

SOUTH AFRICA / JUDGMENT

S v Manzana and Another (CC31/2024)

[2024] ZAECMKHC 93 (14 August 2024)

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COURT

Eastern Cape High Court, Makhanda

BEFORE

N Molony

CASE / FILE NUMBER

CC31/2024

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IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION

- MAKHANDA)

Case No: CC 31/2024

In the matter between:

THE STATE

and

SIYABULELA ANDRIES MANZANA

Accused 1

UNATHI TSHALI

Accused 2

SENTENCE

MOLONY AJ:

[1] The two accused in this matter were charged with:

1.1 Two counts of housebreaking with the intention to steal and theft (Counts 1 and 2).

1.2 One count of murder (Count 3).

1.3 Two counts of robbery with aggravating circumstances (Counts 4 and 5).

1.4 One count of unlawful possession of a firearm (Count 6).

1.5 One count of unlawful possession of ammunition (Count 7).

- [2] The factual matrix, in summary, is that the accused, on 31 May 2023 and on 1 June 2023, broke into and entered two residences on Kroonhof dairy farm, where they were both employed at the time. They stole various items from both residences, including two rifles.
- [3] They then went to the home of the deceased, who was the general manager of Kroonhof farm, and, using the rifles, committed robbery by taking the cellphone of Ms Ongeziwe Gobodo (who was a friend of the deceased), as well as the motor vehicle used by the deceased. The deceased was shot twice (once in the face and once in the back of the head) during the course of the robbery, and died shortly thereafter from his wounds.
- [4] The accused planned the housebreakings, and to some extent the robbery (in regard to the motor vehicle) and murder prior to the events occurring. It appears that the robbery relating to Ms Gobodo's cellphone was a crime of opportunity, and had not factored into the plan prior to it occurring.
- [5] In regard to the murder count, a discretionary minimum sentence of life imprisonment is applicable, as it was alleged that the deceased was killed by the accused acting in concert and in the furtherance of a common purpose; and the deceased was killed by the accused during or after committing robbery with aggravating circumstances.
- [6] A discretionary minimum sentence of 15 years is applicable to each of the robbery counts, as it was alleged that the accused committed robbery with aggravating circumstances and, in regard to one of the robbery counts, the offence involved the taking of a motor vehicle.
- [7] The counts relating to unlawful possession of a firearm and ammunition each carry a maximum sentence of 15 years' imprisonment.
- [8] The trial in this matter commenced on 5 August 2024 and ran until 7 August 2024, when a trial within a trial commenced in regard to an alleged confession made by accused 1, which confession accused 1 alleged had not been made freely and voluntarily, and which had been obtained in violation of his Constitutional rights.
- [9] On 8 August 2024 this court ruled that the confession made by accused 1 was admissible in evidence against accused 1 in this matter.
- [10] On 12 August 2024 both accused stated their intention to change their pleas from not guilty on all counts, to guilty on all counts, and tendered formal admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977, which admissions had the effect of admitting all the elements of all of the offences in question.
- [11] The state thereafter handed in, by agreement, a confession made by accused 2.
- [12] The state then closed its case, followed by the cases for both accused being closed.
- [13] After hearing argument both accused were thus found guilty as charged on 12 August 2024.

[14] On 13 August 2024 the defence and the state addressed on sentence, it having been decided not to lead any evidence in mitigation or aggravation.

[15] It is trite that when determining an appropriate sentence, the nature of the crime, the circumstances of the offender and the interests of society must be considered, and that relevant mitigating and aggravating factors must be balanced in order to determine a sentence which is proportionate under the circumstances.

[16] Accused 1's personal circumstances are the following:

16.1 He was born on 22 September 1986, and is currently 37 years old.

16.2 He is unmarried, and has no children.

16.3 He made it to grade 9 at school but is unsure as to whether or not he passed grade 9, as he did not go and collect his end of year report that year.

16.4 He was raised by his maternal grandmother who currently lives in Alexandria.

16.5 His mother is still alive, and his father passed away in 2001.

16.6 He was employed on Kroonhof dairy farm for a short period prior to the offences being committed, this being approximately one month, according to the evidence of Mr Charl Daniel Wilke, the owner of the farm.

16.7 Prior to being employed on Kroonhof farm accused 1 did gardening work in Alexandria, earning R750.00 per week.

16.8 Accused 1 used to suffer from tuberculosis, but received treatment and it no longer affects him.

16.9 He has been in custody since June 2023 (a period of approximately 14 months).

[17] Accused 1 has three previous convictions, those being:

17.1 Receiving stolen property, which sentence was imposed in February 2006, and for which he received a sentence of a fine of R500.00 alternatively 2 months' imprisonment. Accused 1 was also declared unfit to possess a firearm.

