

THE STATE
versus
TAPFUMANEI ALIFINARI

HIGH COURT OF ZIMBABWE
CHIKOWERO J
HARARE; 23 April & 5 May 2025

Sentencing Judgment

Assessors: *J R Chimonyo*
 : *G Chakuvinga*

B Murevanhema, for the State
N Mangoi, for the accused

CHIKOWERO J:

[1] On 21 November 2018 the accused was convicted on a charge of murder as defined in s 47(1)(a) of the Criminal Law (Codification and Reform) Act [*Chapter 9:23*] (the Criminal Law Code) and sentenced to death.

[2] Since the death penalty was abolished with the coming into force of the Death Penalty Abolition Act [*Chapter 9:26*] the matter is now before us for the accused to be sentenced afresh.

[3] The court found that on 10 December 2015 and at Kent Farm, Marondera, the accused caused the death of Patrick Phillimon by hitting him with a flat iron bar several times all over the body causing injuries from which Patrick Phillimon died.

[4] The accused is a nephew to the deceased. On 10 December 2015 at around 10.00 hours, the accused was at his place of residence when he saw the deceased seated on a stone on the edges of a hill in Kent Farm, Marondera. The deceased was herding cattle. The accused picked an iron bar which was lying on the ground in a field and proceeded to where the deceased was. He approached him from behind and hit the deceased several times on the head and all over the body. The deceased's body was discovered in a pool of blood with several deep cuts on the head. The

discovery was made by Charakupa Musekiwa who was looking for cattle which had strayed. He informed other farm residents leading to the making of a police report. A post mortem was conducted at Parirenyatwa Group of Hospitals. The pathologist concluded that the cause of death was cerebral oedema, subarachnoid haemorrhage and severe head trauma due to beating injury.

[5] In a confirmed warned and cautioned statement the accused gave a graphic account of the circumstances of the murder. He said:

“I admit the charge of murdering Patrick Phillimon that is being levelled against me. On the morning of 10 December 2015, I was sitting at home facing the North and I saw Patrick Phillimon who was sitting on a rock on the foot of a hillock. I stood up and went towards where he was. After walking for a short distance, I picked a piece of metal that is used to stretch the fence in the field. I intended to use it to attack Patrick Phillimon because we had a disagreement over his having chased me away from home. I continued with my journey towards where he was. When I got near him, I went round the hillock so that he would not see me and also that he would not suspect that there was someone drawing close to where he was. While I was behind the hillock, I became afraid of what I wanted to do. I then went to a Muzhanje tree that was nearby while thinking of what I should do. I gathered courage (encouraged myself) and went to where Patrick Phillimon was. I got to where he was while creeping stealthily behind him and struck him with the piece of metal three times on the head near the ear. Patrick Phillimon stood up crying and said ‘nephew, forgive me.’ I did not want to forgive him so I went on striking him with the piece of metal in the head until he fell down. As he was down, I struck him again about five times until I was satisfied that he was dead. I left this place and went back the same way I had come. I hid the piece of metal in the grass and went to the dam to wash my body and my clothes, which were bloodstained. I put the clothes back on when they had dried and the bloodstains were no longer properly visible and went back home.”

[6] The seven photographs of the deceased’s body, produced by consent, reveal that the deceased sustained injuries all over the body.

[7] As for the Post Mortem Report the Pathologist observed multiple cuts on the head, that the deceased was bleeding from the nose and mouth, that the whole face and upper limbs were covered with blood, that there were multiple lacerations on both hands and that the bone fracture on the fifth finger of the right hand was open. In addition, there were injuries on the backside, on both ears and multiple lacerations on the face. As for the skull, there was a depressed bone fracture on the left parietal bone. In convicting the accused the court said:

“from these injuries it is clear that anyone who takes another by surprise and assault them in this manner with an iron bar have the intention to kill him.

Murder with actual intent is committed where the accused desires to bring about the death of another and succeeds in doing so. So in this instance the accused desired to bring about the death of his uncle the deceased and has acceded. He is therefore found guilty of murder with actual intent.”

[8] The court rejected the accused’s defence that he did not intent to kill the deceased. It rejected the accused’s version, presented in the defence outline and under oath, of what happened on the fateful day. Clearly, the accused wanted to minimise the callous, brutal and savage assault that he perpetrated on the deceased and, in the process, giving false evidence that the deceased was the aggressor. The accused said he met the deceased by chance. There existed a dispute about a piece of land between the two parties. In discussing that issue, a quarrel ensued. There was a scuffle. The deceased picked a stick and used it to hit the accused twice on the back. The accused wrestled the stick away from the deceased. The accused picked an iron bar that was lying on the ground. To ward off the deceased’s attack on him, the accused hit the deceased about six times with that iron bar and ran away. He was surprised to learn, later in the day, that the deceased had died.

[9] The State did not accept the accused’s plea of guilty to the permissible verdict of culpable homicide. The court found that the accused’s defence was false and that there was no dispute about a piece of land between the deceased and himself. Instead, the accused, who had been advised by the village head to relocate from the deceased’s homestead after admitting to an adulterous relationship with the deceased’s wife, should not have ambushed and murdered the deceased.

