

SOUTH AFRICA / JUDGMENT

S v Mdlalose (Sentence) (SS23-2018)

[2022] ZAGPJHC 43 (12 January 2022)

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COURT

South Gauteng High Court, Johannesburg

BEFORE

Strydom

CASE / FILE NUMBER

SS23-2018

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION HELD AT JOHANNESBURG

CASE NO: SS23-2018

DATE: 2021.12.07

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES : NO

REVISED

In the matter between

THE STATE

and

MDLALOSE WELCOME MLULEKI

SENTENCE

STRYDOM, J: This is an ex tempore judgment. This judgment should be typed afterwards for me to be corrected.

The accused Mr Mluleki Welcome Mdlalose, herein after referred to as the accused has been found guilty and convicted on 24 counts.

These are 3 counts of murder. Being counts 1, 18 and 23.

Two counts of attempted murder. These are counts 14 and 15.

One count of kidnapping, count 4.

One count of assault, count 6.

One count of pointing of a firearm, count 26.

One count of contravention of section 120(3)(b) of the Firearms Control Act being reckless endangerment to a person or property, that is count 10.

One count of discharge of a firearm in a built up area, count 11.

On eight counts of the unlawful possession of a firearm, being counts 2, 7, 12, 16, 17, 19, 21 and 24.

And eight counts of being in unlawful possession of ammunition, being counts 3, 8, 13, 17, 20, 22 and 25.

Accused's criminal activities stretched over a period of four years. In most instances it involved the use of a firearm which he unlawfully possessed.

This is a case which demonstrates the reason why the legislature decided to impose heavy penalties for the unlawful possession firearms, and more so for the possession of semi-automatic firearms. The accused has shown that if the wrong person gets hold of a firearm it is just a matter of time before he will use it to kill or commit serious crime.

Considering the evidence in totality it appeared that the accused is a person who can only show his perceived manly dominance through the use of a firearm.

Throughout the case it became apparent that accused is a dominating, chauvinistic, suspicious, possessive and extremely jealous person. He demanded women to respect him whilst he abused them and acted in his own self interest.

He treated women as if they were his property. And when he became suspicious about their doings they had to pay with their lives for that. What he has done, in the Court's mind, is shocking and repulsive.

It was argued on behalf of the state that the accused is a danger to society, and more so to women. I agree with this sentiment.

Accused has been convicted of three murders, and in each instance he used a firearm. In the first case he killed a friend of his when he, according to his own version, wanted to shoot two other people simply for the reason that they argued with him. Although it remains a serious matter, this incident is less serious than the other two murders which were, in my view, committed after some premeditation.

As far as count 1 is concerned, that is the murder of Mr Sibesi Mahlaba, the Court convicted accused on a count of murder read with the provisions of section 51(2) of the General Law Amendment Act 105 of 1997. The prescribed minimum sentence for this kind of murder is 15 years' imprisonment unless substantial and compelling circumstances is shown to deviate from the prescribed minimum sentence.

As far as the other two murder convictions are concerned, the Court found that accused did not act on the spur of the moment, but that he premeditated the killing of Ms Sithebe, the deceased in count 18, and Ms Seko, the deceased in count 23.

In the case of Ms Sithebe the accused was in a love relationship with her for a short period. When he visited her she received a phone call, and accused wanted to see the cell phone numbers on her phone. She refused, and accused was prepared to kill her and others for that. I say this because when he was escorted out of the premises he started firing in the direction of Ms Sithebe and Mr Mowesa. He could have killed both of them.

Ms Sithebe laid a case of attempted murder against the accused. Despite this he tried to convince her to withdraw the charges and to continue with the love relationship. He apologised, probably to get him out of trouble, but when she was not prepared to do it he decided to lure her to his place where he met her in the street and shot her in cold blood.

He must have premeditated this, otherwise why would he have taken his firearm to the place in the street where he met her. The cellular phone records tell a story how he phoned her 16 times just before her death. He was the last person that spoke to her shortly before she died.

The same applies in the case of the death of Ms Seko. He phoned her during the course of the day she died. Ms Seko told Mr Mahlaba that if she does not immediately answer her phone when accused phones she will be in trouble as accused was an aggressive person.

He was also told by Ms Seko that her boyfriend was angry as she was not answering her phone, and he wanted to know whom she was with. Clearly there was some form of anger building up within the accused. That evening he stabbed and shot her.

The Court finds that this murder was also premeditated as accused earlier that day has shown his suspicion and aggression. Moreover this was not the first time he acted like this. He did exactly the same to Ms Sithebe. On this occasion he also pointed a firearm at Mr Mahlaba and told him that he must go to his room or otherwise face being shot.

The other incident involving Ms Mathebula also showed the accused's jealousy and aggression. He was only in a two week relationship when he met her, close to a clinic. She received a phone call only and he became suspicious. He pulled out a firearm and threatened her. He pulled her to his house and assaulted her because, according to him, she was disrespectful of him. This only because she took a phone call from another person.

He somehow managed to convince her to continue with her love relationship only to get angry later when she refused his demand to come to his place. He went to her residence and fired shots at the house with occupants. Again an illustration of a person who can only show his manhood when he has a firearm in his possession. He never hesitated to use a firearm. When the house of the Sithebes gave them some protection against his firearm, he threatened that he will get petrol and burn down the house.

