

SOUTH AFRICA / JUDGMENT

S v Redhouse and Another (CC14/2017) [2018] ZAECPEHC 43 (26 July 2018)

[2018] ZAECPEHC 43**COURT**

Eastern Cape High Court, Port Elizabeth

BEFORE

M Makaula

CASE / FILE NUMBER

CC14/2017

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH

Case No: CC 14/2017

Date Delivered: 26/7/2018

In the matter between

THE STATE

and

NEALON REDHOUSE Accused No. 1

DEON HARMSE Accused No. 2

JUDGMENT

MAKAULA J:

- [1] Ms Ayanda Nkombisa a Probation Officer, who works for Nerina One Stop Youth Justice Centre, recorded the following in her Pre-Sentence and Victim Impact assessment report:

“Mrs Tee further applauded the excellent service and support that they received from the South African Police Services from the onset. She reported that they have treated them with care, and they are thankful”.

- [2] I share the same sentiments. Police Officers whose task, is not always easy, are often criticized and blamed for not doing their work. It is not the case in this instance. I wish to commend the police from those who answered the awful painful

telephone call made by Mrs Tee during the commission of the offences, those who were first at the scene, the investigation team and those who keep the Tee family under the witness protection program. The report by Ms Nkombisa amply reflects the abundance of care and sensitivity the members of the South African Police Services handled and showed to the Tee family during these trying times. You have given them hope and reason to live again. The medical and psychological care they have received from hospital and various professional bodies is commendable. I wish to thank both Probation Officer's i.e. Ms Ayanda Nkombisa, Sonwabile Mavuso and their supervisors for such concise and relevant reports. Ms Nkombisa in particular, presented a well-reasoned a Victim Impact Assessment report I have even seen in my years of experience in the profession. I shall on occasions refer to it. It is a pity that Accused 1 refused on two occasions to be interviewed by Ms Nkombisa visiting, on the second occasion, to be rather taken back to the prison cell.

- [3] The prosecution and the defence teams are commended for handling such an emotive matter in such a professional and deserving manner.
- [4] Throughout my judgment I was unable to refer to Aaliyah as the deceased. I ascribe that to her age and the manner in which she passed away. It is inconceivable that a child her age should die in such a gruesome manner. The evidence presented and the report by Ms Nkombisa indicates that Aaliyah was born on 27 November
2003. She passed away tragically on 7 June 2016 in the hands of the accused. At the time she was in Grade 7 at Strelitzia Primary School. She was an intelligent child with profound leadership qualities. She was a prefect at school. She received yearly awards for her academic performance. Her teacher Mrs Meagan is quoted by Ms Nkombisa as saying "one could see that Aaliyah was meant for greater things in life . . . the deceased was polite and respectful".
- [5] The deceased was a devoted Christian. She liked reading the Bible and praying. She took great delight in teasing her father. She displayed such attributes on the day of her death. As Mr Tee and Mrs Tee retired in their bedroom to sleep at about 22h00, Aaliyah joined them, cheerful as usual. She started teasing her father Mrs Tee came to his rescue and told her that her father was tired. She started doing her hair gleefully showing her mother how she would look like in an upcoming wedding ceremony of a relative. Having said so, she requested to read them a verse from the Bible. It was at that juncture that dreadful events of that evening started to unfold. Aaliyah started praying asking God to spare her life and that of her parents. At the time the fatal shot was fired by the merciless accused, she was kneeling praying with her hands in a praying position. Despite that posture the accused executed her.
- [6] Mr Tee, before he was shot and injured by the accused, was a strong man who used to fix cars and run with his house chores. He was a responsible father who was able to work for his family. He used to build Wendy houses. Today as Ms Nkombisa reports, "the offence has since taken away his ability to perform even basic tasks on his own such as eating, bathing or going to the bathroom".

