

THE STATE
versus
GODKNOWS TAFADZWA RINGOZIVA

HIGH COURT OF ZIMBABWE
MUNGWARI J
HARARE; 12 March 2024

Sentencing Judgment

Assessors : Mr *Chimwonyo*
Mr *Kunaka*

A Mupini, for the state
P Takaidza, for the accused

MUNGWARI J: On the night of 14 January 2023 and at Kanengoni village Chambare Manyene in Chivhu, Godknows Ringoziva broke into the deceased's home motivated by a desire to steal. The deceased an elderly woman lived alone at the homestead. She walked in on him as he was in the process of ransacking her house and she confronted him. The offender elbowed her out of the way and assaulted her with her walking stick. He then took the deceased's blanket and covered her with it subsequently using it to suffocate her to death. Unmoved he stole her possessions, among them groceries, a cellphone as well as a blanket. He packed the property into three sacks loaded them into her wheelbarrow and wheeled the deceased's property away from her premises and escaped into the night. He was identified by Anderson Kashora as he made his way to the bus stop and by Taurai Nyandiro as he boarded a commuter omnibus enroute to Chivhu town. About a month later the offender was arrested in Mutasa and was subsequently arraigned before this court facing a charge of murder as defined in s 47(1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] (the Criminal Law Code). He pleaded not guilty to the charge. It was his defence that on the night of 14 January 2023, he was nowhere near Chivhu as he was at his father's homestead in Mutasa. He had arrived there on 5 January 2023 and had never left Mutasa district until his arrest in February 2023. We however threw out that defence and convicted him after a contested trial. The proved facts of the matter were as already stated above.

Currently, the presumptive penalty for a murder committed in aggravating circumstances is 20 years. That law however only came into existence in the latter half of 2023 yet this offence occurred in January 2023. There is no difference between the minimum mandatory sentence prescribed for murder committed in aggravating circumstances and the presumptive penalty stated in the sentencing regulations.

1. The Law

The initial stage in evaluating sentences in murder cases involves the court determining if the murder was committed in aggravating circumstances. Consequently, legal practitioners must recognize the necessity of addressing the court in relation to this aspect before presenting the generalised submissions in mitigation. Only if the court does not find that the murder was committed in aggravating circumstances will the general aspects in mitigation work in favour of the accused.

Section 47(4) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] provides as follows:

“(4) A person convicted of murder shall be liable—
(a) subject to sections 337 and 338 of the Criminal Procedure and Evidence Act [*Chapter 9:07*], to death, imprisonment for life or imprisonment for any definite period of not less than twenty years, if the crime was committed in aggravating circumstances as provided in subsection (2) or (3); or
(b) in any other case to imprisonment for any definite period.”

From the above provision, the court’s discretion is significantly limited in relation to the sentence it can pass after a conviction for murder where it finds that the killing was committed in aggravating circumstances. The decision on which sentence to impose is largely influenced by the strength of the mitigating and aggravating factors submitted by the defence and the prosecution. Citing the provisions of s 47(3)(b) of the Criminal Law Code, the state then submitted that this murder was committed in aggravating circumstances due to the victim being ninety-three (93) years old. The defence acknowledged that it was undisputed that the deceased was indeed of that age at the time of the murder and went on to state however that the deceased was an old woman nearing the end time of her life as it cited the case of *S v Gunde* HH 481/23. The relevance of the cited case was unfortunately lost to the court. We somehow interpreted counsel’s submission to mean that the defence was arguing that because the deceased was old, she had lost relevance in society suggesting that her old age could not be taken as aggravating. Where the argument stems from is baffling especially in light of the provisions of s 47(3)(b) which reads as follows:

“47 Murder

(1)-----

(2)-----

(3) A court may also, in the absence of other circumstances of a mitigating nature, or together with other circumstances of an aggravating nature, regard as an aggravating circumstance the fact that—

(a)-----

(b) the murder victim was a police officer or prison officer, a minor, or was pregnant, or was of or over the age of seventy years, or was physically disabled.”

In this case the deceased was ninety-three years of age as confirmed by both her seventy-four-year-old son and the doctor’s post mortem report. When a murder victim is seventy years old or older, it automatically falls under the category of murder in aggravating circumstances as stipulated by the law. This specific age threshold is not subject to negotiation or debate. The court is obligated to recognize and treat it is an aggravating factor based on the legal provisions in place. It is an aggravating circumstance and the matter ends there.

What further aggravates this crime is that this was a brutal murder of a defenceless nonagenarian without any provocation. The old lady was mercilessly attacked to death. The brutality and inhumanity of the assault were extreme. The offender did not give the deceased any chance of survival as evidenced by the deceased falling down attempting to crawl to safety and then the offender returning to finish her off by snuffing the little life left out of her with a blanket. The examining pathologist said the deceased was old and frail. She obviously stood no chance against the fierce strength of her twenty-eight-year-old attacker. She must have died a very frightened woman.

For some reason the defence counsel then went further and stated that the offender had constructive intent and not actual intent in committing the offence and as such the sentence to be imposed must be minimal. She cited the case of *S v Mungoza* CRB 8 of 2018. However, MAKARAU JA in the case of *Tafadzwa Watson Mapfoche v The State* SC 84/21 laid to rest the issue of whether or not it is of importance for the trial court in a murder trial to consider whether the murder was committed with actual or constructive intent. As already alluded to, what is important is for the court to determine whether or not the offence was committed in aggravating circumstance for purposes of appropriate sentencing. The argument about whether or not a murder was committed with actual or constructive intention is a tired one.

