

SOUTH AFRICA / JUDGMENT

S v Dyosi (CC19/2017) [2019] ZAECMHC 40 (19 July 2019)

[2019] ZAECMHC 40

COURT

Eastern Cape High Court, Mthatha

BEFORE

M.S. Jolwana

CASE / FILE NUMBER

CC19/2017

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IN THE HIGH COURT OF SOUTH AFRICA

[EASTERN CAPE LOCAL DIVISION: MTHATHA]

CASE NO. CC19/2017

In the matter between:

THE STATE

VS

HEADMAN DYOSI

SENTENCE

JOLWANA J

- [1] Mr Headman Dyosi was born on 08 August 1982 at Ngcuka locality in Lady Frere. On 08 August 2019 he will turn 37 years old. He has two previous convictions. On 12 September 2002 the Lady Frere district court found him guilty of house breaking and theft and sentenced him to 12 months imprisonment. On 02 August 2002 six days before his 20th birthday the regional court Lady Frere found him guilty of murder and sentenced him to 18 years imprisonment. It is not clear when the above crimes were committed. What is clear is that he was still a young man when he embarked on serious criminal activities.
- [2] On 17 July 2019 this court found Mr Dyosi guilty of atrocious crimes whose only target was women. He unleashed his reign of terror and embarked on multiple rape and murderous crime spree on the 14th month of his release on parole for the murder conviction. Four of

the women Mr Dyosi raped and murdered did not live to tell their stories. The fear and pain they went through when they were accosted, subdued, raped and killed will never be known. Their lifeless bodies were found strewn in different locations in and around the town of Lady Frere.

- [3] The darkness of your heart and the cruelty of your actions Mr Dyosi will forever remain a mystery to those you were born with, your mother and the community of Ngcuka locality and the people of Lady Frere in general. However, we know from the post mortem reports and the evidence given by the doctors that you raped and killed your victims mercilessly and with extreme violence. N[...] S[...] J[...] died of head injuries and multiple stab wounds to the neck. N[...] N[...] had a fractured base of the skull. B[...] V[...] died of manual strangulation and head injuries. N[...] Q[...] died of head injuries. Her face was found mutilated beyond recognition.
- [4] A[...] F[...] survived miraculously despite sustaining a fractured skull. She told this court that she had made a fire outside in a fireplace to cook a meal in a three legged pot for her family at her home when she was attacked, severely assaulted,

dragged, tied and raped.

- [5] This court was told how the state counsel and the investigating officer had to beg and convince A[...] T[...] to come and tell this court what you did to her. She did not want to testify because she did not want to relive what she went through on 21 July 2014, the day you attacked and raped her. Reluctantly she agreed and testified to this court about how as she walked from work you accosted and dragged her to a bushy area. You thereafter raped her in different ways violating the privacy and the sanctity of her body after which you told her to go away.
- [6] It would be extremely presumptuous of anyone to say that they know what victims of rape go through during and after the ordeal. I consider it befitting to remember the words of our former Chief Justice expressed 22 years ago during the early years of our

democratic dispensation in 1997. In *S v Chapman*[1] Mahomed CJ had this to say:

“Rape is a very serious offence, constituting as it does a humiliating, degrading and brutal invasion of the privacy, the dignity and the person of the victim.

The rights to dignity, to privacy and the integrity of every person are basic to the ethos of the Constitution and to any defensible civilisation.

Women in this country are entitled to the protection of these rights. They have a legitimate claim to walk peacefully on the streets, to enjoy their shopping and their entertainment, to go and come from work, and to enjoy the peace and tranquillity of their homes without the fear, the apprehension and the insecurity which constantly diminishes the quality and enjoyment of their lives.

The appellant showed no respect for their rights. He prowled the streets and shopping malls and in a short period of one week he raped three young women, who were unknown to him. He deceptively pretended to care for them by giving them lifts and then proceeded to rape them callously and brutally, after threatening them with a knife. At no stage did he show the slightest remorse.

The courts are under a duty to send a clear message to the accused, to other potential rapists and to the community: We are determined to protect the equality, dignity and freedom of all women, and we shall show no mercy to those who seek to invade those rights.”

[7] It is with the gravity of these offences and these considerations in mind that this court must consider and give you an appropriate sentence.

