



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL DIVISION
CRIMINAL CASE NO. 49 OF 2009**

**THE REPUBLIC
V
VICTOR KAPANDA**

CORAM: Hon. Justice M L Kamwambe

Salamba of counsel for the State

Panyanja of counsel for the Convict

NgomaOfficial Intrepreter

Pindani....Court Reporter

SENTENCE

Kamwambe J

The convict entered a plea of not guilty to manslaughter contrary to section 208 of the Penal Code and he admitted that the facts narrated by the State were true and correct. Before entering a plea of guilty, the court warned the convict of the nature and consequences of a guilty plea in accordance with section 251 (2) of the Penal Code.

MACLEAN KAMWAMBE



The facts of the case were that the convict, who was 45 years of age then, was husband to the deceased person, Margret Josephy. They were running a hawker. On 19th day of February, 2004, whilst the wife was suffering from an attack of malaria, the convict went to a nearby bar to drink beer instead of running the hawker. The wife was against this practice. She went to fetch her husband at the bar but the husband could not leave immediately. She went to fetch him a third time and this infuriated the convict who took her home, held her by the neck into the bedroom and he assaulted her. She fainted and she was taken to Matope Health Centre where she was pronounced dead on arrival.

Section 211 of the Penal Code provides for punishment for a manslaughter charge and puts the maximum sentence at life imprisonment. Only in the rare of the rarest circumstances is a maximum sentence imposed, or that the maximum sentence should be reserved for the worst of offenders in the worst cases.

In **Ayami v Rep** [1990] 13 MLR 19 the court 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. Sentence must also befit the offender in that it should not be manifestly on the lower or higher side, and that the court should take into consideration the mitigating factors that may avail the offender. See **Republic v Samson Matimati** Criminal Case No. 18 of 2007 HC (unreported). The court should take into consideration the personal and individual circumstance of the convict as well as possibility of reform and re-adaptation. **Republic v Samson Matimati (supra)**.

The law favours the young and the old. The young are those between 18 and 25 years, and the old are those over 60 years. These persons deserve some lenience in sentencing because of

their tender and old ages. See **R v Ng'ambi** [1971-1972] ALR Mal 457. They should be saved from serving long custodial sentences. Consideration should also be given to first offenders although in very serious crimes as murder, depending on the circumstances of the case, lenience may not be exercised. A custodial sentence is justified in serious offences committed in grave and heinous circumstances. In **Domingo Juwawo v Republic** Confirmation Case No. 1029 of 1996, the accused person though he was young when he committed the offence, had his sentence enhanced because of the manner in which the offence was committed.

Further, that one pleaded guilty will win him reduction of sentence up to one third of the normal sentence. It is in the discretion of the court to determine by how much the reduction should be, up to one third of the sentence.

The court will take into consideration, whether an offensive weapon was used or not and how it was possessed. See **Winston Ngulube & others v The Republic** MSCA Criminal Appeal No. 35 of 2006 (unreported).

In the present case, the convict had drunk some beer and when his head got light his attitude may have been affected hence he got angry easily with the insistence of the wife that he goes home. In the course of his anger, he assaulted his wife to death. The charge of manslaughter was befitting because there is no evidence that he formed the intention to kill his wife. He may have overreacted but with no malice aforethought. It is not surprising that he did not use any lethal weapon to assault the victim but his bare hands. Of course he acted foolishly, however, he deserves some measure of lenience. His conduct after the wife fainted is consistent with a remorseful heart. He helped to take the wife to hospital. In fact, he sent for people to come and assist in the situation. He did not expect to see what had happened.

Convict pleaded guilty which greatly attracts consideration of sentence in his favour apart from the fact that he is a first offender. I will also consider the length of time it has taken to prosecute him while he has been in custody. His right to fair trial by ensuring a speedy trial in accordance with section 42 (2) (f) of the Constitution was violated. He must have suffered a lot of psychological anguish due to the long delay. He has now been in custody for over 14 years since his arrest in February, 2004. He saw his friends know their fate while he was kept in the dark not sure if he shall stand charged with the offence of murder or manslaughter while bail was denied him twice. This is most unjust to the convict.

In the circumstances, I pass a sentence that will lead to his immediate release unless he is held for other lawful reasons.

Pronounced in open court this day of 28th day of August, 2018 at Chichiri, Blantyre.



M L Kamwambe
JUDGE