

**THE STATE**

**Versus**

**VINCENT DUBE**

IN THE HIGH COURT OF ZIMBABWE  
DUBE-BANDA J  
BULAWAYO 8 NOVEMBER 2022 & 10 JANUARY 2023

ASSESSORS: 1. Mr Damba  
2. Mr Sobantu

**Sentence**

*K. Guveya*, for the State  
*S. Chivaura*, for the accused

**DUBE-BANDA J:**

1. This court (per KAMOCHA J) on 13 September 2013 convicted the accused of the crime of murder with actual intent to kill. The court found that there were no extenuating circumstances and passed a sentence of death. The accused appealed to the Supreme Court against both conviction and sentence. After hearing the appeal the Supreme Court (*Dube v The State* SC 57/2016) ordered as follows:
  - i. The appeal against conviction be and is hereby dismissed.
  - ii. The appeal against sentence is allowed and the sentence of death imposed upon the appellant is hereby set aside.
  - iii. The matter is remitted to the trial court for the passing of an appropriate sentence.
2. The presiding judge KAMOCHA J has since retired. This matter was then placed before me for sentence in terms of the Supreme Court order. I noted that the Supreme Court remitted this matter to the trial court for the passing of an appropriate sentence. A matter remitted by the Supreme Court must be determined precisely in terms of the remittal order. It is so because this court has no competence to vary, alter or by-pass a Supreme Court order. It is on the basis that this matter was remitted to the trial court,

not to the presiding judge that I proceeded to hear it. See: *C V C SC 178/13; The State v Munkuli & Anor HB 278/22*.

3. The Supreme Court held that the death sentence imposed upon the accused was unlawful on the grounds that it was imposed contrary to the provisions of the Constitution. At the time you were sentenced there was no law in place which provided for a finding of a conviction of murder in aggravating circumstances. In the absence of such a law no court could pass a sentence of death consequent upon a conviction on a charge of murder. In order to give effect to the provisions of s 48 (2) of the Constitution, the Parliament has promulgated the General Laws Amendment Act of 2016. S 47 of the Criminal Law (Codification and Reform) Act has been amended to align with the requirements of s 48 of the Constitution. The result is that there now exists a law providing for the imposition of a death penalty where a murder has been committed in aggravating circumstances. This court can now lawfully pass a sentence in accordance with the provisions of s 47 (4) of the Criminal Law [Codification and Reform Act] as read with s 337 of the Criminal Procedure and Evidence Act. See: *Dube v The State SC 57/2016*.
4. This court can now lawfully pass a sentence in accordance with the provisions of the law. S 47 (4) (a) of the Criminal Law [Codification and Reform] Act provides that a person convicted of murder shall be liable subject to s 337 and 338 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], to be sentenced to death, imprisonment for life or imprisonment for any definite period of not less than twenty years, if the murder was committed in aggravating circumstances.
5. Mr *Guveya* counsel for the State submitted that this murder was committed in aggravating circumstances, in that it was premeditated as provided in s 47 (3) of the Criminal Law [Codification and Reform] Act. Premeditated murder is generally characterized by a measure of forethought and planning. It is clear that the murder was premeditated. The accused suspected that there was a relationship between the deceased and one David Nunu. While he was erecting a tree branch fence at the deceased's mother's homestead, he saw the deceased enter the kitchen hut. Instead of leaving the axe and a knobkerrie at the fence he decided to carry these to the kitchen to confront

the deceased. He did not need these weapons to talk to the deceased. He carried the weapons because he wanted to use them against the now deceased. The murder was premeditated. This court finds that this murder was committed in aggravating circumstances in terms of s 47 (3) Criminal Law [Codification and Reform] Act.

6. The accused did not testify in mitigation of sentence. Mr *Chivaura* placed the following personal circumstances on record: the accused is 51 years old. He went to school up to Grade 7. He is an artisanal miner. That it was his intention to marry the deceased. He had a child with the deceased, who was two years old at the time he committed this crime. Following the death of the deceased he was arrested and released on bail, got married to another woman and he has three children out of that new union. The court has been told that he is very remorseful.
7. Mr *Chivaura* argued that the accused acted out of provocation, provocation arising from the actions of David Nunu who was sending messages to the now deceased. Counsel argued further that this crime was committed on the 2<sup>nd</sup> October 2001, and he was tried almost 11 years thereafter. There has been another delay of 9 years preceding his sentencing today. Counsel argued that the accused has had to wait for a period of 20 years for the finalisation of this matter. Counsel submitted that these factors must be considered in arriving at an appropriate sentence.
8. Mr *Guveya* counsel for the State argued that this is a case of gender violence perpetrated by the accused against his intimate partner and mother to his child. Counsel submitted that cases of gender violence were on the increase and this court must protect vulnerable women in our society. It was submitted further that the now deceased met her death at a young age of nineteen, and her child remained without a mother. The accused became very possessive and refused to heed advice to formalise his relationship with the now deceased. He resorted to using violence against the now deceased. The accused committed a brutal, callous and senseless murder against a defenceless woman. He was motivated by jealous. He used an axe. Counsel argued that the facts of this case cries out for the death penalty.
9. The general principles to be considered in the determination of an appropriate sentence are principles developed by the courts over the years. These general principles, also

referred to as the triad, consist of the crime, the offender, and the interests of society. See: *S v Zinn* 1969 (2) SA 537 (A) at 540 G-H. In the determination of an appropriate sentence a court must consider the aims of punishment namely retribution, deterrence, prevention and rehabilitation. In respect of the question of how the aims of punishment should be incorporated in the *Zinn* triad, SS Terblance in *Guide to Sentencing in South Africa*, 2<sup>nd</sup> Ed. 2007 p. 155 suggests that “theoretically,” the aims of punishment “should be dealt with as part of the interest of society component of the *Zinn* triad.” See: *State v Malumo* (CC 32/2001) [2016] NAHCMD 43 (8 December 2015).