[8] You never pretended to be remorseful nor was any submission made on your behalf by your counsel that you were because you were not. From the beginning of this trial right up to the end you set there emotionlessly and expressionlessly as the state witnesses gave testimonies of their gruesome discoveries of dead and decomposing bodies.

[9] The court is obliged to take into account your personal circumstances. Mr Gxaba told this court that you were born on

08 August 1982. When you were arrested on 05 June 2015 you worked as a gardener at a certain homestead where you earned R1250.00

per month. You have no children, your father predeceased you and you lived with your mother when you were arrested. You were serving an 18 year sentence for murder and you had been released on parole when you committed these horrific crimes.

[9] Your arrest resulted in your parole being revoked as you violated its conditions when you committed these offences resulting in you being returned to prison to continue serving the remainder of your 18 year jail term. You will finish your 18 year term of imprisonment in

2020. Your counsel urged me to take into account your pre-sentence period of incarceration in considering your sentence. He also urged me to order the sentences to run concurrently with any term of life imprisonment if I sentence you to life imprisonment. However, everything said by your counsel on your behalf pales into insignificance when the seriousness of your crimes is taken into consideration.

[10] The general principles of our law that a sentencing court must apply were summarised as follows in S v SMM[2]:

“[13]It is equally important to remind ourselves that sentencing should always be considered and passed dispassionately, objectively and upon a careful consideration of all relevant factors. Public sentiment cannot be ignored, but it can never be permitted to displace the careful judgment and fine balancing that are involved in arriving at an appropriate sentence. Courts must therefore always strive to arrive at a sentence which is just and fair to both the victim and the perpetrator, has regard to the

nature of the crime and takes account of the interests of society. Sentencing involves a very high degree of responsibility which should be carried out with equanimity. As Corbett JA put in S v Rabie:

‘A judicial officer should not approach punishment in a spirit of anger because, being human, that will make it difficult for him to achieve that delicate balance between the crime, the criminal and the interests of society which his task and the objects of punishment demand of him. Nor should he strive after severity; nor, on the other hand, surrender to misplaced pity. While not flinching from firmness, where firmness is called for, he should approach his task with a humane and compassionate understanding of human frailties and the pressures of society which contribute to criminality.’

[14] Our country is plainly facing a crisis of epidemic proportions in respect of rape, particularly of young children. The rape statistics induce a sense of shock and disbelief. The concomitant violence in any rape incidents engenders resentment,

anger and outrage. Government has introduced various programmes to stem the tide, but the sexual abuse of particularly women and children continues unabated. In S v RO I referred to this extremely worrying social malaise, to the latest statistics at that time in respect of sexual abuse of children and also to the disturbing increasing phenomenon of sexual abuse within the family context. If anything, the picture looks even gloomier now, three years down the line. The public is rightly outraged by this rampant scourge. There is consequently increasing pressure on our courts to impose harsher sentences primarily, as far as the public is concerned, to exact retribution and to deter further criminal conduct. It is trite that retribution is but one of the objectives of sentencing. It is also trite that in certain cases retribution will play a more prominent role than the other sentencing objectives. But one cannot only sentence to satisfy public demand for revenge – the other sentencing objectives, including rehabilitation, can never be discarded altogether, in order to attain a balanced, effective sentence. The much-quoted Zinn dictum remains the leading authority on the topic. Rumpff JA’s well-known reference to the triad of factors warranting consideration in sentencing, namely the offender, the crime and the interests of society, epitomises the very essence of a balanced, effective sentence which meets all the sentencing objectives. More than 40 years ago Schreiner JA had the following to say about the balance which has to be struck:

‘While the deterrent effect of punishment has remained as important as ever, it is, I think, correct to say that the retributive aspect has tended to yield ground to the aspects of prevention and correction. That is no doubt a good thing. But the element of retribution, historically important, is by no means absent from the modern approach. It is not wrong that the natural indignation of interested person and of the community at large should receive some recognition in the sentences that Courts impose, and it is not irrelevant to bear in mind that if sentences for serious crimes are too lenient, the administration of justice may fall into disrepute and injured persons may incline to take the law into their hands’

[11] In respect of counts 4, 7, 9 and 11 which are the murder convictions the state has invoked the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997 in terms of which the legislature has prescribed a minimum sentence of life imprisonment. It was never suggested on your behalf that this Act is either inapplicable or that there are any weighty considerations on the basis of which I should depart from the prescribed minimum sentence of life imprisonment. Had that submission been made it would have been without merit and I would have given it short shrift as there are no substantial and compelling circumstances that could justify the imposition of a lesser sentence.

