

THE STATE  
versus  
GODFREY MAROWA  
and  
TRYMORE TIRIVAVI  
and  
DAVID MUPANDAWANA

HIGH COURT OF ZIMBABWE  
**MUTEVEDZI J**  
HARARE, 13 June 2024 & 22 November 2024

**Assessors:** Mr *Gweme*  
Dr *Mushonga*

***Criminal Trial - sentencing judgment***

*D.H. Chesa*, for the state  
*T. Mutema*, for first accused  
*Y. Chourombo*, for second accused  
*V. Chipamaunga*, for third accused

MUTEVEDZI J: Every murder is bad but this particular one stands out for a variety of reasons. It was barbaric. It involved two brothers and their accomplices, must have been premeditated, was well executed and was intended to facilitate the commission of even more crimes.

[1] The three offenders and their accomplices who are fugitives from justice waylaid an unsuspecting man who had left his home to leave his motor vehicle at a secure parking lot. Before he could do so, his attention was caught by a crowd of commuters who appeared desperate for transport from a location called Machipisa to Harare City centre. He abandoned his plans to park the car and loaded the commuters into his Honda Fit car. No one except the offenders really know what then happened. What is known for sure is that the deceased man called David Chimbambo never returned home. He was found dead the next morning a long way from Machipisa in another Harare suburb called Waterfalls. His

vehicle was missing. His head had been brutally assaulted. The autopsy report made sad reading, that is if any solace was expected from it.

- [2] The offenders were later caught after executing a spate of robberies using the vehicle stolen from the deceased. Their luck ran out soon after executing the last of those robberies. The first offender Godfrey Marowa failed to escape the chase which followed that brazen robbery. He was arrested by members of the public and the victims of the robbery. His arrest led to the apprehension of his co-offenders in this case. They were all arraigned before us charged with the murder of the deceased. They pleaded not guilty and raised various defences which we all threw out. We duly convicted them.
- [3] At the presentencing hearing, the legal practitioners representing all the offenders and the prosecutor requested to make written submissions. We granted the request. They all made extensive submissions regarding what each of them perceived as the appropriate sentence to be meted on each offender.
- [4] On one hand, the prosecutor, Mr *Chesa* chose to be direct. He said this was a murder which was committed in aggravating circumstances because it occurred in the course of a robbery. Once that was ascertained, so he argued, the offenders could not escape the penalty of death. He referred the court to several authorities for that proposition among them *S v Charles Sumani and Anor* HH 75/00; *Augustine Gones v S* SC 21/96; and *Bigboy Ncube v S* 179/98. The common thread running through those authorities is that in the absence of weighty mitigation a murder committed in the course of a robbery invariably attracts the sentence of death.
- [5] On the other hand, counsel for the first offender Godfrey Marowa, neglected to address the court on this critical aspect of the sentencing process in murder cases. He instead chose to emphasise certain issues which he believed mitigated the offender's moral blameworthiness. Counsel for the second offender, Trymore Tirivavi said the offence wasn't committed in aggravating circumstances because it was not pre-meditated as shown by the fact that the offenders did not know the deceased person. Further he argued that the crime was committed in an amateurish way because the offenders did not even cover their faces to conceal their identities.

- [6] We immediately pause here to once and for all deal with counsel's submissions. They are not correct. It cannot be true that this murder wasn't premediated. Like the prosecutor rightly argued, it was immaterial that the offenders' victim was not known. To them the identity of the victim wasn't important. What was critical was that they wanted a vehicle. They pre-planned how they were going to get that car. They knew exactly what was supposed to be done. The deceased was just unfortunate to inadvertently fall into that scheme of things. That it was so does not take away the meticulous planning that must have gone on before the robbery and the murder. A gang which plans to rob anyone with a valuable which they covert cannot escape the finding that they premeditated the commission of the offence because they did not know the identity of their victim. Further, the daftness of a criminal cannot be allowed to work in his/her favour. That the offenders neglected to conceal their identities does not demote their crime from the realm of aggravated murders.
- [7] Counsel for the third offender David Mupandawana conceded that the murder was committed in aggravating circumstances and that the constricted sentencing regime regulating such murders must apply. He however implored the court to approach the issue with more light than heat.
- [8] Our analysis of the issue is that there is no gainsaying that the murder is aggravated. It was brutal and accompanied by gratuitous violence. The evidence which is there is that the offenders first tied the deceased before battering his head resulting in gruesome injuries. Further the irrefutable evidence is that they took not only his car but other valuables. The deceased's wife said he also had USD \$500 in his possession at the time. The offenders' plight is compounded by the fact that this was a gang robbery and therefore a gang murder.
- [9] Section 47 (2)(a) of the Criminal Law Code provides that a murder shall be considered aggravated if it was committed in the course of, or in connection with, or as the result of the commission of any one or more of the crimes listed under that provision. Those crimes include the offence of robbery. In turn s 47(5) states that the factors which are listed as aggravating under subsections (2) and (3) of s 47 are not exhaustive and a court may find other circumstances in which a murder is committed to be aggravating. By virtue of that power reposed in this court, we wish to add to that list the fact that it shall be aggravating

that a murder was committed as in this case, to facilitate the commission of further crimes in future. The reason why the offenders killed the deceased was that they did not only want to rob him of his car but that they wanted to use that vehicle as an instrument for the commission of further robberies. They indeed went on to commit such robberies.

[10] In view of the above we find that this particular murder was committed in a multiplicity of aggravating circumstances.

[11] The law circumscribes the sentences which a court can impose on an offender once it makes the finding that a murder was aggravated. The options in such cases are that the court may impose the sentence of death, life imprisonment or any determinate term which however must not be less than twenty (20) years imprisonment. In addition, this court has previously stated that the existence of a single aggravating circumstance is enough to elevate the murder to an aggravated one. There need not be more than one factor. The existence of a multiplicity of the circumstances, as in this case, must however serve to worsen the offender's plight. We are therefore bound to go by one of the three options prescribed under s 47(4)(a) of the Code.

[12] There isn't much that lessens the offenders' moral blameworthiness other than that they are all first timers; that they are family men and are the sole breadwinners for their families. Counsel for the first offender tried to persuade us that his role in the murder was minimal. We do not agree. There is no evidence to show us which offender played what role. If the first offender intended to benefit from that, he ought to have come out clean on the roles played by each of them. Without that, we must be guided by the evidence which we have. It actually shows that the first offender was a very active participant in the gang. When they were caught, he was driving the vehicle stolen from the deceased. We reject the call for us to treat him any differently from the others.

[13] Our further view is that it appears not much may be achieved from sentencing the offenders to death except to further brutalise society. The criticisms targeted at capital punishment are sometimes very justified. Those who call for its abolition have in many instances gone for broke and said it is nothing else but judicial barbarism. We are not prepared to go into that debate in this case. It is unnecessary. All we can do is to exercise our discretion and refrain from imposing it because of its uselessness in this particular case.

Instead we believe that the same aim of demonstrating society's displeasure at those who, for very selfish reasons, sink so low as to take others' lives can be achieved by permanently removing such elements from society. The murder was totally unnecessary. The gang could have simply violently taken the vehicle from the deceased and left him alive.

[14] For the above reasons, our considered view is that the circumstances of this case constrain us to sentence as we hereby do **each offender to LIFE IMPRISONMENT**.

**MUTEVEDZI J:** .....

*National Prosecuting Authority, state's legal practitioners*  
*Masango Seda Mutema Attorneys, first offender's legal practitioners*  
*Maruwa Machanzi Attorneys, second offender's legal practitioners*  
*Marufu Misi Law Chambers, third offender's legal practitioners*