

THE STATE
versus
TAISON CHAIRA

HIGH COURT OF ZIMBABWE
MUREMBA J
HARARE, 7 March 2024

Criminal trial – Sentencing judgment

Assessors: Mr. *Shenje*
Mr. *Gwatiringa*

Ms. C Mutimusakwa, for the State
Ms. L Garanowako, for the accused

MUREMBA J:

Introduction

The accused is a male adult who is 27 years old. He was charged with murder as defined in s 47(1) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] (the Criminal Law Code).

The plea

He pleaded not guilty to the charge and was convicted after a full trial. See HH 96-24 for the full judgment.

The relevant facts

The accused and the deceased were both residing in Chaira village in Masasa in Chivhu. They were close relatives. The deceased was a son to the accused's paternal grandfather's sister. The deceased was 82 years old at the time of his death. The deceased was a widower who was staying by himself at his homestead. The accused was staying with his young brother Panashe Chaira at their late parent's homestead, two homesteads away from the deceased's.

The deceased was last seen alive by his niece Tsitsi Homerai on 16 May 2022 at around 5-6 pm. At around 6am of 17 May 2022, the deceased's girlfriend Precious Mhenyu and Tsitsi

Homerai found him missing from his homestead and the door to his house was open. The two women had gone to the deceased's home to assist him in ferrying unshelled maize from his field. They noticed that money had been stolen from the wardrobe in his spare bedroom. The bag which the deceased used for keeping his money was missing. The two women searched for him to no avail, and they ended up alerting his relatives and other villagers. Many people went to the deceased's homestead to conduct a search. In conducting the search, people noticed one of the deceased's slope close to the well at his homestead. Suggestions were made to check for the deceased in the well. People improvised a device using a rope and a long stick which they put in the well. The device hooked the deceased's leg. Lancelot Nduna a fellow villager went down the well to retrieve the body of the deceased. It was his evidence that he found the head down and the legs up. When the body was taken out of the well, it was observed that the deceased's mouth was tied with a tie and the hands were tied behind the back using a t-shirt and a shirt.

The police attended the scene of crime after the deceased's body had been retrieved from the well. In inspecting the deceased's house, they discovered that the house had been broken into as the door latch had been removed. They also discovered a lot of blood on the mattress on the bed in deceased's bedroom. The police only managed to take away the body from the deceased's homestead to the mortuary on the following day, the 18th of May 2022.

The post mortem report that was produced by the State indicated that the causes of death were a neck fracture and a severe head injury. The deceased's body had the following injuries: a depressed skull fracture, a neck fracture, multiple facial bruises, a dislocated right shoulder and multiple lower limb bruises.

The accused was arrested for the murder of the deceased because the clothes that he was seen wearing on 16 May 2022, were seen with some fresh blood on the day the deceased's body was ferried by the police from his homestead to the mortuary. The accused had taken off these clothes and left them on the floor in his bedroom before proceeding to Harare on the very night the deceased was murdered. The accused bade farewell to his young brother Panashe Chaira and to his elder brother Norman Chaira around midnight. The clothes were discovered by his young brother Panashe Chaira on 18 May 2022 around mid-morning when he entered the accused's bedroom to charge his phone.

Upon discovering the blood-stained clothes, the accused's brothers alerted the police who went and collected the clothes. This is what caused the police to start looking for the accused. He

was now a suspect. He was arrested on 30 May 2022 in Harare where he was hiding. Upon his arrest, the accused confessed to the murder of the deceased. A warned and cautioned statement was recorded from him. The statement was confirmed in the Magistrates Court and it is that statement that the State relied on in securing a conviction against the accused. In the statement the accused stated that he used a screwdriver to remove the latch on the door to the deceased's house. He then gained entry and took some money. As he was now exiting the house, he then met with the deceased. The two of them fought and he overpowered the deceased. He then tied the deceased's mouth using a shirt and a t shirt. He also tied the deceased's hands using a tie before throwing the deceased into the well. The accused said that he then went home where he left his clothes and proceeded to Harare.

