



REPUBLIC OF MALAWI
MALAWI JUDICIARY
IN THE HIGH COURT OF MALAWI
PRINCIPAL REGISTRY (SITTING AT NSANJE)
CRIMINAL DIVISION
HOMICIDE CAUSE NO. 53 OF 2021

BETWEEN

THE REPUBLIC

-and-

PAUL GENTI

Coram: Honourable Mr. Justice J. M. Chirwa
Mr S. Chisanga, Senior State Advocate for the State.
Mrs S. Chirwa, Senior Legal Aid Advocate Counsel for the
Accused.
R. Chanonga, Official Court Interpreter.

SENTENCE

1.0 Background:-

Paul Genti, the Convict herein, pleaded guilty to the charge of murder contrary to Section 209 of the Penal Code and was convicted of the said charge on his own plea of guilty on 27th day of April, 2021. The case was then adjourned to consider the appropriate sentence to be meted on him after considering the mitigating and aggravating factors.

2.0 Facts:-

The facts of the case are that the Convict on or about the 13rd day of August, 2018 at John Village, Traditional Authority Malemia in the Nsanje District in the Republic of Malawi with malice aforethought caused the death of Meria Genti ("the Deceased").

3.0 Issue for determination:-

The issue for determination by this Court is what would be an appropriate sentence which would fit the Convict, the circumstances of the within offence and the offence of murder.

4.0 Determination:-

This Court is in agreement with both Counsel hereto that the mandatory requirement of the death penalty for the offence of murder which had been provided for in Section 210, aforesaid, before its amendment in 2010 is no longer law in this country. This Court is also mindful of the legal proposition that the maximum sentences are reserved for the worst instances of the offenders as per **Skinner CJ** in the case of **Namate v Republic** [1975-1977] 8 M.L.R., 132 at p.135 where he said:

"We respectfully agree with the principle laid down in the cases. The maximum sentence permitted by the legislature should be reserved for the worst instances of the offence and it is, indeed, a very grievous example of the crime which calls for the imposition of such a sentence on a person of previous good character. It is necessary for a court to compare the seriousness of the circumstances of the particular offence in relation to the worst type of circumstances which could attend contravention of the penal section."

This Court is in agreement with the sentiments of **Chipeta J** (as he then was) in the case of **Republic v Dalitso Mathuso** Criminal Case No. 27 of 2008 (unreported) in the following words:

“...it amounts to an affront against the value of human life to treat a person who has killed a fellow human being as good as the one who has just stolen property worthy, or amounting to a few hundred kwacha....”

It may be worthy adding to the sentiments of Chipeta J (as he then was) that as courts we have by our sentences, somehow, even upheld offences less serious than the offence of murder and yet the right to life is one of the fundamental human rights guaranteed by the Constitution of the Republic of Malawi (vide Section 16). The said provision prohibits the arbitrarily deprivation of a person's life in a manner that the Convict did with the Deceased.

This Court is also in agreement with the submission of Counsel for the Convict that the present case is not the worst instance of the offence of murder so as to deserve a sentence of death or imprisonment for life because of the available mitigating factors in favour of the Convict, such as, that he is a first offender, he pleaded guilty to the charge and did not thus waste the court's precious time and resources, he was at the time of the commission of the within offence aged only 18 years and thus still youthful and that he was, generally, remorseful.

Against the foregoing mitigating factors, there are also aggravating factors such as, that the commission of the offence by the Convict had been premeditated as evidenced by the fact that after the Convict had finished quarrelling with his mother, the Deceased, who had even gone to sleep, the Convict went out of the house and picked up a big stone with which he hit the Deceased in the head whilst the latter was asleep and thus not suspecting the evil intention of the Convict. The fact that a stone had been used in the commission of the offence herein is in itself an aggravating factor. The other aggravating factors being the facts that the offence of murder is a serious offence as evidenced by the maximum sentences of death or imprisonment for life reserved therefor (vide Section 210 of the Penal Code) and that such offences are nowadays quite prevalent in society.

This Court has also considered the sentencing trends by our courts through some of the decided cases such as **Republic v Keyaford Malata**, Re –hearing case No. 32 of 2015 (unreported) where the Court found that the offence had

been premeditated by the convict and a sentence of a term of 25 years' imprisonment with hard labour was imposed on the convict; **The Republic v Patrick Psyangu**, Criminal Case Number 9 of 2010 (unreported) where a sentence of a term of 25 years' imprisonment with hard labour was imposed on the convict and **The Republic v Chiukepo Chavula**, Sentence re-hearing No. 11 of 2015 (unreported) where a sentence of a term of 20 years' imprisonment with hard labour was imposed on the convict. It should be evident from the above cited cases that the sentences range from 20 years upwards. This is, no doubt, a clear indication that courts have not treated the arbitrarily taking of a person's life lightly even in the cases where there are some mitigating factors obtaining in favour of the convict as is case herein.

In the instant case, here is a convict who instead of accepting the correction or chastisement of his own loving mother resorts to taking away her life in a very gruesome manner, as it were, in order to avoid any further correction or chastisement from her. What other form of correction would there be left for him other than correction by the law?

It is, in the premises, the view of this Court that albeit the Convict is a first offender, he pleaded guilty to the charge; he is still youthful and was remorseful, he deserves a stiff custodial sentence. It is with this backdrop that this Court believes that a sentence of a term of 25 years' imprisonment with hard labour would fit the Convict, the offence of murder and the circumstances of the said offence.

5.0 Conclusion:-

In conclusion, this Court now proceeds to sentence the Convict to a term of 25 years' imprisonment with hard labour. The sentence, aforesaid, is to run from the 14th day of August, 2018, the date when the Convict was re-arrested. It is so ordered.

The Convict is, however, reminded of his Constitutional right of appeal against this sentence should he be inclined so to do. It is further so ordered.

Delivered at Nsanje this third day of August, 2021.

CHIRWA J
JUDGE