17.2 Housebreaking with intent to steal and theft, imposed in January

2006. Accused 1 was sentenced to 18 months' imprisonment, which was conditionally suspended for 5 years, along with an extensive period of community service. He was, once again, declared unfit to possess a firearm.

17.3 Possession of dagga in terms of section 4(b) of the Drugs and Drug Trafficking Act 140 of 1992, for which he received a sentence of a fine of R1 000.00, alternatively 100 days' imprisonment. The dagga was declared forfeited to the state.

[18] It is noted that the only two relevant previous convictions stem from 2006, which is approximately 18 years prior to the commission of the offences in this matter. In my view the length of time that has elapsed renders them of little relevance to the determination of sentence in this matter.

[19] Accused 2's personal circumstances are the following:

19.1 He was born on 8 January 2000, and is currently 24 years old.

19.2 He is unmarried and has one child (a boy who is 8 years old), and who resides with the accused's girlfriend, who is the mother of the child. The accused and his girlfriend had the child when they were both 16 years of age.

19.3 Accused 2 was raised by his grandmother, who lives near Cookhouse.

19.4 Accused 2's mother resides on a farm near Addo, and his father resides in Addo.

19.5 He went as far as grade 7 at school.

19.6 He had, at the time of the commission of the offences in question, been employed at Kroonhof farm since 2020, and was earning a salary of R5 200.00 per month. Prior to that he worked with sheep.

19.7 He has been in custody since June 2023 (a period of approximately 14 months).

[20] Accused 2 is a first offender.

[21] The following submissions were made by Mr Geldenhuys in mitigation of sentence:

21.1 Accused 1 had conveyed that he (accused 1) feels hurt by what he did, and did not think he would do something like this.

21.2 Accused 2, similarly, conveyed to Mr Geldenhuys that he feels hurt by what he has done, and feels remorse for his actions.

21.3 The personal circumstances of both accused were generally favourable, and accused 2 was a first offender, whilst accused 1's relevant previous convictions were both very old. Neither of the accused have previous convictions for any violent offences.

21.4 It was unfortunate that the accused only changed their plea late during proceedings, but they had eventually come clean and made a full disclosure. This was indicative of remorse on their part.

21.5 They had co-operated with the police by making frank and full disclosure when their confessions were taken, and accused 1 had pointed out to the police where various stolen items were being kept, and assisted in finding the motor vehicle keys that were stolen from the deceased.

[22] It was submitted that, whilst the offences were serious, the prescribed minimum sentences would be disproportionate to the well-known triad of factors if imposed, and that the imposition of the maximum sentence in regard to the counts relating to possession of a firearm and ammunition, would be inappropriate.

[23] It was further submitted that the sentences should run concurrently, as the offences were all intrinsically linked.

[24] Mr Mtsila submitted that the following factors were aggravating:

24.1 There was a level of planning involved in regard to the offences committed.

24.2 There appeared to be no good reason as to why the accused broke into two residences, stole rifles (inter alia), and ultimately killed the deceased. The evidence led demonstrated that accused 2 was to some extent dissatisfied with the manner in which the deceased was running the farm and treating employees.

24.3 The deceased was an important member of the farming industry, with Kroonhof farm generating almost R80 million per year. The farming community had suffered a significant loss due to the death of the deceased.

24.4 Both accused were authors of their own misfortune. They now requested mercy from this court but had not shown any mercy to the deceased. Ms Gobodo, in her evidence, had explained how she had told the accused to take whatever they wanted, but to spare her and the deceased's lives. The accused ignored her pleas.

[25] Mr Mtsila submitted further that:

25.1 None of the mitigating factors, alone or considered cumulatively, amounted to substantial and compelling circumstances justifying the imposition of a lesser sentence.

25.2 He agreed that the maximum sentence should not be imposed in regard to the counts relating to possession of a firearm and ammunition, and suggested sentences of 8 years and 5 years respectively.

25.3 He agreed that all the sentences should run concurrently and submitted that this would demonstrate an element of mercy.

[26] I was not pertinently addressed (by either the state or the defence) on the issue of an appropriate sentence regarding the housebreaking charges, and presume the parties were content that I use my discretion in this regard.

[27] In considering whether or not there are substantial and compelling circumstances present which justify the imposition of a lesser sentence, I will remain mindful of the guidance provided by the matter of *S v Malgas*.^[1]

[28] I will also remain mindful of the fact that the offences occurred during the same sequence of events.

