

SOUTH AFRICA / JUDGMENT

S v Ratel (K/S 17A/2023) [2024] ZANCHC 119 (29 November 2024) [2024] ZANCHC 119

COURT

Northern Cape High Court, Kimberley

BEFORE

MC Mamosebo

CASE / FILE NUMBER

K/S 17A/2023

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IN THE HIGH COURT OF SOUTH AFRICA

NORTHERN CAPE DIVISION, KIMBERLEY

Case No: K/S 17A/2023

Reportable: YES / NO

Circulate to Judges: YES / NO

Circulate to Magistrates: YES / NO

Circulate to Regional Magistrates: YES / NO

In the matter between:

THE STATE

and

JACOB RATEL

Accused

Heard:

Determined on the papers

Delivered on: 29/11/2024

Summary: Application for leave to appeal against sentence of life imprisonment.

ORDER

(a) Application for leave to appeal is dismissed.

JUDGMENT ON APPLICATION FOR LEAVE TO APPEAL

MAMOSEBO ADJP

[1] The accused seeks leave to appeal to the Full Court of this Division only against his sentence of life imprisonment imposed on 15 October 2024, having been convicted on 21 June 2024 of murder read with s 51(1) of Act 105 of 1997 with *dolus directus* as the form of intent and three counts of assault with intent to do Grievous Bodily Harm (assault GBH). The respondent is opposing the application.

[2] The following are the grounds upon which the accused relies to substantiate his application for leave claiming that this Court erred:

2.1 by underemphasising his personal circumstances and overemphasizing the seriousness of the offence and the interests of society;

2.2 by finding that there are no substantial and compelling circumstances to deviate from the prescribed minimum sentence of life imprisonment; and

2.3 by imposing a sentence which is shockingly harsh and inappropriate.

[3] The law is settled in terms of the threshold to be met for the applicant to succeed in the application for leave to appeal. The accused must not only satisfy the court that there are reasonable prospects of success but there must, in addition, be some compelling reason why the appeal should be heard. See *Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd*[1]. A compelling reason includes an important question of law or a discreet issue of public importance that will have an effect on future

disputes.

[4] Murder is undeniably a heinous offence. Coupled with the fact that in *casu* it was committed in a domestic relationship exacerbates its seriousness. The deceased was entitled to equal protection under the

law. She also had the right to life which was cut short without any justification. The courts bear the responsibility to ensure that public confidence in the courts is maintained and that people do not take the law into their own hands. The accused's personal circumstances were considered but when weighed against the seriousness of the offence and the interests of the society they receded into the background.

[5] Nugent JA in *S v Vilakazi*[2] cautioned:

[58] The personal circumstances of the appellant, so far as they are disclosed in the evidence, have been set out earlier. In cases of serious crime the personal circumstances of the offender, by themselves, will necessarily recede into the background. Once it becomes clear that the crime is deserving of a substantial period of imprisonment the questions whether the accused is married or single, whether he has two children or three, whether or not he is in employment, are in themselves largely immaterial to what that period should be, and those seem to me to be the kind

of 'flimsy' grounds that Malgas said should be avoided. But they are nonetheless relevant in another respect. A material consideration is whether the accused can be expected to offend again. While that can never be confidently predicted his or her circumstances might assist in making at least some assessment. In this case the appellant had reached the age of 30 without any serious brushes with the law. His stable employment and apparently stable family circumstances are not indicative of an inherently lawless character.'

[6] I have already pronounced when sentencing the accused that I was not persuaded that the accused's personal circumstances warrant an elevation to substantial and compelling circumstances, justifying a deviation from the prescribed minimum sentence on the count of murder. I cannot allow 'maudlin sympathy' for the accused

to unduly influence my objective and dispassionate consideration of an appropriate sentence. Taking cue from *S v Malgas*[3] that I am required to approach sentencing conscious of the fact that the legislature has ordained life imprisonment or a particular prescribed period of imprisonment as the sentence which should 'ordinarily' be imposed for the commission of listed crime in the specified circumstances, unless I find the existence of substantial and compelling circumstances warranting a deviation from the prescribed minimum sentences.

[7] I am not swayed that the sentence of life imprisonment under the circumstances is disproportionate. Having carefully and dispassionately considered the application for leave to appeal in order to determine whether there are reasonable prospects that another court would come to a different finding than this court had reached, I have not found any. There are, in my view, no cognisable prospects of success nor compelling reasons that warrant the attention of the Full Court of this Division, nor are there any compelling reasons to entertain this appeal. I am therefore satisfied that there are no reasonable prospects of a successful appeal. In the result the application for leave to appeal to the Full Court of this

Division must fail.

[8] In the result, the following order is made:

The application for leave to appeal is dismissed.

MC MAMOSEBO

ACTING DEPUTY JUDGE-PRESIDENT

THE HIGH COURT, NORTHERN CAPE DIVISION

For the State

Adv. A Stellenberg

Adv. S Sauls

Instructed by:

The Director Public Prosecutions

For the Accused: Adv. K Biyela

Instructed by:

Justice Centre, Kimberley

[1] Caratco (Pty) Ltd v Independent Advisory (Pty) Ltd 2020 (5) SA 35 (SCA) para 2

[2] S v Vilakazi 2009 (1) SACR 552 (SCA) para 58

[3] S v Malgas 2001 (1) SACR 469 (SCA)

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