What the accused said in his confirmed warned and cautioned statement tallied with the observations that were made by the State witnesses at the deceased's homestead. When the accused went with the police for indications at the deceased's homestead, he even caused the recovery of the latch that he had removed from the door and threw in the grass within the deceased's homestead. It is in view of the foregoing that we convicted the accused. We made a finding that the accused intentionally murdered the deceased as he had tied his hands and mouth and threw him into the well alive.

The law

The law distinguishes between a murder which was committed in aggravating circumstances and a murder which was not committed in aggravating circumstances. The applicable penalties are different in the two scenarios. This is provided for in s 47(4) of the Criminal Law Code and in the sentencing guidelines in S.I 146/23. For an offence committed in aggravating circumstances, the penalty is death, imprisonment for life or imprisonment for any definite period of not less than 20 years. In terms of the sentencing guidelines the presumptive penalty is 20 years' imprisonment. For a murder committed in other circumstances, the penalty is any definite period of imprisonment. The presumptive penalty in the sentencing guidelines is 15 years' imprisonment. Therefore, in each murder trial, before sentencing an accused, the court must first determine if the murder was committed in aggravating circumstances in terms of s 47(2) and (3) of the Criminal Law Code and as listed in the sentencing guidelines. However, the court is not

limited to the listed aggravating circumstances. Both the Criminal Law Code and the Sentencing Guidelines state that the listed aggravating circumstances are not exhaustive.

In terms of s 47(3)(a) of the Criminal Law Code and the Sentencing Guidelines Regulations S.I 146/2023 at p 29, it is an aggravating circumstance if the murder was premeditated. In *casu*, as was correctly submitted by the State counsel, the murder was premeditated. This is because of the following. When the accused met with the deceased in the house after having stolen his money, they fought and the accused overpowered the deceased. The accused was aged 25 years, very youthful and strong whereas the deceased was 82 years old and obviously not as strong as the accused. The accused then tied the deceased's mouth with a shirt and a t shirt. He went on to tie the deceased's hands behind the back with a tie. He then made a deliberate choice to carry the deceased on his shoulders to the well which was outside the house. He then threw him into the well head down and legs up. We are not in agreement with the defence counsel that all these circumstances point to an impulsive killing of the deceased by the accused. Obviously, the accused was startled to see the deceased when he was exiting the house. Since they were closely related and knew each other very well, the accused had to make a quick decision on what to do next. His quick decision was to end the deceased's life. It is obvious that the accused wanted to cover up the offence that he had committed. He could not face the humiliation and embarrassment that was going to come with the deceased revealing to the community and the family what he had done. To ensure that the deceased would not tell, he decided to silence him forever. That is why after overpowering the deceased, he went on to tie his mouth and hands, carried him all the way to the well outside the house and threw him into the well. After throwing the deceased into the well he went away with the money that he had taken.

The second aggravating circumstance is that the deceased was 82 years old. In terms of s 47(3)(b) of the Criminal Law Code, it is an aggravating circumstance to murder a person who is over the age of seventy years. The deceased was a defenceless old man who was living by himself. In terms of physique, the deceased was no match for the youthful, strong and energetic 25-year-old accused.

The third aggravating circumstance is in terms of s 47(2)(a) (iv) of the Criminal Law Code and the sentencing guidelines. The murder was committed during the commission of another offence. The accused had committed the offence of unlawful entry into the deceased's house. Upon gaining entry into the house, the accused had gone on to steal the deceased's money. When

the accused was now leaving the house that is when he met with the deceased and they fought resulting in the accused murdering the deceased.