- [29] Having carefully considered and weighed the relevant mitigating and aggravating factors, it is clear that the aggravating factors in this matter far outweigh the mitigating factors.
- [30] The accused went to the home of the deceased on the night in question with the direct intention to kill the deceased, ostensibly due to dissatisfaction with working conditions, which is what occurred.
- [31] The reason provided for the murder is shockingly callous, particularly if one considers the evidence of Mr Yonwabo Feketshana, another employee at Kroonhof farm who lived with the deceased and was present in the house when the deceased was shot. Mr Feketshana testified that the relationship between the two accused and the deceased was fine prior to the incidents in question, and that there had been no suggestion of the deceased ill-treating either of the accused.
- [32] According to accused 1's confession, Ms Gobodo's cellphone was taken to prevent her from contacting anyone whilst the accused fled the scene. The stolen vehicle was ultimately abandoned at the side of the road, with the two firearms remaining inside.
- [33] Since the deceased was murdered Ms Gobodo, who witnessed the entire incident, and pleaded for her life and that of the deceased, testified that she had trouble sleeping and would often have flashbacks. She attended an identification parade shortly after the incidents in question, and identified both accused from photographs, being too terrified to attend an in-person identification parade. Her distress was evident when she testified, and she required a break at one point as she was crying and needed to compose herself.
- [34] Mr Wilke testified that, prior to the offences in this matter being committed, accused 2 had previously worked as a gardener for Mr Phillipus Rudolph Mentz (the complainant in regard to one of the housebreaking charges). According to Mr Wilke, he had offered to employ accused 2 on the farm in order to assist, as Mr Mentz had informed Mr Wilke that he could no longer afford to employ accused 2.
- [35] Mr Wilke testified further that the deceased (who was, according to the postmortem report, 25 years old at the time of his death) had been his friend, and had been the most important employee on his farm. It was a serious loss to the business that the deceased was no longer there to attend to the day-to-day running of the farm.
- [36] The offences involved in this matter are extremely serious, involve significant violence, and are prevalent within this court's area of jurisdiction.
- [37] Both accused, despite initially co-operating with the police, elected to plead not guilty to all the charges, only changing their minds in regard to their pleas after three days of evidence (including a trial within a trial).
- [38] In the matter of *S v Matyityi*[2] the following was stated:

“There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus genuine contrition can only come from an appreciation and acknowledgement of the extent of one's error. Whether the offender is sincerely remorseful, and not simply feeling sorry for himself or herself at having been caught, is a factual question. It is to the surrounding actions of the accused, rather than what he says in court, that one should rather look. In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence. Until and unless that happens, the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of, inter alia: what motivated the accused to commit the deed; what has since provoked his or her change of heart; and whether he or she does indeed have a true appreciation of the consequences of those actions”.

- [39] Neither of the accused testified or adduced evidence in mitigation of sentence, relying instead on brief submissions from the bar in regard to remorse. In my view neither accused has demonstrated any degree of genuine remorse for their actions.
- [40] Given all of the above, I am not persuaded that substantial and compelling circumstances exist (in relation to either accused) in regard to either of the robbery counts or the murder count.
- [41] I also see no reason to differentiate between the accused in regard to sentence, nor was it suggested in argument that such differentiation would be appropriate.

[42] I accordingly impose the following sentences:

42.1 Accused 1:

Count 1: Housebreaking with intent to steal and theft

The accused is sentenced to undergo five (5) years' imprisonment.

Count 2: Housebreaking with intent to steal and theft

Count 3: Murder

The accused is sentenced to undergo life imprisonment.

Count 4: Robbery with aggravating circumstances

The accused is sentenced to undergo fifteen (15) years' imprisonment.

Count 5: Robbery with aggravating circumstances

Count 6: Unlawful possession of firearm

The accused is sentenced to undergo eight (8) years' imprisonment.

Count 7: Unlawful possession of ammunition

It is ordered that all sentences are to run concurrently.

42.2 Accused 2:

N MOLONY

ACTING JUDGE OF THE HIGH COURT

Appearances:

For the State:

Adv Mtsila instructed by

Deputy Director of Public Prosecutions

MAKHANDA

For the Accused: Adv Geldenhuys instructed by

Legal Aid South Africa

Heard on:

5, 6, 7, 8, 12, 13 & 14 August 2024

Judgment

delivered: 14 August 2024

[1] 2001

(2) SA 1222 (SCA) at para 25.

[2] 2011

(1) SACR 40 (SCA) at para 13.

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