

**KUWIRIRANA                      MASARAKUFA**  
**v**  
**THE                                      STATE**

**SUPREME COURT OF ZIMBABWE**  
**ZIYAMBI JA, GARWE JA & HLATSHWAYO JA**  
**BULAWAYO, MAY 5 & 8, 2014**

S *Muguni*, for the appellant  
N *Ngwenya*, for the respondent

**ZIYAMBI JA:**              The appellant was charged with the murder on 10 August 2012, at Village Dzvaka, Chief Chireya, in the Midlands Province, of his brother one Felix Masarakufa. At the time of his death the deceased was aged twenty-eight years, and the appellant, forty-one years. The court *a quo*, after a full trial, found him guilty as charged and, no extenuating circumstances having been found, imposed the death sentence. Against this sentence the appellant now appeals.

The facts of the case are largely common cause. The deceased was the appellant's younger brother. He operated a grinding mill, and two weeks before this incident, he had sold his cotton for which he had been paid US\$1800. He was known to carry large sums of money in two wallets which he kept on his

person. The appellant was aware of this. On the fateful day the appellant went to the deceased's homestead to request the latter's assistance in making contour ridges at his field. The deceased stated that he was unwell whereupon the appellant went away and returned with herbs with which he prepared a concoction and gave the deceased to drink. After taking the concoction the deceased announced that he was feeling better and they left for the appellant's field. The appellant was carrying an implement known as a w-bar (used for digging), a mattock, an axe and a shovel.

Upon arrival at the appellant's field the appellant struck the deceased on the head several times with the mattock. The deceased died instantly. The appellant searched the deceased and took an undisclosed amount of cash which he found in his pocket. He then buried the deceased in a makeshift grave, used the shovel to fill the grave with soil and thereafter covered it with thorn bushes which he had cut using the axe. That done, the appellant returned to his homestead, packed his clothes and, together with his wife, left for Harare. The body of the deceased was discovered 10 days later and a report made to the Police leading to the subsequent arrest of the appellant in Harare. The body was exhumed and a search for

valuables revealed only a Nokia phone. The two wallets and the money were never found.

On 22 August 2012, a postmortem examination of the deceased's remains was performed. The doctor concluded that the cause of death was head injury, multiple skull fractures and blunt force trauma.

In his warned and cautioned statement recorded by the police on 25 October 2012, the appellant admitted that he killed the deceased in order to rob him of his money. He however denied finding any money when he searched the deceased after his death however the inference is irresistible that he must have taken the money.

We are satisfied that the conviction on a charge of murder with actual intent to kill was proper in the circumstances.

The main ground of appeal advanced in the notice of appeal was that the Court ought to have found extenuating circumstances. This ground of appeal was not pursued at the hearing before us.

Mr *Muguni*, who appeared on behalf of the appellant, advised the court that he was unable to fault the finding of the trial court that there are no extenuating circumstances in this matter. That in our view is a concession that was properly made.

Extenuating circumstances are any circumstances which reduce the moral blameworthiness of an accused person. The question as to the existence or otherwise of extenuating circumstances is essentially one for decision by the trial court and in the absence of a misdirection or irregularity this court will not interfere with a finding that no extenuating circumstances were present. In the instant case the appellant could point us to no misdirection by the Court *a quo* which would justify our interference with the finding by the court *a quo* that no extenuating circumstances exist and indeed we find none. This was a brutal killing of an innocent man in the course of, or with intent to commit, a robbery. It has been reiterated in this court that murder committed in the course of robbery will attract the death sentence.

We are satisfied that the appeal is entirely without merit and it is accordingly dismissed.

**GARWE JA:** I agree

**HLATSHWAYO JA:** I agree

*Hwalima, Moyo & Associates, appellant's legal practitioners.*