

SOUTH AFRICA / JUDGMENT

Montsho v S (CA33/15) [2015] ZANWHC 45 (27 August 2015) [2015] ZANWHC 45

COURT

North West High Court, Mafikeng

BEFORE

Landman, Chwaro

CASE / FILE NUMBER

CA33/15

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IN

THE HIGH COURT OF SOUTH AFRICA

(NORTH

WEST DIVISION, MAHIKENG)

CASE

NO.: CA 33/15

In

the matter between:

SELLO
KLEINBOY
MONTSHO
APPELLANT
and
THE
STATE
RESPONDENT
LANDMAN
J, CHWARO AJ

JUDGMENT

Landman J:

- [1] S K Montsho, the appellant, appeals against a sentence of 8 years imprisonment imposed upon him on 29 January 2013 by a Regional Magistrate for the Regional Division of North West sitting at Temba, for the attempted murder of his then spouse. The appeal is with the leave of the court a quo.
- [2] The appellant instructed his attorney on the day before the hearing to withdraw the appeal but he reversed his decision on the day of the appeal. As we have read the record we decided to hear the appeal. He seeks condonation for his fault to note the appeal timeously.

Appellant's

submissions

- [3] Mr Gonyane, who appeared on behalf of the appellant, submitted that the sentence of 8 years imprisonment is excessively long and it induces a sense of shock that warrants interference by this court. He also submitted that the court a quo attached little weight (meaning insufficient weight) to the appellant's personal circumstances. Counsel submitted that the sentence should be reduced to 4 years imprisonment.

Respondent's

submissions

- [4] Ms Rasakanya, who appeared on behalf of the respondent, submitted that the appellant, as a breadwinner and father of his two minor children, should have known, more than anyone else that he was placing the wellbeing of his family in jeopardy by resorting to this crime. The appellant should consider himself fortunate by failing to kill the complainant on that day. He must also be grateful to the complainant for struggling with him as he would have killed her had she not run away from him. He would have faced a term of life imprisonment.
- [5] The prevalence of this offence in our society, that innocent women are assaulted, killed by their partners or husbands calls for a sentence which will not only deter perpetrators, but deter offenders from violence against women who love them and trust them. The complainant went alone to meet the appellant because she trusted him even though they were in the process of divorcing one another.

Evaluation

- [6] An appeal court may not interfere with the sentence imposed by a lower court unless it is convinced that the sentencing discretion has been exercised improperly or unreasonably or that the sentence imposed on the appellant induces a sense of shock.

- [7] A court of appeal will only interfere with the sentence imposed by a trial court if it is vitiated by an irregularity or misdirection or when the sentence is shockingly severe, disturbingly inappropriate or totally out of proportion to the offence committed. See *S v Coetzee* 2010 (1) SACR 176 (SCA).
- [8] The following are the personal circumstances of the appellant:
- 8.1 He was [...] years of age and a divorcee;
- 8.2 He was a first offender;
- 8.3 He has 2 [...] children aged [...] and [...] and is co-responsible for their maintenance;
- 8.4 He was employed at Mahumu Investment Holdings;
- 8.5 He was active in church as an assistant Pastor; and
- 8.6 He was diagnosed with severe depression and bipolar disorder.
- [9] It is necessary to also record that the learned Regional Magistrate found that the appellant showed no remorse.
- [10] The crime that the appellant committed was found by the learned Regional Magistrate to have been premeditated. The appellant sought to kill his spouse by stabbing her with a knife in her abdomen. His spouse leapt out of the window of the vehicle and landed on the road. The appellant executed a u-turn and ran over the complainant as she lay on the road.
- [11] As Ms Rasakanya submitted, the appellant attempted twice to kill his spouse on that day. His first attempt was thwarted when the complainant grabbed the knife by the blade, and the second attempt to kill her, was when he drove into her. It is possible that bystander who came to the scene prevented a further attempt. Ms Rasakanya submits, but this possibility cannot taken into account.
- [12] Taking all the factors into account it cannot be said that a sentence of 8 years imprisonment is harsh or that it induces a sense of shock. The sentence clearly takes into account the appellant's personal circumstances and his mental illness. If it was not for his mental illness a harsher sentence would have been justified.
- [13] In the result I make the following order:
1. The late noting of the appeal is condoned.
 2. The appeal against sentence is dismissed.

A A Landman

Judge of the High Court

I agree

O K Chwaro

Acting Judge of the High Court

APPEARANCES:

Date of hearing:

21 August 2015

Date of Judgment:

27 August 2015

Counsel for the Appellant:

Adv Gonyane

Instructed by:

The Mafikeng Justice Centre

Counsel for the Respondent:

Adv Rasakanye

The Director of Public Prosecutions

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