

SOUTH AFRICA / JUDGMENT

S v Shoba (SS36/2021) [2022] ZAGPJHC 491 (29 July 2022) [2022] ZAGPJHC 491

COURT

South Gauteng High Court, Johannesburg

BEFORE

S D J Wilson

CASE / FILE NUMBER

SS36/2021

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG LOCAL DIVISION, JOHANNESBURG)

Case No: SS36/2021

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: NO

REVISED.

DATE: 29 July 2022

In the matter between:

THE STATE

and

NTUTHUKO NTOKOZO SHOBA

Accused

SENTENCE

WILSON AJ:

1 On 25 March 2022, I convicted Ntuthuko Shoba of the murder of T [....] P [....]. It is now my duty to pass sentence.

Evidence on sentence

2 By agreement between the parties, I received three Exhibits. The first was a victim impact statement prepared by the Department for Social Development. The second was a presentencing report prepared by Ms. Jessie Thompson, a social worker in private practice,

who sought to provide insight into Mr. Shoba's life, family and circumstances. The third was the standard SAP69 certificate, which confirms that Mr. Shoba has no previous convictions.

3 The State cross-examined Ms. Thompson. It asserted that a number of statements Ms. Thompson made about Mr. Shoba's post-conviction use of a psychologist were unreliable, because they could only have come from Mr. Shoba himself. Mr. Mohamed asked me to attach little or no weight to those statements for that reason.

4 I do not think that it is necessary for me to assess the weight to be accorded to what Mr. Shoba says about his sessions with his psychologist. Ms. Thompson's report placed no reliance on those utterances save to point out that the trauma of being tried and convicted of an offence of this nature is itself a form of retribution. While this is true, that is not the sort of retribution a court weighs when it passes sentence.

5 Criminal trials, while obviously deeply affecting for all involved, including an accused person, are the mechanism we have chosen to determine culpability and the legal consequences of that culpability if any is found. Save where there has been pre-conviction

imprisonment, the vicissitudes of the criminal process will rarely be relevant to the sentence to be imposed, unless of course they are particularly unusual or exceptionally distressing – whether to the offender, to the victim or to society at large. In this case there are no such exceptional features, and the shock and trauma Mr. Shoba apparently experienced on conviction do not in themselves bear on the sentence to be imposed.

6 This is especially so because, in my judgment convicting Mr. Shoba, I found that Ms. P [...]’s murder was premeditated. Section 51 (1) of the Criminal Law Amendment Act 105 of 1997 requires me, on reaching this conclusion, to sentence Mr. Shoba to life imprisonment, unless there are substantial and compelling

circumstances that justify a lesser sentence. Mr. Makhubela did not suggest, and I would have some difficulty in concluding, that the obvious stress involved in being convicted of the offence could amount, in this case, to such a circumstance.

7 I will now turn to consider the other circumstances placed before me in mitigation and aggravation of sentence, before assessing

whether they are, individually or in any combination, substantial and compelling.

Mr. Shoba's life and circumstances

8 Mr. Shoba is 33 years old. He was born and brought up in a loving and supportive environment. He was well-educated and otherwise

well-provided for. He took some time to decide on a career, but after two years of a law degree and some basic computing courses, he eventually alighted on a career as a financial analyst on the Johannesburg Stock Exchange. Here, by all accounts, he was in his element. He found the pressures of the job invigorating, and I have no reason to believe that he was anything other than very good at it.

9 In argument before me, Mr. Makhubela emphasised Mr. Shoba's productive career, strong family background and his previous good

character. He referred to what he submitted was the "Jekyll and Hyde" feature of this case: that Mr. Shoba displayed, in his character and previous conduct, no indication that he could commit the offence of which I have convicted him. I accept all of this. The apparent asymmetry between Mr. Shoba's previous good character and Ms. P [...]’s murder is one of the very many troubling features of this case.

10 The fact remains, however, that the evidence placed before me points overwhelmingly to the conclusion that Mr. Shoba did arrange

and participate in Ms. P [...]’s murder. Previous good character does not operate as a liability shield or a mitigating

factor where, as in this case, the facts so plainly inculcate Mr. Shoba in a very serious offence.

11 It is to the nature of that offence that I now turn.

The offence

12 T [...] P [...] was, by all accounts, a young woman of style and vivacity. The victim impact statement placed before me suggests that she was her family's emotional centre of gravity. The force of her personality, her optimism, her kindness, her empathy and her generosity leap out from the way in which her family describe her. Her loss has been incalculable. The manner of her death, the intense media interest that has followed her murder and the sheer yawning absence left in her stead have devastated those who knew and loved her.

13 It is not necessary for me to set out in any detail the psychological consequences and emotional pain her family have suffered. Suffice it to say those consequences have been particularly severe. Each of Ms. P [...]’s close relatives suffers real and continuing anguish as a result of her death. While time may ease the pain, it is clear to me that each of Ms. P [...]’s close relatives will live under a real burden of loss for most, if not all, of their remaining lives.

14 I have said that Ms. P [...] was vivacious. But it is equally clear to me from the evidence led at trial that she was also

a vulnerable young woman looking for care and attention – a meaningful connection that she thought a relationship with Mr. Shoba might be able to give her. Her vulnerability was not just emotional. It was material. As her pregnancy progressed, she relied in no small measure on financial support from Mr. Shoba. That reliance only deepened as her pregnancy with Mr. Shoba's daughter went on.

15 This vulnerability both animated Mr. Shoba's decision to kill Ms. P [...], and formed a critical part of his design to do so. It is clear from the evidence that Mr. Shoba wanted to be rid of Ms. P [...] and the baby. They were an inconvenience to him and to his hopes of pursuing a relationship with someone else. But it was also Ms. P [...]'s dependence on Mr. Shoba for money to buy baby clothes and to transport her to and from his home that gave Mr. Shoba the opportunity to arrange her abduction and murder. That is probably the most aggravating feature of this case.

