



**IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY
CRIMINAL DIVISION**

CRIMINAL CASE NO. 17 OF 2010

THE REPUBLIC

V

HORRIS MITHATHI

CORAM: Hon Justice M L Kamwambe

Munthali of counsel for the State

Sigele Chirwa of counsel for the Convict

Ngoma ...Official Interpreter

Mthunzi...Recording Officer

SENTENCE

Kamwambe J

The accused person together with John Jimu, now deceased whilst in prison, were convicted on the 26th January, 2018 for the murder of George Valani, on the 30th day of August, 2006, contrary to section 209 of the Penal Code. The murder took place at Luchenza in the District of Thyolo, in the area of sub-chief Nanseta.

The deceased was a headmaster at Mikombe Community Day Secondary School. He was assaulted by the two accused as he was going home at night after drinking. After attacking him with a panga knife about 300m from Luchenza Community Day Secondary School he was left unconscious on the main road to

Thyolo to fake a motor road accident. He was run over by a motor vehicle, probably a big one since he was discovered with intestines gaping outside. He sustained injuries to the head and fractures of both legs and the right arm. On this very night, the accused met one John Michael **(PW1)**, a businessman who sold chickens and goats. He told the court that he bought a goat from the accused persons at K1, 500.00. In the course of selling him the goat, the accused persons told him that they had assaulted someone with a panga knife and they had left him unconscious. The assault was because the deceased had asked them about the goat. Eventually, all evidence led to the conclusion that this was the only man attacked on that night who ended up being run over by a vehicle. They were convicted accordingly.

When sentencing, the court must consider mitigating and aggravating circumstances. Mitigating factors speak well for the accused person and will often lead to the court exercising lenience on him. Aggravating factors speak against the accused person and will lead the court to pass a more severe sentence from what normally it would be. Penal sections in Malawi provide for maximum sentences. Sentencing practice is clear that only worst offenders deserve maximum sentences. Ordinarily, imposition of a sentence more than half of the prescribed maximum sentence is not usual. However, in deserving situations, courts may sentence one beyond half the maximum sentence.

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 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 the manner in which the offence was committed was such that his age and his conduct did not match.

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 the manner in which the offence was committed, especially, whether an offensive weapon was used or not. See **Winston Ngulube & others v The Republic** MSCA Criminal Appeal No. 35 of 2006 (unreported).

In **The Rep. v Duncan Golasi, Homicide Case No. 27 of 2018**, the convict lost the first fight with William and he went home unhappy and frustrated. His anger had not subsided so, he collected a knife and put it into his pocket. After about twenty minutes, having changed clothes, he was back at the beer party where he looked around for William but did not find him. He bought some beers and sat under a mango tree. When he was confronted by the deceased why he was causing trouble to merry making people, he was not pleased and another fight ensued with the deceased and he stabbed the deceased person in the stomach who died three days later at Queens Elizabeth Central Hospital where he was referred from Mwanza Hospital. The offence was planned and premeditated and his actions were inconsistent of a drunken person. He knew what he was doing and what he wanted to achieve. He carried the knife for revenge on William who he did

not find but opportunity to vent his anger arose when the deceased person confronted him. It cannot be said that his actions were as a result of provocation or drunkenness but out of malice. He used the knife the way he intended it to be used and he fled from the place. He was chased and arrested. We was not remorseful hence, he fled without attending to the person in agony. The circumstances of this case were really serious. A sentence of 24 years imprisonment was meted.

Despite the serious circumstances in which the crime was committed, the present case does not fall in the ambit of the rarest of the rare circumstances of murder warranting the imposition of the death sentence. In the case of **Republic v Jordan Criminal Case No. 58 of 2008** the convict intentionally insisted that the wife should leave the one year nine months old child as she was going to draw water from a nearby tap. The convict killed the stepchild and on her return she found the child dead. A life sentence was imposed despite the court observing that convict had no history of being a violent and dangerous person to society, and that it was usual in our local circumstances that step-fathers do not like the presence of step-children. They love mothers of the children and not the children.

In the case of **Republic v Sinosi Pasipanadya Criminal Case No. 41 of 2008** the convict cut the child on the finger and as the child was crying his wife reprimanded him for what he had done. The convict's wife went to report to her mother what her husband had done to the child. She left the child behind. When she came back home she discovered that the convict was not with the child. He buried the child in the sand at a river bank. A life sentence was imposed.

The accused did not plead guilty which would have entitled them to sentence reduction up to one third of sentence to be imposed. The offence was perpetrated by two persons against one person who otherwise was simply walking home. They assaulted him with a panga knife which they were carrying. They showed no remorse at all. The mere use of a panga knife demonstrated that they really intended to cause grievous harm or death. It was a suspicious hour that the accused were walking with a goat and it

was not out of place for one to ask them about the goat. What was wrong with so asking?

The convicts acted very irresponsibly with no regard for human life. They did not even want to help him to hospital which meant that they intended the consequences thereof. As a result of their actions, the nation of Malawi, not only the family members of the deceased, also has been adversely affected by the loss of a headmaster. The accused persons' actions fall in the category of gross anti-social behaviour worth severe punishment. They do not deserve any lenience. The court fails to see the real motive of attacking the deceased to that extent and one can only think that it was to commit robbery or to get rid of the deceased who would reveal that at that late night they were with a goat. In the course of doing all that, they left him in the main road in danger of being run over by a vehicle, which really happened. This was so cruel and inhuman of them befitting a life sentence.

In the circumstances, this court imposes a sentence of 40 years imprisonment from the date of arrest.

Pronounced this 23rd day of January, 2019 at Chichiri, Blantyre Principal Registry.



M L Kamwambe

JUDGE