

Nicholas Phiri Official Interpreter

Miss Chiusiwa, Reporter

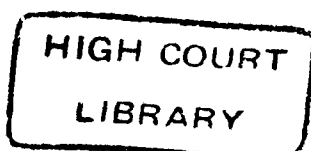
Mrs Msowoya, Secretary

SENTENCE

Kamwambe J

The accused Peterson Kampira was convicted on his on plea of guilty and admission of the facts as narrated by the State as correct. He admitted that he assaulted the deceased unlawfully and that he caused his death.

The facts are that the crime occurred on the 14th March 2014 at 9:00 am. The deceased was coming from a beer party going to his house. He branched by the house of the suspect and found the convict's wife. He asked for a cup of water and later started



making advances at the woman. She refused. Her name is Jenifer Peterson. Later, the deceased started forcing himself to sleep with her. After failing his mission he went to another drinking place. When convict came home the wife explained what happened.

Thereafter the suspect followed the deceased to the drinking joint where he found deceased drunk. He returned home doing nothing to the deceased, not even asking him anything. After a few minutes the deceased came to the convict's house. The convict asked the deceased why he has come to his house. The deceased started apologising and crying and started insulting the convict and his family. The insult was that he wanted to assist the convict who was failing to impregnate his wife. The convict could not hold himself any further. He assaulted the deceased with bare hands and kicked him with his legs. As the deceased was running away, he fell down after a few metres from the house. He died on the spot and the matter was reported to the Police.

In sentencing the court exercises its discretion, which discretion shall be exercised judicially. The court has to take into consideration section 321J of the Criminal Procedure and Evidence Code which states that the court may, after judgment but before passing sentence, receive such information or evidence as it thinks fit, in order to inform itself as to the proper sentence to be passed...The information or evidence that the court may receive.....in addition to the evidence of the accused or the prosecution, include information or evidence by or on behalf of the victim of the offence and any relevant reports to enable the court to assess the gravity of the offence. Both counsel did not find it necessary to apply section 321J of the Criminal Procedure and Evidence Code. The court cannot insist on its compliance as it is not mandatory. May be there was no other material information or evidence to produce to assist the court.

In **Ayami v Rep [1990] 13 MLR 19 (SCA)** the Supreme Court of Appeal stated that in considering the appropriateness of the sentence, it is imperative to evaluate the extent of the crime, the effect on the victim (or victims) and the circumstances in which it was committed, and come up with a sentence which is appropriate in that particular case.

In **Republic v Samson Matimati** the court highlighted that in mitigation Courts have to look into the personal and individual circumstances of the offender as well as the possibility of reform and social re-adaptation of the convict.

Even if manslaughter is a serious offence this court shall take into consideration the fact that the convict is a first offender due to the particular circumstances of this case. Ordinarily, I would not consider being a first offender as a strong mitigating factor in a manslaughter conviction.

It is the duty of the sentencing court to be just and fair by having in mind the interests of the victim, convict and the society and balance them to come up with an appropriate sentence. It is not always so easy a task. Likewise, I shall take into account the youthful age of the convict. He committed the offence when he was 27.

I have carefully looked at the circumstances of the case. The deceased sexually assaulted the convict's wife when the convict was away. The wife was bold enough and honest to eventually inform the husband about the provocative behaviour of the deceased. The convict went to the beer joint where the deceased

went to continue drinking, but on finding that the deceased was drunk, he refrained from asking him what he did to his wife. As a gentleman he decided to go back home. He arrived at his house and later he saw the deceased arrive at the suspect's house. The deceased started to apologise to the suspect for what he did earlier to the suspect's wife and he was crying. As if he was possessed he turned around and started insulting the suspect for failing to impregnate his wife and advised that he was there to offer assistance. By all standards, the nature of provocation was so scathing and poignant that an ordinary person would be expected to use a panga knife or any other lethal weapon available in the house. Instead, the convict assaulted the intruder with bare hands and feet. He was able to stomach the insults and use the least punishment to the intruder. The deceased was an unwanted and malicious intruder because that is what he portrayed himself to be.

In my strongest view, the deceased invited death upon himself and it is unfortunate that after he is gone he has placed the convict in this unpalatable situation. Either death was beckoning at him or he was beckoning at death, but unfortunately it was the convict who was used by fate to do the act of fulfilling the act that gave rise to the deceased's death. But even then, he did it not in a cruel and ghastly manner, but in a more humane manner as expected of any reasonable person with a strong sense of restraint. The convict did not expect that such a thing would happen since it was business as usual for him until the deceased spoiled his day. I must confess, I have not heard that he was a bad character in the community.

The sentence I am intending to impose on the convict may seem to be novel and ridiculous for one who has taken away a person's life but, considering the circumstances stated above, it is the appropriate sentence. We do not only look at the seriousness or nature of the offence but also the circumstances surrounding the crime. It is imperative for me to consider section 337 (1) (b) of the

Criminal Procedure and Evidence Code which I have rarely applied. It is couched as follows:

"Where in any trial for an offence, the court thinks that the charge is proved but is of the opinion that, having regard to the youth, old age, character, antecedents, home surroundings, health or mental condition of the accused, or to the fact that the offender has not previously committed an offence, or to the nature of the offence, or to the extenuating circumstances in which the offence was committed, it is inexpedient to inflict any punishment, the court may-

(b) Convict the offender, and if probation is not appropriate,

make an order either discharging him absolutely or, if the court thinks fit, discharging him subject to the condition that he commits no offence during such period, not exceeding twelve months from the date of the Order, as may be specified therein;"

The convict is a first offender who I noticed to be genuinely remorseful. He did not just plead guilty before this court but he admitted to murder when he was charged by police. This shows how co-operative and remorseful he was. He is of youthful age at 29 now. The convict was arrested on 15th March, 2014 which means that he has been in custody for two years. Even if the post mortem report says that the deceased died due to assault, but since there was no cross examination on the cause of death, the deceased may have died due to falling down on the ground as he was running away in his drunken state, and not necessarily due to assault. In my mind there is some sort of obscurity or uncertainty as to the actual cause of death. In fact the deceased contributed greatly to his own death.

I have considered cases cited by the defence such as **R v Legani Lipande Crim. Case No. 320 of 2010** where after full trial the

court awarded 6 years imprisonment sentence to the accused who assaulted his deceased wife.

In **R v Hopeson Kanthwe** Criminal Case No. 50 of 2009 (unrep.) Mbvundula J meted a sentence of 5 years imprisonment to the convict who assaulted the deceased for provoking him. The convict had already spent two years in custody when he was convicted and he was 30 years of age then.

In **R v Siyeni Nakhoya** Criminal Case No. 102 of 2008 (unrep.)(High Court Zomba District Registry), the accused assaulted the deceased. He was a young first offender and he pleaded guilty. He was sentenced to 5 years imprisonment.

I am aware of the strong sentiments of Chipeta J as he was then, in **R v Dalitso Mathuso** Criminal Case No. 27 of 2008 where he said to the effect that one cannot envisage sentencing a homicide convict as if it were a mere burglary offence. I agree with him, but I have been moved by the circumstances of this case for me to consider a more lenient punishment. Each case must be considered according to its own unique facts.

In view of what I have stated above, I discharge the convict forthwith under section 377(1) (b) of the Criminal Procedure and Evidence Code on condition that he does not assault any other person for a period of 12 months.

Pronounced in Open Court this 14th day of March 2016 at Chikwawa.


M L Kamwambe
JUDGE