As indicated herein before, all of this indicates to the Court that one deals with a jealous and aggressive person who is a danger to society. Even more so when he has a firearm in his possession.

The three murder counts and some of the other counts carry minimum sentences unless the Court can find that there are substantial and compelling circumstances to deviate from the prescribed minimum sentences. As far as the murder counts 18 and 23 are concerned the minimum prescribed sentence is one of life imprisonment.

The Court must now consider the aggravating and mitigating circumstances together with all other considerations to determine whether the accused has shown the existence of substantial and compelling circumstances to deviate from the prescribed minimum sentences.

The Court will start with the personal circumstances of the accused. The accused is currently 40 years old. He is married and has three minor children aged 15, 13 and 3 years respectively. He has one minor child outside wedlock who is four years old. He passed standard 5 at school. He was employed at the time of his arrest working as a taxi patroller earning R500 per week.

The Court will regard the accused as a first offender as the only relevant previous conviction is one for assault committed during 2005 which is approximately 16 years ago.

He has been in custody for three years since his second arrest. If the accused did not abscond after his first arrest this matter might have been concluded earlier.

These are the circumstances which to some extent can be seen as mitigating factors, but before the Court can conclude that the accused has shown substantial and compelling circumstances to deviate from the prescribed minimum sentence, the aggravating factors should also be considered.

The Court cannot leave out of the equation that the accused over a four year period committed various serious crimes including three murders. The accused has shown no remorse whatsoever. He persisted in his innocence in the face of overwhelming evidence from various witnesses and ballistic evidence. Three statements received in evidence from loved ones left behind illustrated what devastating effect it has on people and loved ones left behind when a person is murdered.

[Mechanical interruption 11:38:40]

The pain a father must suffer when his daughter gets murdered must be intense. Mr Pilani Donald Sithebe described this in his affidavit, EXHIBIT AA. Deceased had two children whom she maintained who were left behind. This placed a long term responsibility on remaining family members to look after these children. This whilst money and other resources are scarce.

The two victim impact statements, EXHIBITS BB and CC, explain how traumatic it is for people when a person fires shots at them and threatens to burn down their house. The victims needed counselling thereafter. In the case of Ms Mathebula she has been mistrusting all males thereafter. All of this because the accused, through his abusive behaviour towards women, tainted in her mind the trustworthiness of all men.

Our courts have warned accused that the abuse and violence against women would not be tolerated. Apart from this the abuse and violence against women has been reported on in the media. This clearly did not have any influence on the accused. It is an aggravating factor that the accused showed a total disregard towards the dignity of women. He regarded himself as a superior individual who can control women. When, according to his own judgment, they refused to be subservient to him they must even pay with their lives for this.

Considering the mitigating factors and more so the personal circumstances against the aggravating circumstances the accused has failed to indicate that substantial and compelling circumstances exist to deviate from the prescribed minimum sentences.

When a Court sentences an accused the Court will consider the nature of the crimes, the personal circumstances of the accused and the interests of society.

The Court has dealt with the seriousness of the crimes to some extent and it speaks for itself. When firearms are used lives become threatened, and it is very serious.

The interests of society in this matter is paramount. When a person is a danger to society the Court must impose a sentence which, to the best it can, protects the society from the accused.

In this case it has not been shown whether the accused is a candidate to be rehabilitated. His previous behaviour indicates that he is not to be rehabilitated. After his initial arrest he was let out on bail just to obtain a further firearm and to kill another woman. The only protection the Court could give to society against the accused is to sentence him to the maximum period of incarceration and hope that when he is ultimately released that he will have rehabilitated himself.

With reference to count 7, 12, 16, 19 and 21 the unlawful possession of a firearm the evidence has revealed that the accused on different dates and times was in possession of the same semi-automatic pistol. For this reason the Court will take these counts together for purposes of sentence.

The firearm used in the murder count 1 was not identified. And the firearm used in count 23 was not proven to be a semi-automatic firearm. Section 51(2) of the Criminal Law Amendment Act does not apply to these two convictions. Therefore the minimum sentence as stated in the indictment does not apply to these counts.

After considering all the factors the Court is of the view that the accused should be sentenced as follows.

On count 1, the murder count, to 15 years' imprisonment.

Counts 7, 12, 16, 19 and 21 are taken together for purposes of sentence and the accused is sentenced to 15 years' imprisonment.

Counts 2 and 24, the unlawful possession of firearms, to 5 years' imprisonment on each count.

On counts 3, 8, 13, 17, 20, 22 and 25, the unlawful possession of ammunition, to 2 years' imprisonment on each count.

On count 4, kidnapping count, to 5 years' imprisonment.

On count 6, assault, 2 years' imprisonment.

On count 10, the reckless endangerment to a person or property, to 2 years' imprisonment.

On count 11, the discharge of a firearm in a built up area, to 2 years' imprisonment.

On counts 14 and 15, the attempted murder counts, to 6 years' imprisonment on each count.

On count 18, the murder count, to life imprisonment.

On count 23, the murder count, to life imprisonment.

On count 26, the pointing of a firearm count, to 2 years' imprisonment.

In terms of the relevant legislation all sentences will be served concurrently with the life imprisonment sentences.

This concludes sentencing in this matter.

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STRYDOM, J

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

DATE: 12 January 2022

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