16 That Ms. P [...] was pregnant when she was killed is also plainly very aggravating, as is the degree of planning and persistence Mr. Shoba demonstrated in bringing about Ms. P [...]'s death. He contracted another to carry out the killing. He made two attempts to do so – first by trying to arrange her abduction from the Ormonde MacDonalds outlet, and then by delivering

Ms. P [...] into her killer's hands outside his home at the Westlake Complex.

17 It is clear from all this that Mr. Shoba was the prime mover in bringing about Ms P [...]'s death. Although Muzikayise Malepane inflicted the fatal wounds, the evidence is that he would not have killed Ms. P [...] unless Mr. Shoba contracted him to do so and helped him to carry out that contract. It has gone unchallenged throughout these proceedings that Mr. Malepane

had no other connection with Ms. P [...] other than through Mr. Shoba, and no detectible motive to kill Ms. P [...] other than to carry out his contract with Mr. Shoba.

18 It is clear, therefore, that this offence is one of the worst kind: a contract killing that exploited the dependency of a vulnerable young woman, and that resulted in the death of a baby very soon to be born.

The needs of society

19 It is these features of the case that have excited an unusual degree of public interest. But even without that interest, the needs

of society would have pointed towards a very lengthy custodial sentence. I accept that the exploitation of vulnerability inherent in this offence is closely connected to the general and unacceptable level of violence against women and children in our society, which the criminal justice system must play its part in addressing. I have taken this into account when considering the appropriate sentence.

Substantial and compelling circumstances

20 While accepting all these aggravating features of the case, Mr. Makhubela urged me to find that a departure from the statutory penalty of life imprisonment was justified. He advanced the contention that Mr. Shoba should not receive the statutory penalty because it was not imposed on his accomplice, Mr. Malepane. Mr. Malepane was sentenced to 20 years in prison. I was asked to find that the need for parity of sentencing between Mr. Malepane and Mr. Shoba is, in itself, substantial and compelling enough to depart from the prescribed life sentence.

21 Other things being equal, this would be a strong argument. It is a basic principle of sentencing that “one should strive to

punish co-perpetrators equally unless there are circumstances justifying differential treatment” (S v Smith 2017 (1) SACR 520 (WCC) para 109). But in this case other things are plainly not equal. Mr. Malepane confessed to his part in Ms. P [...]’s

death. Despite initially and unwisely seeking to mislead the police about the manner of Ms. P [...]’s death, in the end he provided information and evidence which assisted the police in apprehending Mr. Shoba and in successfully prosecuting him. In my judgment convicting Mr. Shoba, I pointed out that, despite attacks on Mr. Malepane’s credibility, the core of that evidence was left substantially unchallenged at Mr. Shoba’s trial.

22 These are plainly circumstances that Mokgoathheng J must have thought justified a more lenient sentence than Mr. Malepane could otherwise have expected. There is no comparable factor that would justify a departure from the prescribed statutory penalty in Mr.

Shoba’s case.

23 I accept that, as Mr. Makhubela submitted, I should not punish Mr. Shoba merely for pleading not guilty and maintaining his innocence. But that does not mean that Mr. Shoba is entitled to the leniency that was extended to Mr. Malepane. The default legal position in respect of both men is that they would both have faced life imprisonment unless such a sentence would be disproportionate (see S v Dodo [2001] ZACC 16; 2001

(1) SACR 594 (CC), para 40 and S v Malgas 2001 (1) SACR 469 (SCA) para 25). To say that Mr. Malepane’s co-operation with the police rendered a life sentence in his case disproportionate is not the same as saying that Mr. Shoba is being punished for not co-operating with the police.

24 I am also persuaded that Mr. Shoba’s role as the prime mover in the planning and commission of the offence distinguishes his

situation from that of Mr. Malepane. But for Mr. Shoba, Ms. P [...] would not have been killed. But if Mr. Malepane had not accepted the contract on Ms. P [...]’s life, the facts of this case strongly suggest that Mr. Shoba would have carried on looking for a way to kill Ms. P [...] with or without Mr. Malepane’s help.

25 Accordingly, the need for parity in sentencing does not apply in this case. While Mr. Shoba and Mr. Malepane killed Ms. P [...], their roles in perpetrating her murder and their conduct after it was carried out were quite different. Mr. Shoba was the

driving force behind the scheme and has done nothing since Ms. P [...]'s murder to merit the kind of leniency that Mr. Malepane received.

The sentence

26 Mr. Makhubela did not identify any other factor that would justify a departure from the statutory penalty. He drew my attention to the year or so that Mr. Shoba has spent in pre-trial incarceration, but accepted that this could not, on its own, justify a departure from that penalty (see *S v Ngcobo* 2018 (1) SACR 479 (SCA), para 14 and, generally, *S v Makgopa* [2022] SAGPJHC 470 (18 July 2022)).

27 For all these reasons, I am enjoined to apply the ordinary sentence for an offence of this nature. Mr. Shoba will spend the rest of his natural life in prison, unless the parole authorities consider him fit for release in the fullness of time.

28 Accordingly, on count 1 of the indictment, I sentence Mr. Shoba to LIFE IMPRISONMENT.

S D J WILSON

Acting Judge of the High Court

HEARD ON:

28 July 2022

DECIDED ON:

29 July 2022

For the State:

F Mohamed

Instructed by National Prosecuting Authority

For the Accused:

N Makhubela

Instructed by Mophosho Attorneys Incorporated

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