

SOUTH AFRICA / JUDGMENT

S v Rwantsana (CC21/2015) [2020] ZAECMHC 59 (9 December 2020)

[2020] ZAECMHC 59

COURT

Eastern Cape High Court, Mthatha

BEFORE

M.S. Jolwana

CASE / FILE NUMBER

CC21/2015

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE LOCAL DIVISION: MTHATHA

CASE NO. CC21/2015

In the matter between:

THE STATE

and

SAMUEL CEBISILE RWANTSANA

ACCUSED

JUDGMENT ON SENTENCE

JOLWANA J

[1] The accused has been convicted of a very serious offence, the premeditated murder of the deceased in respect of which the State invoked the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997 (the Act). Section 51(1) of the Act prescribes for the imposition of a minimum sentence of life imprisonment if a person is convicted of an offence referred to in Part 1 of Schedule 2.

[2] In *S v Malgas*

[2001] 3 All SA 220 (A) the approach to section 51 was articulated as follows:

“[25] What stands out quite clearly is that the courts are a good deal freer to depart from the prescribed sentences than has been supposed in some of the previously decided cases and that it is they who are to judge whether or not the circumstances of any particular case are such as to justify a departure. However, in doing so, they are to respect, and not merely pay lip service to, the Legislature’s view that the prescribed periods of imprisonment are to be taken to be ordinarily appropriate when crimes of the specified kind are committed. In summary –

A. Section 51 has limited but not eliminated the courts’ discretion in imposing sentence in respect of offences referred to in Part 1 Schedule 2 (or imprisonment for those specified periods for offences listed in other parts of Schedule 2)

B. Courts are required to approach the imposition of sentence conscious that the legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the sentence that should ordinarily and in the absence of weighty justification be imposed for the listed crimes in the specified circumstances.

C. Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit a severe, standardised and consistent response from the courts.

D. The specified sentences are not to be departed from lightly and for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation, and marginal differences in personal circumstances or degrees of participation between co-offenders are to be excluded.”

- [3] The real question is therefore whether there are personal circumstances of the accused which are of such a substantial and compelling nature that the Court may depart from the imposition of the prescribed minimum sentences, in the judicious exercise of its sentencing discretion.
- [4] In this regard Counsel for the accused, Mr Kekana addressed the Court and made submissions on the basis of which he urged me to consider the following personal circumstances of the accused and exercise the Court’s discretion by imposing a lesser sentence than that of life imprisonment.
- [5] The accused is now about 33 years old having been born on 31 January 1987. He is single with four children. The ages of the accused’s children are eleven and nine years old and the last two are seven years old respectively. All of them stayed with the accused for various reasons. He was therefore looking after all of them, providing for all of their needs. He was self-employed as a panel beater and earned an average of R5000.00 a week. From this income he provided for his family especially his children. All of these children now stay with the accused’s sister.

- [6] The accused is the first born of four siblings. Unfortunately, two of his siblings have since passed on and his remaining sister is the only one at home since his arrest for this case. The accused could not go beyond grade 9 in his schooling because of financial constraints. Both his parents passed away in 2010 and 2012. The accused is also a first offender. I was therefore urged to try and find the right balance between the deterrence and the rehabilitation sentencing purposes on the basis that the accused could still return to the society having been rehabilitated and become a very useful member of the society. I was also urged to take into account the fact that the accused has been in custody since the 23 January 2015 and therefore his pre-sentence incarceration is also an important factor to be considered as part of all the relevant considerations that the Court must take into account.
- [7] The State also made submissions in aggravation of sentence. Counsel for the State Mr Makubalo submitted that he has been advised by the family of the deceased that the deceased was not married but had one child, a boy named Luchwayito Nkosiyané. The said child stays with the mother. It appears from the post-mortem report that the deceased would have been 29 years old today because he was born on 03 December 1991. He was therefore 24 years old on the date of his murder five years ago.
- [8] The deceased was not only a very young man when he was killed but he was also clearly a promising businessman and a breadwinner for his family and his child. In fact the accused used the fact that the deceased was a self-employed businessman by luring him to the remote place where he killed him. This was on the pretext that he was going to do quotations for the accused for some kitchen cupboards at the accused's homestead. In the process he was shot dead that afternoon by the accused in the presence of three of his friends who had accompanied the deceased going to the accused's homestead.
- [9] It is difficult to imagine how, Ntando, Xabiso and Lubabalo, the three friends of the deceased who were present when he was suddenly brutally murdered by being shot in the head in their presence, felt as they witnessed the deceased succumbing to a single gunshot wound to the head. It is even more difficult to imagine how the family of the deceased must have felt when they were told that the deceased was shot and killed by the very person who had braai meat with him and his friends and for whom he was on his way to do quotations for kitchen cupboards.
- [10] In *S v Di Blasi* 1996 (1) SACR 1 (A) at 11 e-g the court dealt with the balancing act that a sentencing court must do in arriving at an appropriate sentence in such serious cases as this one before the advent of the minimum sentence legislation as follows:

“In my view the learned trial Judge did not give due consideration to the aspects of deterrence and retribution. The requirements of society demand that a premeditated, callous murder such as the present should not be punished too leniently lest the administration

of justice be brought into disrepute. The punishment should not only reflect the shock and indignation of interested persons and of the community at large and so serve as a just retribution for the crime but should also deter others from similar conduct. In my view the sentence imposed by the learned Judge does neither, and I consider it to be shockingly inappropriate.”

The Act has not changed our sentencing principles save for the introduction of certain minimum sentences under certain specified circumstances adumbrated in the Act.