[12] In *S v Malgas*[3] the Supreme Court of Appeal had this to say about section 51:

“[25] What stands out quite clearly is that the courts are a good deal freer to depart from the prescribed sentences than has been supposed in some of the previously decided cases and that it is they who are to judge whether or not the circumstances of any particular case are such as to justify a departure. However, in doing so, they are to respect, and not merely pay lip service to, the legislature’s view that the prescribed periods of imprisonment are to be taken to be ordinarily appropriate when crimes of the specified kind are committed. In summary –

A. Section 51 has limited but not eliminated the courts’ discretion in imposing sentence in respect of offences referred to in Part 1 Schedule 2 (or imprisonment for those specified periods for offences listed in other parts of Schedule 2).

B. Courts are required to approach the imposition of sentence conscious that the legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the sentence that should ordinarily and in the absence of weighty justification be imposed for the listed crimes in the specified circumstances.

C. Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit a severe, standardised and consistent response from the courts.

D. The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation, and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded.”

[13] In this case these women were going about their lives routinely doing what they were entitled to do and that is to walk freely in the streets and villages of Lady Frere. Horrific crimes were committed against them and they became victims of rape when you took advantage of their vulnerabilities as women and you violated and raped them for personal gratification. In the process they were humiliated and suffered unimaginable degradation as women. Four of them were also killed extremely violently to silence them forever. You deliberately targeted their heads when you crushed their skulls to ensure that they would never survive. You also made an attempt to kill Angelina Fose by the same method of the

crushing of the skull.

- [14] Over a period of three years four women had been killed, one had been lucky to survive the attempt at taking away her life and another one was also lucky not to be killed and you told her to go away. According to her evidence she may have been saved from your extreme violence by the fact that you asked her for her clan name. However, even after she told you her clan name and you asked her why she did not tell you earlier, you still raped her again.
- [15] For three years you succeeded in making sure that you were not caught as you continued with your reign of terror. The work of the investigating team of police officers, especially sergeant Nzube in never giving up in searching for the clues on these rapes and murders resulted in the breakthrough which led to your arrest. The work done by the crime scene experts of the police and the task team that investigated the serial rapes and murders is highly commendable. Advocate Govender, the work you put in in ensuring that the case was properly presented ensured that the hard work that many police officers put into this case did not go to waste and that Mr Headman Dyosi got to account for his crimes and the families of the victims got to know why their loved ones were killed so mercilessly.
- [16] It is the duty of this court to pronounce on the appropriate sentence which I now proceed to do. However, before I do so, it is absolutely necessary that I point out again that when Mr Dyosi committed all these crimes with abominable cruelty, he was still on parole for a previous conviction for murder and had only served half of his 18 year jail term. What this means is that his rehabilitation in prison failed dismally while he might have convinced the correctional services officials by sheer pretence that he was rehabilitated. That failure resulted in him embarking on rampage of rape and murder crime spree which showed no signs of abating until he was arrested. Throughout these proceedings he has not said one word of remorse for his actions. He is a very dangerous criminal whose actions make it clear that he should never be allowed back into society.
- [17] Mr Headman Dyosi you are sentenced as follows:
1. For counts 1, 2, 3, 5, 6, 8 and 10 you are sentenced to 15 years imprisonment for each count.
 2. For counts 4, 7, 9 and 11 you are sentenced to life imprisonment for each count.

M.S. JOLWANA

JUDGE OF THE HIGH COURT

Appearances

Counsel for the State: A. GOVENDER

Instructed by: NPA

MTHATHA

Counsel for accused: W.K.M. GXABA

Instructed by: LEGAL AID SOUTH AFRICA

Heard on: 17 July 2019

Delivered on: 19 July 2019

[1] S v Chapman 1997 (2) SACR 3 (SCA)

[2] S v SMM 2013 (2) SACR 292 (SCA)

[3] S v Malgas in [2001] 3 ALL SA 220 (A)

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