

SOUTH AFRICA / JUDGMENT

Chika v S (A438/2016) [2017]

ZAGPPHC 632 (22 September 2017)

[2017] ZAGPPHC 632

COURT

North Gauteng High Court, Pretoria

BEFORE

C J van der Westhuizen, N Ranchod, TM Maumela

CASE / FILE NUMBER

A438/2016

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

APPEAL

CASE NO.: A438/2016

DATE:

22/09/2017

In

the matter between:

LEBOGANG

CHIKA

APPELLANT

and

THE

STATE

RESPONDENT

JUDGMENT

VAN DER WESTHUIZEN, AJ

- [1] The appellant pleaded guilty to a charge of murder in the High Court, Pretoria, was duly convicted by Dama, AJ, and sentenced to life imprisonment. The appellant, with leave of the court a quo, appeals against the sentence of life imprisonment.
- [2] It will suffice to summarise the events that led to the conviction and sentencing of the appellant. The appellant was one of three accused.

[3] The appellant was imprisoned on a charge of assault with the intention to cause grievous bodily harm. During June 2013, the

appellant was released from prison. Shortly after his aforesaid release, he was approached by the third accused to arrange for the murder of her husband. The third accused offered the appellant an amount of R10

000.00 for murdering her husband. He accepted the task, and solicited the services of the second accused to assist him in completing the task laid upon him by the third accused. In respect of the aforementioned task, the latter on occasion met with the appellant at his home to discuss the relevant details. On enquiry from his relatives, and in particular from his mother, he stated that the purpose of the third accused's visits were to encourage him to be intimate with her at her home. On the eve of the commission of the said crime, the third accused took the appellant and the second accused to a guesthouse close to her house, from where they could easily access her property to commit the heinous crime. When the deceased exited from his house, the appellant attacked the deceased from behind with a knife and his accomplice attacked from the front. The deceased died from the wounds inflicted upon him during the attack. The appellant was arrested a few days after the murder.

[4] Prior to his initial incarceration on the charge of assault with the intention to cause grievous bodily harm, the appellant assisted his father who had conducted the business of mechanical repairs to vehicles. His father taught him the skill of mechanic and paid him for his assistance in that regard.

[5] The appellant on the issue of sentence, initially and through his attorney, placed his personal circumstances before the court. The appellant was content to have the important and relevant issues in respect of sentence addressed from the bar. Only after being prodded by the court a quo was the appellant's attorney instructed to lead the appellant's evidence under oath.

[6] It is trite that a court of appeal will only interfere with a sentence imposed upon an appellant if it is held that: no reasonable man ought to have imposed such a sentence; the sentence is totally out of proportion to the gravity of the offence; the sentence evokes a feeling of shock or outrage; the sentence is grossly excessive or insufficient; the trial judge had not exercised his discretion properly; it is in the interest of justice to alter the sentence.
[1]

[7] In terms of the provisions of section 51(1) of Act 105 of 1997, the court is empowered to sentence an accused convicted of murder to life imprisonment. However, the court is entitled to deviate from such sentence if there are substantial and compelling circumstances justifying a lesser sentence. In *S v Malgas*, supra, the Supreme Court of Appeal succinctly dealt with the issues constituting substantial and compelling circumstances and provided guidelines in approaching minimum sentences.

[8] On behalf of the appellant it was submitted, with reference to *S v Blignaut*,^[2] that the following cumulatively constituted substantial and compelling circumstances:

- (a) The appellant was relatively young when he committed the heinous crime;
- (b) He co-operated with the police;
- (c) He pleaded guilty;
- (d) He was remorseful;
- (e) He was not paid by accused three for committing the murder;
- (f) He spent two years in custody awaiting trial.

[9] In *DPP, KWAZULU-NATAL v NGCOBO*^[3] it was held that youthfulness by itself cannot be a mitigating factor. The appellant did not seem to demonstrate immaturity. Furthermore, the appellant had already embarked upon a career of violence prior to him committing the murder. The appellant's incarceration for assault with the intention to cause grievous bodily harm did not deter him from embarking on a more serious and violent trail, namely that of contract killing, shortly after being released. His apparent youthfulness fades into insignificance.

[10] The alleged factors of co-operating with the police and pleading guilty as constituting mitigating factors, in the proper context, run hollow. It was clear to the appellant that he was caught out and that his relatives were lined up as witnesses who would testify against him. His alleged co-operation and plea of guilty was no more than a mere ploy to gain a lenient sentence.

[11] The appellant's alleged remorse in the correct context is mere lip service. The appellant was initially content to have his personal

circumstances, and alleged remorse, argued from the bar. When it became clear that more weight would be placed on such evidence when under oath, and after being prodded by the court a quo, only then did the appellant offer to testify under oath to that effect. The appellant's remorse is no more than regret for being found out.^[4]

[12] The submission that the appellant was not paid for his heinous crime constituting a mitigating factor, defies all logic. How non-payment for the commission of the contract killing constitutes a mitigating factor is not explained, nor understood.

[13] The converse of the foregoing is to be considered when determining whether the court a quo misdirected itself on the issue of the cumulative effect of the aforementioned alleged mitigating factors, namely:

- (a) It was a contract killing, an offence of greed, where the appellant was not unemployed as he could easily have returned to his father's business of mechanic;

- (b) The offence was predetermined over a period of time, where the appellant had ample time to reconsider the request. The appellant was certainly not compelled to accede to the request;
- (c) The deceased was unarmed and could not resist the attack. The deceased was attacked in the sanctity of his home environment;
- (d) The appellant was ready to commit a murder, irrespective of the circumstances, and had no hesitation to take the life of a person who posed no threat to him, nor being compelled to do so in the particular circumstances.
- [14] In my view, and for the foregoing, it has not been shown that the court a quo had misdirected itself in any respect that would require this court to interfere with the sentence imposed upon the appellant.
- [15] I would dismiss the appeal against sentence.

C J VAN DER WESTHUIZEN

ACTING JUDGE OF THE HIGH COURT

I agree and it is so ordered.

N RANCHOD

JUDGE OF THE HIGH COURT

I agree.

TM MAUMELA

On behalf of Applicant: Ms MB Moloi (Attorney)

Instructed by:

Pretoria Justice Centre

On behalf of Respondent: S D Ngobeni

Instructed by:

Director of Public Prosecutions, Gauteng Division,

Pretoria

[1] S v Fhetani 2007(2) SACR 590 (SCA); see also S v Kibido 1998(2) SACR 213 (SCA), S v Barnard 2004(1) SACR 191 (SCA), S v Ma/gas 2001(1) SACR 469 (SCA)

[2] 2008 (1) SACR 78 (SCA)

[3] 2009(2) SACR 361 (SCA) at para [18]

[4] Matyityi 2011(1) SACR 40 (SCA)

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