[11] The view that I take of this matter and especially the fact that the accused was a hired assassin who had no grudge or score to settle with the deceased, the personal circumstances of the accused are neither substantial nor compelling. I do feel some empathy for the children of the accused especially if it is even true that he has been looking after them and providing for them. Unfortunately, all of those considerations are outweighed by the heinous crime that their father committed. There is also no evidence of the extent of his involvement in their upbringing and the extent to which he provided for them. The accused could easily have given evidence on these issues or even called some of the children’s mothers to testify or even his sister whom he claims currently looks after all these children. This he failed to do with the result that there is no

evidence before this Court on any of the circumstances of these children and the role of the accused in their lives which would have assisted the Court to make a proper evaluation and assessment thereof.

[12] The wanton killing of innocent and unsuspecting people such as the deceased is increasingly becoming prevalent in our country. This calls for the imposition of appropriate sentences. The starting point has to be the consideration of the minimum sentences regard being had to the Zinn triad including the accused’s personal circumstances. Mr Kekana raised the issue of the accused having been in prison since 2015 when he was arrested. This is also an important consideration. However, it is a fact that the accused himself as Mr Makubalo for the State submitted, played a significant role in delaying the trial. He fired a number of lawyers which

included two lawyers provided to him by Legal Aid South Africa. Apparently he previously had privately funded lawyers before he asked Legal Aid South Africa for assistance.

[13] Even if the accused had played no role in the delay of his trial, that would not necessarily mean that the prescribed sentence must be departed from without more. That is certainly not part of our law nor is it part of our courts’ approach to sentencing. The facts of each case must be considered and a decision made in the overall interests of justice. What is required is for the State to do what it needs to do to ensure that unnecessary delays in the commencement and finalisation of trials are avoided. However, other stake holders must do their part and the accused’s own role, if any, in whatever delay that happens is a weighty consideration as well. Again it would have assisted me if the accused had testified also on this issue and given his perspective of the delay. Surely, the reasons for the delay are also known to him as he would have been present during each occasion the matter was

postponed. The State would then have had to deal with that evidence appropriately and the Court would have been placed in a good position to deal with the facts before it. In any event, when

it was brought to the Court's attention that it was the accused himself who was responsible for the delay, that was never disputed by the accused or on his behalf.

[14] In *S v Vilakazi* 2012 (6) SA 353 (SCA) at para 58 the court said:

"The personal circumstances of the appellant, so far as they are disclosed in the evidence, have been set out earlier. In cases of serious crimes, 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."

[15] In this Division Van Zyl DJP has recently restated the approach to sentencing as follows in *Jansen v S* 2020 (1) SACR 413 (ECG) at para 25:

"... The proper approach, according to Matyityi is that the point of departure of the sentencing court must be that the prescribed sentences are generally appropriate for the kind of offences specified, unless there are substantial and compelling factors justifying a departure therefrom. This is consistent with what Cameron J in Centre for Child Law v Minister of Justice said are the two operative effects of the minimum sentencing legislation:

'First, the statutorily prescribed minimum sentences must ordinarily be imposed. Absent 'truly convincing reasons' for departure, the scheduled offences are 'required to elicit a severe, standardized and consistent response from the courts'

through imposition of the ordained sentences.

Second, even where those sentences do not have to be imposed because substantial and compelling circumstances are found the legislation has a weighing effect leading to the imposition of consistency."

[16] Not only are the personal circumstances of the accused not substantial and compelling, in my view, there is yet another very weighty consideration. The deceased, at a promising young age of 24 was shot and killed by the accused at the instance of one Lusindiso Mnukwa. The accused committed this offence after being promised payment of the sum of R15 000.00 by Lusindiso Mnukwa if he killed the deceased. He agreed and indeed used the deceased's

own skill of being a carpenter by promising him a job. The evidence before this Court was that the deceased was lured to his death under the pretext that he was going to do quotations for kitchen cupboards for the accused. The deceased went there to make a living. The accused went there to kill the deceased so that he could be paid for killing the deceased. This was therefore a contract killing.

[17] In *S v Ferreira and Others* 2004 (2) SACR 454 (SCA) para 53 the court said:

“Having regard to the nature of the crime they committed – killing for money – and the limited extent of the mitigating factors referred to, the condemnation expressed in previous cases of contract killing applies unrestrictedly to them. There are, on the Malgas test, no substantial and compelling circumstances which justify a lesser sentence in their cases.”

[18] What the court said in *Ferreira* is equally and even aptly applicable to the facts of this case. The accused agreed to murder an innocent person he did not even know out of his insatiable greed for money. He was after all, self-employed, making a decent living and earning about R5000.00 per week in his panel beating business at Transido in Hillcrest. His personal circumstances, even considered cumulatively, including his pre-sentence incarceration period are all outweighed very heavily, by the crime he committed and the obvious interests of the society to have such crime uprooted through the consistent imposition of heavy sentences to the perpetrators of such crimes.

[19] In the result the accused is sentenced as follows:

1. In respect of count 4, unlawful possession of a firearm the accused is sentenced to 5 years imprisonment.
2. In respect of count 5, the unlawful possession of ammunition, the accused is sentenced to 5 years imprisonment.
3. In respect of count 1, the murder of Vuyisani Masoka the accused is sentenced to imprisonment for life.

M.S. JOLWANA

JUDGE OF THE HIGH COURT

Appearances

Counsel for the State: M. Makubalo

Instructed by: NPA

Mthatha

Counsel for Accused: S. Kekana

Instructed by: Legal Aid South Africa

MTHATHA

Last heard on: 08 December 2020

Delivered on : 09 December 2020

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAECMHC/2020/59.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/s-v-rwantsana-unknown-topic-aecmhc-2020>

Prepared on 10 October 2026 · Esheria