[10] The statutory penalty for murder committed in aggravating circumstances is imprisonment for life or imprisonment for any definite period of not less than twenty years. This is provided for in s 47(4)(a) of the Criminal Law Code.

[11] In terms of Chapter V Part1 of the Criminal Procedure (Sentencing Guidelines) Regulations 2023 the presumptive sentence for murder committed in aggravating circumstances is twenty years imprisonment.

[12] Since the coming into force of the Death Penalty Abolition Act [*Chapter 9:26*] there is no established sentencing trend for offenders convicted of murder committed in aggravating circumstances. This is so because the Act is a recent piece of legislation. Before the coming into force of the Act offenders convicted of murder committed in aggravating circumstances were liable to a sentence of death, imprisonment for life or imprisonment for any definite period of not less than twenty years. What the Act has done is to take away the death penalty from the basket of competent sentences for murder committed in aggravating circumstances.

[13] Ms Mangoi is correct in conceding that this murder was committed in aggravating circumstances. The offence was premeditated (s 47 (3)(a) of the Criminal Law Code), and it was committed with repeated ,gratuitous violence, cruelty and degradation on the person of the deceased (s 8 (e) of the Sentencing Guidelines). In addition, a weapon was used. Further, the accused actually intended to kill the deceased and succeeded in doing so.

[14] We accept the mitigating factors. The accused is a first offender. He is 40 years old, a divorcee and father to two children who are now majors. He has been in custody since his arrest on 10 December 2015. That period of incarceration, approaching a decade, is a factor that is relevant in the assessment of an appropriate sentence. See *S v Mutakwa and Anr* 2000 (1) ZLR 393 (H). He is unemployed and has neither assets nor savings.

[15] The mitigating factors pale in comparison to that which is aggravating. The offence was premeditated. A weapon was used on the person of the deceased not once but several times and all over the body. The murder was brutal, callous and cruel. The deceased, who was minding his business, was ambushed and mercilessly bludgeoned to death. His pleas for mercy fell on deaf ears. The accused only ceased assaulting the deceased when he was satisfied that the latter was indeed dead. His confirmed warned and cautioned statement is clear in this regard. For expressing his love for his sister's child by welcoming him into his own family in 2012, the accused rewarded his uncle by conducting an adulterous affair with the latter's wife in 2015. Instead of attacking the accused the deceased reported the adultery to the village head. The village head advised the accused to relocate to his own village. This the accused did, only to return to kill his uncle.

Nothing can be worse than that. The deceased did not wrong the accused. The accused did so, not once but twice. The first was the adultery which went on for five months. The second was that which took the wronged person's life. At all material times the accused was married. He had no reason to endeavor to take over his uncle's wife by acting in the manner that he did.

[16] He did not cooperate with the police. The accused only confessed to the murder, in the confirmed warned and cautioned statement, when confronted with the evidence of that which he had done. That is not cooperation with the police. He neither surrendered himself to the police nor did he divulge the offence to anybody. He was content to leave his uncle's dead body wallowing in a pool of blood. That relationship is aggravatory.

[17] The accused has not paid any compensation to the deceased's family. He has not requested his relatives, over the almost ten years that he has been in custody, to compensate the deceased's family on his behalf.

[18] The plea of guilty to the permissible verdict of culpable homicide is not evidence of contrition. Instead, it demonstrates the accused's lack of remorse by seeking to mislead the court and swaying it from doing justice to the offender, the deceased's family, society and the matter itself. The Victim Impact Assessment produced by Mr Murevanhema shows that the death shocked the deceased's family. This was so because it was "very sudden." As for its emotional impact, it was stressful. The death financially impacted the family because the deceased was a bread winner. The deceased's niece, who signed the Victim Impact Assessment Report, called for the imposition of a custodial sentence on the accused.

[19] Needless to say, imprisonment for life is a custodial sentence. We do not share Ms Mangoi's views that a sentence of twenty-five years imprisonment would meet the justice of this matter. Indeed, while we accept that the presumptive sentence for murder committed in aggravating circumstances is twenty years imprisonment, the circumstances of this case are so bad as to justify a sentence of imprisonment for life. This court must communicate the correct message to the public lest the criminal justice system falls into disrepute. Perpetrators of violent and serious crimes must be adequately punished. That has a deterrent effect on other would-be offenders.

Further, it is necessary to protect the public by separating the accused, who is a dangerous criminal, from the society. See s 6(d) of the Sentencing Guidelines.

[20] We pause to record that human life is sacred and should never be taken away. It is a constitutional right in this country. The Death Penalty Abolition Act [*Chapter 9:26*] is a recognition of the sacred nature of human life. In this matter an innocent life was needlessly lost at the hands of the accused. That life will never be regained.

[21] The accused is sentenced to imprisonment for life.

CHIKOWERO J:.....

*The National Prosecuting Authority, State's legal practitioners
Pro Deo, accused's legal practitioners.*