- [7] According to the report Mr and Mrs Tee are helped by a family friend Mrs Meagan Terblanche. I must mention upfront that people like Mrs Terblanche are very scarce. I take the opportunity of thanking her for the sterling work she is doing for the Tee family. She assists them in cooking, cleaning, bathing, taking their medication and taking Mr Tee to the bathroom for purposes of relieving himself and his cleaning thereafter. As a result of the injuries, Mr Tee is paralysed from his waist. He does not have control of his urine and at times defecates himself. At times she has to deal with Mr Tee's obstructed defecation. She is not a trained nurse nor a caregiver. She does this out of love and her friendship with the Tee family.
- [8] Mr Tee verbosed to Ms Nkombisa the helplessness he now feels of not being able to provide for his family. He is bemused by how they are to rebuild their live after being released from the witness protection programme. Both Mr Tee and Mrs Tee have been uprooted from amongst their friends, family and the environment they were used to after the commission of these offences. They lost their support structure completely. They have not been able to share with family members and friends, moments of joy and sadness. Mr Tee was not even able to be present at Aaliyah's funeral. It is worth mentioning that the State played a crucial financial role in the funeral of Aaliyah.
- [9] Mrs Tee has been diagnosed with Post Traumatic Stress Disorder which Ms Nkombisa defined it as:

"As a disorder that is characterized by failure to recover after experiencing or witnessing a terrifying event".

Mrs Tee's most painful experience is that of seeing her daughter praying in from of her executioners for her dear life and

subsequently seeing her lying in her own pool of blood. No one or right thinking person can wish this to happen to her/his worst enemy. The accused could not even be deterred by her plea in prayer. Instead they executed Aaliyah.

- [10] Doctor Christian Jacobus Snyman testified the injuries sustained by Mr Tee and the effects thereof are that:

"He is a quadriplegic and could not be saved".

- [11] It is undoubtedly so that the actions of the accused have caused the lives of the Tee family untold hardship. The consequences of their barbaric actions shall live with the Tee family for the rest of their entire lives. Ms Nkombisa amply captures it in her report. "Mrs Tee reported that the accused persons took away our whole lives from us".

They are devoted Christians who grew up instilling such values to Aaliyah. Due to what the accused did to them, they have started to ask questions of God who had allowed such hardship to befall them. Ms Nkombisa reports thus:

“During consultation with Mrs Tee, it was clear that she has not yet overcome the trauma of losing her daughter due to the incident . . . She indicated that although she is a believer in Christ, and it is said that God has a purpose for everything, she however, reported that she asks herself what could have been the purpose of this. She is unable to come up with an answer”.

[12] Mrs Tee mentioned to Ms Nkombisa that:

“ . . . the events and trauma they suffered will never go away . . . (S)he reported that looking at her husband every day, seeing him in the condition that he is now, knowing very well the kind of man he was before is a daily reminder of the incident. She mentioned that knowing that she lost her baby (Aaliyah) and that she will never get her back kills her inside”.

[13] Mrs Tee testified and asked that a video of Aaliyah dancing, a few weeks before she was killed by the accused, be played. She appears on the video happy and showed her dancing powers. Mrs Tee thanked everybody who played a role in the finalisation of the case.

[14] Zano Tee, the son of Mrs Tee confirmed the effect the offences had to her parents as well captured by Ms Nkombisa in her report. He testified that his parents are in extreme pain and there is nothing he can do to ease the pain. He testified that Aaliyah was a joyous person. He believed that she was in the hands of God and free from the cruel world. As a Christian, though painful, he is able to accept the death of his sister.

[15] As alluded to Ms Nkombisa was expelled by Accused 1 when she visited him for purposes of compiling a pre-sentence report. The report was essential for Accused 1 personal circumstances. A copy of the birth certificate handed up indicated that he was 17 years at the time of the commission of the offence.

[16] Other than what is stated from the Bar, I have no other mitigating factors proffered by Accused 1. He was 17 years old at the time. I am advised that Accused 1 is currently serving a ----12 year term of imprisonment for unrelated convictions. Because of the seriousness of these offences and the nonchalant behaviour Accused 1 displayed, I considered that the sentences I am going to impose should not run concurrently with that sentence.

[17] As stated before, Mr Mavuso compiled a well-researched pre-sentence report on behalf of Accused 2. Accused 2 was born on 6 March

1993. He is the last born in his family. He has three siblings. He was born in a marital relationship. However, his father left the common home when Accused 2 was one year old. He was raised by his loving mother and was the jewel of the family. His siblings also took care of Accused 2. His mother spoiled Accused 2 to an extent that he got all that he wanted. Accused 2 did not exhibit behavioural problems when he grew up. He never smoked nor drank alcohol. He hated smoking and alcohol which his siblings partook of, so the report states.