10. It has been stated that in sentencing a court must strive to balance the three factors in the triad. However it is an acceptable principle that a court may, depending on the circumstances, emphasise e.g. the seriousness of the offence at the expense of the personal circumstances of an accused person, and that “balancing” should be understood to mean each factor should be afforded a certain weight, not that each factor should be afforded equal weight. In *S v Vekueminina* 1993 (1) SACR 561 (NM) at 564 the court said in cases where the nature of the offence causes moral indignation, in such cases the purpose of the penalty must clearly be retributive, the interests of the accused must recede to the background.
11. In *S v Rabie* 1975 (4) 855 AD at 862 G the court said punishment should fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances. In *State v Malumo (supra)* the court held that compassion for the offender is the mark of an enlightened society and what constitutes mercy in a particular case and its application can be elusive, but that mercy has nothing in common with maudlin sympathy for the accused, and recognises that fair punishment may sometimes have to be robust.
12. The interests of society is significantly implicated in a case such as this that involves violence of an extremely serious degree against a woman. Violence against woman is prevalent, and society is entitled to expect of courts to impose sentences that send a message clearly that violence against the weak and vulnerable in our society will not be tolerated. In view of the spate of brutal murders currently committed against women in this country, where the victims are struck with axes or stabbed with Okapi knives and other dangerous weapons the courts of law must rise to the occasion and confront

this tide head on. Crimes like the present disturb the peace and harmony in society and unless the offender is given a sentence which satisfies the requirements of justice, a sentence which not only reflects the disapproval of the courts, but also that of society, some might lose faith in the justice system and decide to take the law into their own hands.

13. The accused committed a heinous crime of murder. He went to the homestead armed with an axe and a knobkerrie. He did not need to arm himself with such dangerous weapons to speak to the now deceased in connection with the issues arising from David Nunu. He could have left the weapons at the fence where he was working. When he got to the hut he had two weapons at his disposal, i.e. axe and the knobkerrie and he chose to use the axe and discounted the knobkerrie. The axe which was used in the commission of the offence was admitted into evidence. It had a wooden handle measuring 70cm long, with a sharp blade measuring 20cm long and 10cm wide. It weighed 1.458 kg. The accused used a formidable axe with a very sharp blade against another human being, a defenceless woman.
14. The brutality of the attack is graphically portrayed in the post-mortem report. It reveals two external injuries, an axe wound to the temporal region measuring 13 x 3 x 6 cm and a compound fracture of the left temporal region. The internal examination revealed a fracture of the left temporal bone 13 x 6 cm. In the summary of the history the pathologist recorded that the deceased died instantly. The accused struck the now deceased in the nape of the neck not once but twice. The axe remained embedded on the back of the head of the now deceased. Brain matter oozed out of the head. This speaks to the force and violence that the accused used in striking the deceased. This was a vicious and deadly attack, with a deadly weapon against another human being.
15. The attack involved a high degree of uncontrolled violence. The victim was unarmed and defenceless. The attack displayed a high level of cruelty and an almost unprecedented degree of disregard for the

welfare of the now deceased. This murderous attack constitutes a very serious crime, warranting a severe penalty.

16. This murder must rank extremely high on the ladder of serious crime. Society expects violent crimes to be evaluated with sufficient seriousness and stringent penalties imposed. In this instance the accused committed this crime with a high degree of unbridled violence, the violence directed against the mother of his child. The weapon used against the deceased was an axe, the victim unarmed and defenceless. It was a cold-blooded murder. The violence was excessive and gratuitous, it was intended to cause maximum harm, and it did.
17. Mr *Chivaura* informed this court that the accused is remorseful. In a case like this the plea of remorse that comes from counsel carries little weight, if any. It must come from the mouth of the accused, the court must “hear and see” that indeed the accused is remorseful. We do not agree that he is remorseful.
18. At best for the accused we find that this crime was not committed in a vacuum but was the product of some provocation, arising from the actions of David Nunu who was sending messages inviting the now deceased. It is this aspect of the case that has caused the accused to escape the death penalty.
19. In these circumstances the personal circumstances of the accused recede into the background and the abhorrence of the crime and the interest of society must be emphasised. The moral blameworthiness of the accused is very high. He is a danger and must be permanently removed from society. We therefore find that the following sentence will meet the justice of this case:

The accused, Mr Vincent Dube is sentenced to life imprisonment.

*National Prosecuting Authority, State's legal practitioners*  
*Mashayamombe & Company, accused's legal practitioners*