The fourth aggravating circumstance is in terms of s 47(2)(c) of the Criminal Law Code and the sentencing guidelines in that the murder was accompanied by subjecting the deceased to physical torture and cruel treatment. The accused tied the deceased's hands and mouth before carrying him to the well alive. According to the evidence of the investigating officer, there was a lot of blood on the mattress. This means that the deceased suffered some serious injury before he was carried to the well. In his confirmed warned and cautioned statement, the accused said that he had fought with the deceased. However, he did not explain how exactly they had fought. Obviously, as the deceased was being carried to the well, he could clearly see that he was now going to be thrown into the well. However, since his mouth and hands were tied, he could not shout or scream for help and he could not fight the accused. He was simply incapacitated to do anything to save himself. The accused then threw the deceased head first into the well which was one metre wide and 7-8 meters deep and had water. Throwing a victim into a well while they are still alive is an extremely cruel and torturous act. The victim would experience intense fear, panic, and suffering as they struggle to survive in the confined space, surrounded by darkness and water. The physical pain, emotional trauma, and helplessness endured by the victim make this act a grave violation of human rights and a heinous crime. This action demonstrates a complete lack of empathy and disregard for another person's life and well-being. The deceased sustained a depressed skull fracture, a neck fracture, multiple facial bruises, a dislocated right shoulder and multiple lower limb bruises. The injuries are horrific and indicative of severe trauma. The injuries paint a grim picture of the deceased's suffering.

The defence counsel did not dispute that this is a murder which was committed in aggravating circumstances. Therefore, the applicable presumptive penalty is 20 years' imprisonment.

The reports

The only report that was produced during trial was the post mortem report which shows the gravity of the injuries the deceased sustained in the process of meeting his death. We have already discussed them elsewhere above. The accused's actions resulted in immense physical and emotional trauma to the deceased before he died.

The normal range of sentence

As already discussed elsewhere above, the normal range of sentence is between 20 years' imprisonment and the death penalty for a murder committed in aggravating circumstances. The minimum is 20 years' imprisonment.

The mitigating factors

The accused's legal practitioner submitted that the accused was 25 years old when he committed this offence. He is now 27 years old. He is married and has 2 children aged 3 and 2 years. He went to school up to Form 4 and has no formal employment. He was raised in poverty and committed this offence as a result of poverty. He wanted some money. His mother who used to mentor him in buying and selling wares had died. The accused was also living in the poor and crime infested suburb of Ushewokunze in Harare. The accused's social background and environment may have influenced him to commit the offence. The accused has been in remand prison since 1 June 2022. This means that he has been in prison for 1 year 9 months awaiting his trial and its finalisation. It was further submitted that the accused is a first offender who deserves a second chance in life. During investigations he was remorseful as he confessed to the murder and even had his warned and cautioned statement confirmed in court. He even made positive indications which made the case easy to resolve at trial.

The aggravating factors

Some of the aggravating factors that the State counsel raised are the ones that we have already discussed above in determining whether this is a murder which was committed in aggravating circumstances or not and these are: premeditation; torture and cruelty; the deceased being a vulnerable person who was over 70 years old, and the offence having been committed in the process of committing the offences of unlawful entry and theft. These offences of unlawful entry and theft even border on the offence of rubbery for the accused intentionally murdered the deceased immediately after taking the deceased's money. Essentially the accused was preventing the deceased from recovering his money from him. It is also aggravatory that the offence of murder is inherently a serious offence. The right to life is constitutionally guaranteed in s 48 of our Constitution. During trial the accused showed no remorse at all for he tried to falsely implicate his

young brother Panashe for the murder of the deceased by saying that the clothes that were recovered in his room that were blood stained were Panashe's. The accused also disputed that it was him who made indications that led to the recovery of the latch to the deceased's house. Instead, he said that it was Panashe who recovered the latch to the deceased's house. The accused even said that on the night the deceased was murdered, he spent the night alone at home and that it was Panashe who did not sleep at home. In saying all these things, the accused was implicating his young brother for the murder of the deceased when he knew very well that it was himself who murdered the deceased.

The State counsel furnished the victim impact statement that was prepared by the deceased's daughter. It is to the following effect. The deceased was the family head. He supported the extended family including his murderer with grain food and finances. He was a church leader. His murder robbed his family of a legacy and the extended family of social support. He was thrown into a well which was a source of water for 20 families. 8 families fetched water for cooking while his body was in the well. These families were traumatized because of the revolting fact that they consumed the deceased's blood. The injuries on the deceased's body tell a story of torture before death. This has left the community not only shocked but divided. The community is yet to recover and the family remains traumatized.

