

SOUTH AFRICA / JUDGMENT

Masuku v S (A287/2012) [2012]

ZAWCHC 301 (31 August 2012)

[2012] ZAWCHC 301

COURT

Western Cape High Court, Cape Town

BEFORE

Davis, Stelzner

CASE / FILE NUMBER

A287/2012

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

IN THE
HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE
TOWN)

CASE NUMBER: A287/2012

DATE: 31 AUGUST 2012

In the matter between:

MASUKU

SENZO CASTRO

.....Appellant

and

THE STATE

.....Respondent

JUDGMENT

DAVIS, J

The appellant was convicted in the Cape Town Regional Court on 18 March 2011 on a count of attempted murder and was sentenced to a direct term of 15 years imprisonment, following a guilty plea which he made in terms of Section 112(2) of the Criminal Procedure Act 51/1977.

The crime of which the appellant was convicted was without any exaggeration A most brutal and unprovoked attack. A sense of the brutality and its unprovoked nature of can be gleaned from his own plea statement which reads thus:

“Die betrokke dag het ek die klaer by sy woning ingewag. Ek het agter ‘n groot blompot geskuil. Die klaer het my gesien en my genader. Ek was met ‘n panga bewapen. Ek het verbouereerd geraak toe ek die klaer sien en het hom met my panga begin slaan. Ek het die klaer verskeie kere met die panga raakgeslaan op sy liggaam. Ek kan egter nie se hoeveel keer ek hom raakgeslaan het en waar op sy liggaam ek hom geslaan het nie.”

In passing sentence the Magistrate referred to a medical report of Dr Smith which included the following passage:

“Although Mr Itzeck’s injuries have healed well, he will always be scarred. His hand injury will need extensive rehabilitation over a prolonged period of time in order for him to regain the full use of his hands. Mr Itzeck was extremely fortunate the injuries could easily have led to the amputation of fingers and the thumb as well as permanent brain damage if not death.”

This highlighted the fact, as I have already placed on record, the severity of the attack on the complainant. What is even worse is that this attack commenced on his own premises where the accused lay in waiting for him.

The complainant fills in some of the details with regard to the crime which had been committed when he testified thus:

“I came home at about 20 to seven. I parked my car and deactivated the alarm in the house and I opened my garage door also with the remote. Once I was in the garage, I closed the garage door and then left the garage through an entrance. What is important to note is that my garages are separate from the house. So as I walked out into the inter-leading door with the leading door into the back garden, I stood there and I basically just looked over the area because my back door is on the right hand side. I then noticed that there is a strange form behind a big ceramic pot and what had initially happened the weekend before, I had actually put building rubble into potting soil bags that you get at the nurseries that are blue in colour, they are sort of blue - light blue and I had asked the builders to please cast away. When I came home and I saw the shape behind there it was blue and I immediately thought why would the builders now put those rubble bags behind those pots and immediately I went to investigate, totally oblivious of what was about to happen and in my stride I walked towards the pot and as I got to the pot, this figure stood up and immediately started lashing and striking me with this massive panga.”

On appeal, the argument on behalf of the appellant was to the effect that the Magistrate placed too little emphasis on the appellant’s personal circumstances, over-emphasised the interests of the community and the seriousness of the offence. By not giving sufficient consideration to the appellant’s personal circumstances, the sentence was therefore been excessive. In particular the Magistrate had not taken sufficient account of the fact that the appellant is a 31 year old man with two children, for which he was at least partially financially responsible at the time of the sentencing. Furthermore he was a first offender. He had shown some remorse which was evident by his plea of guilty.

These factors are not unimportant and must be taken into account in the overall assessment of the sentence, but as I have indicated from the passages of the evidence to which I have already made reference, the gravity of the attack was appalling.

The appellant attacked the complainant in an unprovoked manner with a large panga. The evidence seems to suggest that he was intent in chopping off the head of the complainant. The complainant's ear had to be sewn back on. A six hour operation was required in order to restore the complainant to some form of health. Some of the complainant's fingers still do not function properly. He requires physiotherapy.

Furthermore, the appellant was unrelenting in the attack which began in the garden of the complainant's home and continued until neighbours and the police arrived at the scene.

In the broad assessment of a sentence a Court is required to take account of the accused and his personal circumstances together with the nature of the crime, the interest of the community and equally the interest of the victim.

In this case the interest of the victim coupled with the gravity of the crime constitute weight of considerable significance in any assessment as to sentence.

Furthermore, a Court which exercises an appellate jurisdiction with regard to sentence, absent any material misdirection by the trial court, must approach the assessment of sentence with a great degree of care and should be cautious to substitute a sentence simply because the appellate court would have preferred a different sentence to the one which was given by the trial court.

These considerations have been set out in *S v Malgas* 2001(1) SACR 469 (SCA) particularly at paragraph 9.

In the light of the nature of the attack, a brutal sustained and unprovoked assault, it cannot be said that the imposition of a term of imprisonment of 15 years is disturbingly inappropriate, induces a sense of shock which therefore would trigger off an enquiry as to whether there has been a material misdirection on the part of the Trial Court.

In this case the sentence that was imposed is certainly not disproportionate to that which occurred on that fatal day.

For these reasons therefore I would DISMISS the appeal and confirm the sentence.

I agree and it is so ordered.

STELZNER, J

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAWCHC/2012/301.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/masuku-v-s-unknown-topic-awchc-2012--6a3ea51e3b1caa9129814e43>

Prepared on 13 October 2026 · Esheria