[18] The report reveals that Accused 2 did well in his lower Grades at school. However, he started to experience concentration

difficulties. He was hyperactive. He was taken for psychometric and scholastic screening. He was put on Ritalin

and enrolled at Merryvale Special School and received disability grant. He remained at the school for less than two years and he left. His disability grant was stopped. It is then that they received complainants about his behaviour. His mother continuously paid for losses suffered by people because of Accused 2' behaviour. The accused started to clash with the law. He was arrested and sent to Nerina Child Justice Court and subsequently referred to Gali Thembani Specialized Child and Youth Care Centre. He remained there for a year and never went back.

[19] Accused 2' mother passed away in 2015 while the accused was in custody at North End prison. He was bailed out for purposes of attending his mother's funeral by his sister Glenda Mali.

[20] Accused 2 has a good health even though he was hospitalized for four months suffering from Tuberculosis. He has not fully recovered from it. He is not married but has a child who was born in

2016. He denied his involvement in the commission of the offence to Mr Mavuso.

[21] As stated in the judgment on merits, the Accused's bodies are full of tattoos which they have interpreted to mean robbers, an Intziswa i.e. a strong young man, with bags of money and fire-arms depicted. The accused belong to the "26 gang" which operate from prison. They are high ranking members of that gang. They showed no remorse at all and took no responsibility

for their actions.

[22] Accused 1 is a member of a highly dangerous gang as testified to by the police and Mr and Mrs Tee. He is emboldened in gangsterism by the tattoos on his torso and arms. He did not behave like a juvenile prior to the commission and during the commission of these offences. Aaliyah literal grew up with him and he in turn in front of the Tee family. That did not deter him from committing these heinous crimes. When in prison, he prefers to associate with the dangerous gangsters. A child of 17 years would not and is expected not to behave in the manner Accused 1 behaved. He has shown no remorse and did not want to participate in the pre-sentence procedures which were to benefit him. He was smirking at the time when the video of Aaliyah was watched. He is smiling even as I am reading out the judgment on sentence.

[23] The motive for the commission of these offences is that Mr and Mrs Tee witnessed the killing of a gangster member named Stahl. I am advised that life in the Northern areas, here in Port Elizabeth is a nightmare. People are killed day in and day out in gang related murders. The community in the Northern areas live in perpetual fear of death. Certainly that is a community infested and under siege by gangsterism. Gangsters are repeatedly fighting over the so called turf. That is exactly what occurred in this matter. Our courts shall not flinch in handing down appropriate sentences for such barbaric crimes. The whole Tee

family was believed to have been “wiped out” by the accused not knowing that Mr and Mrs Tee had survived. That community needs protection from our courts. Justice has to be seen to be done. The sentences should reflect on the personal circumstances of the accused, the crime and the interests of society, the victims in particular. I find the following substantial and compelling circumstances.

23.1 Accused 1 was a minor at the time of the commission of the offences;

23.2 Accused 2 was relatively young and four years older than Accused 1;

23.3 Accused 2 has serious health problems as stated above.

[24] I was advised that Accused 1 is serving 12 years’ imprisonment for related offences. Accused 1 is unrepentant. He has shown no regret to the offences he has committed. He has refused to place mitigating factors before court. The

unlicensed firearm used in the commission of those offences was found in possession of Accused 1. I am of the view therefore that the sentences to be imposed should not run concurrently with the current sentence he is serving.

[25] The Accused are sentenced as follows:

Count 1: The accused are sentenced to undergo two (2) years’ imprisonment.

Count 2: The accused are sentenced to undergo five (5) years’ imprisonment.

Count 3: The accused are sentenced to undergo twenty (20) years’ imprisonment.

Count 4: The accused are sentenced to undergo five (5) years’ imprisonment.

Count 5: The accused are sentenced to thirty (30) years’ imprisonment.

Count 6: The accused are sentenced to undergo ten (10) years’ imprisonment.

Count7: Accused 1 is sentenced to undergo twelve (12) years’ imprisonment.

Count 8: Accused 1 is sentenced to undergo five (5) years’ imprisonment

The sentences imposed are to run concurrently.

It is further ordered that accused 1’s sentence shall commence after he had served the current sentence.

M MAKAULA

Judge of the High Court

Counsel for the State: Adv Sandan & Adv Landam

Director of Public Prosecution

Port Elizabeth

For Accused 1: Adv J Coertzen

Legal Aid

For Accused 2: Mr J Riley

Instructed by: Legal Aid

Sentence Delivered: 26 July 2018

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