The sentence

When the guilt of the accused has been established, sentencing becomes the fulcrum. Courts should ensure that justice and vengeance do not collide. Punishment not vengeance should prevail.

The defence counsel submitted that a sentence of 20 years' imprisonment will be appropriate in the circumstances of this case as it will help the accused who is youthful to reform. She added that the sentence will enable the accused to serve his sentence and go back to society and enable him to work and pay compensation to the deceased's family. It was further submitted that the murder was not committed in a violent manner. The defence counsel failed to appreciate that the accused used the deceased's own ties, t shirt and shirt as instruments of torment and anguish on the deceased. They were used to bind and silence him. The deceased was thrown alive into a well which had water. The injuries that the deceased sustained as stated in the post mortem report tell a horrific story of torture before the deceased died. The injuries are images of the

brutality that the deceased suffered at the hands of the accused. It is obvious that the old man's final moments were filled with immense physical suffering and pain. By murdering the deceased who was a close relative by throwing him into a well alive, the accused did an act of unspeakable cruelty. The deceased likely experienced unimaginable fear and suffering. It cannot be said that this is a murder which was not committed in a violent manner. The proposed sentence of 20 years' imprisonment being the minimum sentence, does not meet the justice of this case in light of the highly aggravatory factors discussed above.

The accused's actions are deplorable and reveal a profound lack of empathy and morality. Over and above murdering a very close relative in a very gruesome manner after breaking into his house and stealing money, the accused also tried to falsely implicate his blood brother for the murder of the deceased. His false testimony implicating his innocent brother is a betrayal of trust. It has the effect of jeopardizing an innocent person's life. By prioritizing his own interests over truth and justice, the accused demonstrated extreme selfishness. His willingness to sacrifice his brother's well-being for his own benefit is reprehensible. The accused's actions disregard family bonds. Instead of protecting and supporting his brother, he was trying to manipulate the legal process to escape accountability. He was not remorseful during trial. In summary, the accused's behaviour is marked by cruelty, selfishness, and a callous disregard for family ties. The victim impact statement shows that the accused's actions have caused irreparable harm and shattered trust within the family. The deceased's family is still grappling with grief. The words of the deceased's daughter tell a story of the family's tears. The words bear witness to the violence inflicted upon the family by the accused. This serves as a reminder that justice should extend beyond the courtrooms. Victims of heinous crimes need support and healing. They need counselling as grief that is associated with homicide is intense.

The State proposed a sentence of imprisonment for life. We believe that this is an appropriate sentence for the accused. While it may appear severe, it is essential to consider the gravity of the accused's actions. After breaking into the house of the deceased and stealing money therefrom, the accused intentionally took the life of the deceased by throwing the deceased into a well while he was still alive. This act is heinous and cruel. The accused falsely implicated his innocent brother in court. This betrayal of trust aggravates the offence. The accused knew that 20 families were fetching water from the deceased's well and that these families would fetch water and consume it for as long as the deceased's body was not recovered. As it is, 8 families consumed

the water before the deceased's body was discovered in the well. The accused disregarded the impact of his actions on the community which he also belongs to. The accused's disregard for family bonds and selfishness in prioritizing his own interests is deeply troubling. Society needs to be protected from him by having him imprisoned for life, despite his youthfulness. The sentence of life imprisonment for the accused is not a demonstration of vengeance. Instead, it reflects this court's judgment based on the severity of the crime committed. The accused is a danger to society and is not fit to go back to it. The goal in sentencing the accused to imprisonment for life is to uphold justice, deter similar offences, and protect innocent lives.

Accordingly, the accused is sentenced to imprisonment for life.

National Prosecuting Authority, the State's legal practitioners
L T Muringani Law Practice, the accused's legal practitioners