

SOUTH AFRICA / JUDGMENT

S v Nkosi (SS240/2014) [2016] ZAGPJHC 77 (3 May 2016)

[2016] ZAGPJHC 77**COURT**

South Gauteng High Court, Johannesburg

BEFORE

Dosio

CASE / FILE NUMBER

SS240/2014

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IN THE HIGH COURT OF
SOUTH AFRICA
GAUTENG LOCAL DIVISION,
JOHANNESBURG
CASE NUMBER: SS240/2014
DATE: 03 MAY 2016

In the matter between:

THE STATE

And

BONGANI SIZWE

NKOSI.....ACCUSED

JUDGMENT

DOSIO AJ:

- [1] The accused pleaded guilty and was found guilty on count one (1), which is a charge of murder, read with the provisions of section 51 (2) of the Criminal Law Amendment Act 105 of 1997 (“Criminal Law Amendment Act”), and on count two (2), of a charge of arson.
- [2] For purposes of sentence this court has taken into consideration the accused’s personal circumstances, the seriousness of the offence and the interests of the community. The court has borne in mind also the purposes of sentence which include prevention, retribution, reformation and deterrence.

[3] As regards the events of this fateful day, the court has merely the accused's explanation incorporated in the plea of guilty. On the 12th of September 2014, at Saja Street, Braamfischer, the accused set alight the dwelling of the deceased, thereby destroying and damaging the property of the deceased, namely Darlington Mbetse. The deceased owed the accused an amount of R100-00, which he did not want to pay back. The accused also believed the deceased stole five (5) crates of beer from him. As a result, out of revenge, the accused set the house on fire thereby killing the deceased who was inside. He was not aware the deceased was inside the house at the time, He did however reconcile himself with that possibility and went recklessly ahead to burn down the

dwelling.

[4] Counsel for the State and Defence negotiated and entered into an agreement in respect to the plea and sentence, in terms of section 105A (1) (b) (i)-(iii). The accused confirmed that such an agreement had been entered into freely, voluntarily and in his sound and sober senses. The contents of the agreement were disclosed in court. The court was satisfied that the sentence agreement was just.

[5] The personal circumstances of the accused are;

He was born on the 26th of June 1988 and he is presently twenty (27) years of age. He was twenty six (26) years old at the time he committed these offences. He passed standard 10/grade 12 and has no further formal qualifications. He is single and has two children. At the time of his arrest he was not formally employed, however he used to do odd jobs. He used the earnings to provide financially for his children. The accused spent six (6) weeks in custody awaiting trial and was released on the 31st of October

2014. The accused is a first offender. He has pleaded guilty which shows that he has deep remorse for his actions. He felt extremely

regretful that the deceased had passed away. He co-operated with the police from the beginning.

[6] In respect to the seriousness of the offences the court would like to remark as follows;

The offences of murder and arson are very serious and prevalent within the jurisdiction of this Court.

Murder is the most serious of crimes. The deceased died a most painful and traumatic death. He was twenty seven (27) years old at the time of his death. Every citizen in this country has a right to life and to property guaranteed by the Constitution. Mr and Mrs Mbeste and their entire family are left with a void that cannot be filled. Mrs Mbetse is still according to the formal plea that was handed in, suffering from the trauma of seeing her son in flames. From time to time she still experiences nightmares.

[7] In respect to count two, the crime of arson is also serious, as it has destroyed the dwelling of the deceased and caused much shock to the family of the deceased.

- [8] The post mortem report states that the cause of death was large surface burns, with multi organ failure.

INTERESTS OF THE COMMUNITY

- [9] The community observes the sentences that courts impose and the community expect that the criminal law be enforced and that offenders be punished. The community must receive some recognition in the sentences the courts impose, otherwise the community will take the law into their own hands.
- [10] The provisions of the Criminal Law Amendment Act with specific reference to section 51 (2) dictates that if an accused has been convicted of an offence referred to in part II of schedule 2, he shall be sentenced to a period of not less than fifteen (15) years imprisonment.
- [11] Section 51(3) of the Criminal Law Amendment Act states that if any court referred to in subsection (1) or (2) is satisfied that substantial and compelling circumstances exist, which justify the imposition of a lesser sentence than the sentence prescribed in these subsections, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence.
- [12] The court has notwithstanding the application of the prescribed minimum sentences, considered the agreement, in respect to sentence, entered into between the State and Defence in terms of section 105A (1) (b) (i)-(iii) of the Criminal Procedure Act.
- [13] The Counsel for the State and the Defence have agreed that there are no substantial and compelling circumstances warranting a deviation from the prescribed sentence of fifteen (15) years imprisonment as prescribed in section 51(2)(a) of the Criminal Law Amendment Act. This court agrees.

- [14] In the result the following order is made:

The accused is sentenced to fifteen

(15) years imprisonment on count 1

The accused is sentenced to five (5) years imprisonment on count 2.

- [15] The cumulative effect of sentences has been considered by this court. The offences were committed on the same day, and are inextricably linked in terms of the locality and time. This court is accordingly going to order that the sentence imposed on count two (2) run concurrently with the sentence imposed on count one (1).

In terms of section 280(2) of the Criminal Procedure Act, the court orders that five (5) years imprisonment imposed on count two

- (2) will run concurrently with the fifteen (15) years imprisonment imposed on count one. Accordingly the effective term of imprisonment will be fifteen (15) years.

[16] In terms of section 103 (1) (g) of the Firearms Control Act 60 of 2000, the accused is declared unfit to possess a firearm.

D DOSIO

ACTING JUDGE OF THE HIGH COURT

Appearances:

On behalf of the State: Adv Serepo

On behalf of the Accused: Adv Buthelezi

Date Heard: 3 May 2016

Handed down Judgment: 3 May 2016

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