The state also argued that the fact that the offender had unlawfully entered the deceased house intending to steal is another aggravating factor. The defence on the other hand confirmed

that the offender had indeed entered the deceased's dwelling house and only intended to steal when he assaulted the deceased in the process. The defence counsel tried to differentiate this case from the *S v Mhunza* HH 331/2023. In the cited case the accused unlawfully entered the elderly deceased's house, and upon being startled by the deceased assaulted him until she died. The evidence before us is that the offender unlawfully entered the elderly deceased's dwelling house. He was disturbed by the presence of the deceased and assaulted her till she died. It is respectfully submitted that quite the contrary, the case of *Mhunza* is on all fours with this matter. The offender's behaviour therefore brought him squarely into the ambit of the aggravating circumstance of murder committed after an unlawful entry into a dwelling house. This court is enjoined to take as an aggravating circumstance that the murder was committed in the course of or in connection with or as a result of the commission of an unlawful entry into a dwelling house.

Section 47 (5) of the Criminal Law Code provides that the list of aggravating circumstances enumerated in s 47 (2) and (3) is not exhaustive. The provision provides that a court may find other circumstances in which a murder is committed to be aggravating. In the circumstances of the present case, even though the state encouraged us to we could not find any other aggravating factors besides those already mentioned.

We also highlight at this point that the defence prayed for a custodial sentence not exceeding twenty years. On the other hand, the state prayed for a sentence of forty-five years. For this purpose, in mitigation, counsel for the accused submitted the following:

2. Personal circumstances

We were informed that the accused is a twenty-nine -year-old first offender. He was twenty-eight years old when he committed the offence marking him as youthful offender. The fact that he is a first-time offender suggests that he is less likely to reoffend. The probability of an offender reoffending is assessed based on various factors. Past convictions can to some extent indicate an offender's predisposition to reoffend. We were not informed of any past convictions or any other factors and can therefore safely conclude that he is less likely to reoffend. We will consider this as mitigatory.

The accused is said to have a disadvantaged background. He grew up in rural Nyanga and is an O'level high school dropout. As with other submissions by counsel we again fail to see the disadvantage that comes with someone having gone to school up to O'level. If anything,

that should have put the offender at a level better than many people who did not have the privilege of learning up to O'level.

It was also submitted that the accused's upbringing heavily impacted on his behaviour and decision making and that his circumstances may have shaped his worldview and contributed to the tragic outcome. Counsel for the offender Ms *Takaidza* implored this court to exercise leniency in sentencing this unsophisticated offender. She also submitted that the accused has a wife and one child that are dependent on him among other ordinary issues.

In addition, it was submitted that the offender suffered pre-trial incarceration of one year. I asked counsel for the offender and the state to address me on this aspect. Both counsels agreed that the offender was let down by systems challenge when he made his abortive bail application. He was frustrated to no end by the prison officials who insisted that his state papers had to have an official stamp before it could be processed. His pre-trial incarceration was therefore not of his own making but of the state machinery. The pre-trial incarceration of one year will therefore be taken as mitigatory.

Lastly it was argued that the offender did not pre-mediate the offence. He had only set out to unlawfully enter into the premises. The murder came about as a result of the confrontation and he panicked after the confrontation. There was no rebuttal from the state. We accepted that the offender did not premeditate the offence. It appears from the pre-sentencing hearing that these are the only factors that the accused could advance as personal factors in mitigation of sentence.

On the other hand, we find it aggravatory that the offender was violent towards the deceased starting at the point of confrontation. The two were not strangers and the offender knew the old lady very well as he resided close to her homestead. He confessed to that himself during trial. It would appear that since he knew her, he also knew that she resided alone and that her children would provide for her. He then set out to steal from her. From that desire, the offender unlawfully entered her house. While he may indeed have initially just intended to unlawfully enter and steal from the deceased, things went south when the deceased resisted. The offender assaulted the deceased with her walking stick cracking her ribs in the process and pushed her until she fell. He thought he had done away with her but realised he hadn't when he saw her crawling and trying to make her way out of the house. He then beat her up again and suffocated her.

In aggravation Ms *Mupini* for the State furnished the court with a victim impact statement authored by Fanuel Mubata the deceased's elderly son. Fanuel expressed the pain he

felt on the news of his mother's death as well as the circumstances leading to her death. He claimed that he has and still is suffering psychologically from the death of his mother to the extent that he now has to take hypertension medication. He prayed for the court to impose a sentence of life imprisonment or death. While we benefitted from the insight provided by the deceased's child on the impact the murder has had on him and the recommended sentences, we cannot sentence the offender to either of these as we have already stated the factors, we deem to be mitigatory and which we will in the final analysis take into consideration in sentencing the offender.

In the final analysis and after considering all the factors presented in mitigation by the offender and the aggravating factors in this case, it is clear that the aggravation outweighs the mitigation. The loss of life due to greed and the presence of multiple aggravating factors make the murder senseless and extremely brutal such that a higher sentence than the mandatory penalty of (20) years' imprisonment is called for. The act of murdering another person is heinous on its own. This act must have sent shockwaves in the rural areas of Chambare Manyane. There is no doubt that this caused emotional distress to the deceased's family and loved ones. Human life was unnecessarily lost in cruel circumstances and no amount of punishment can bring back the life of the deceased. There is therefore in this case, the sad reality of a combination of aggravating circumstances under which the murder was perpetrated. That increases the accused's moral blameworthiness. The only saving grace for the offender's moral blameworthiness is that he is a youthful first offender who suffered pre-trial incarceration of one year. There is little or no risk that he will reoffend. It is our considered view that a sentence of **35 years imprisonment** will suit the instance of justice in this case.

National Prosecuting Authority, the State's legal practitioners
Mabuye Zvarevashe -Evans legal practitioners, accused's legal practitioners