

SOUTH AFRICA / JUDGMENT

Mamabolo v S (CC94/2013) [2015] ZAGPPHC 894 (6 October 2015)

[2015] ZAGPPHC 894

COURT

North Gauteng High Court, Pretoria

BEFORE

Francis

CASE / FILE NUMBER

CC94/2013

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IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

Case

No: CC94/2013

DATE: 06 OCTOBER

2015

In the matter

between:

GODFREY

MAMABOLO.....Applicant

And

THE

STATE.....Respo

ndent

JUDGMENT

FRANCIS J

1. This is an application for condonation of the late filing of the application for leave to appeal and for leave to appeal against

both conviction and sentence. On 25 April 2014 the accused was convicted of murder read with section 1 of the Criminal Law Amendment Act 105 of 1997 -count 1; attempted murder count 2; attempted murder

- count 3 and breaching of a protection order - count 4. He was sentenced on the same day to life imprisonment for count 1; 5 years imprisonment for counts 2 and 3 and 2 years imprisonment for count 4.

The sentences imposed on counts 2 to 4 were ordered to run concurrently with the sentence imposed on count 1. He was also automatically declared unfit to possess a firearm.

2. The applicant in his application for condonation contends that his application was late because he had no knowledge about what steps

to take until he requested to see a social worker in prison and stated to the social work that he wanted to apply for leave to

appeal. His legal advisor did not inform him of his rights regarding an appeal after he was sentenced. He was confused and stressed and after he was sentenced he did not get an opportunity to ask for advice in court to apply for leave to appeal..

3. I am satisfied that a proper case has been made for condonation and the application for condonation is granted.

4. The grounds for leave to appeal against conviction are as follows:

4.1 The court erred in finding that the state had proved his guilt beyond a reasonable doubt; erred in finding that there were no improbabilities in the State's version; erred in finding that the State witnesses gave evidence in a satisfactory manner; erred in finding that the evidence of the State witnesses could be criticised on matters on details only, whereas the evidence was contradictory in material respects; and erred in finding that there were minor differences between the evidence of the applicant and the State's

witnesses were sufficient to reject the

4.2 In convicting the applicant the court erred in failing to properly analyse or evaluate the evidence of the State's witnesses and properly consider the improbabilities inherent in the State's version.

4.3 In convicting the applicant the court erred in rejecting the evidence of the applicant as not being reasonably possibly true; in

accepting the evidence of the State witnesses and rejecting that of the State's witnesses; holding against the applicant

contradictions between his own evidence and that the facts put to witnesses in cross examination; holding against the applicant matters which were not put to the witnesses; giving importance to minor discrepancies between the defence witnesses.

4.4 It was further contended that there were improbabilities in the State version.

4.5 The court erred in failing to evaluate the evidence of the applicant and the witnesses of the State.

4.6 The court erred in failing to reject the evidence of the applicant which is possibly true and correct under oath.

4.7 The court erred by taking into account the evidence of the State's witnesses whereby there were minor differences in the State's version.

4.8 The court erred in not calling the investigating officer to testify under oath.

5. The grounds for leave to appeal against sentence are as follows:

5.1 An effective term of life imprisonment is strikingly inappropriate in that it is out of proportion to the totality of accepted facts in mitigation and it disregards the period of time which the applicant spent in custody.

5.2 The court erred by not imposing a shorter term of imprisonment, coupled with community service and/or a further suspended sentence, more particularly in view of the absence of previous convictions; the absence of planning; the age and personal circumstances of the applicant; the rehabilitation element and the mitigating factors inherent in the facts found proved.

5.3 The court erred in overemphasising the seriousness of the offence; the interests of society; the prevalence of the offence; the deterrent effect of the sentence; the retributive elements of sentence and that life imprisonment is strikingly inappropriate whereas the court only took into account the interest of society when it sentenced the applicant.

6. It is trite that the traditional test in deciding whether leave to appeal should be granted is whether there is a reasonable prospect that another court may come to a different conclusion to that reached by me in my judgment.

7. The applicant has raised nothing new in his application for leave to appeal. This court has dealt with all the issues raised in this application for leave to appeal in its judgment and it is unnecessary to repeat those in full. Direct evidence was led by two

state witnesses who testified about the fact that they saw the applicant who had a container filled with petrol and that the deceased was pleading with the applicant. The applicant had given his counsel instructions not to cross examine his son [O.....]

[M.....] who was 9 years old at the time of the incident who testified that he saw his father throwing petrol in the bedroom. This version clearly contradicted the applicant's version about how the fire started. Their domestic worker Mmaletsatsi Matshona testified that when she woke up the passage had already been dozed with petrol and when she got into the main bedroom she saw the applicant having a container with petrol and the deceased was on her knees and had lifted her hands pleaded with the applicant to forgive her. There was a smell of petrol in the bedroom and he was pouring out the petrol. The applicant told her to come to him and she ran away. This also contradicted his version about the incident. There is therefore no reasonable prospects that another court will come to a different conclusion to that reached by me in convicting the

8. In the application for leave to appeal against sentence, the applicant has not addressed the issue about whether there are substantial and compelling circumstances that warranted the imposition of a sentence other than life imprisonment for the murder. Despite this, I allowed his counsel to address me whether there were any substantial and compelling circumstances that warrants the imposition of a different sentence to life. None of the factors that were placed before me today and that I had considered in my judgment on sentencing are substantial and compelling circumstances. I had carefully considered the mitigating factors that were placed before

me in my judgment namely that the accused was 46 years old and was 45 years old when he murdered the deceased. He was a first offender and was out on bail. He has 5 children the eldest being 20 years old and the youngest three years old. He was employed at the time of the commission of the offences and when he was convicted he was unemployed. The applicant showed no remorse. I concluded that the factors that were placed before me were not substantial; and compelling circumstances justifying a lesser sentence than life

imprisonment. I am still not persuaded that there are any substantial and compelling circumstances that would warrant the imposition of a different sentence to life imprisonment.

9. I do not believe that there is a reasonable prospect that another court may come to different conclusion to that reached by me. The application for leave

to appeal stands to be dismissed.

10. In the circumstances the following order is made:

10.1 The application for leave to appeal is dismissed.

FRANCIS J

HIGH COURT JUDGE

FOR APPLICANT : P D PHAHLANE INSTRUCTED BY

LEGAL AID SOUTH AFRICA

FOR RESPONDENT: M MARRIOTT OF DPP

DATE OF HEARING : 6 CTOBER 2015

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