

SOUTH AFRICA / JUDGMENT

S v Taki (CC 188/08) [2011] ZAKZDHC 91 (19 January 2011)

[2011] ZAKZDHC 91

COURT

Kwazulu-Natal High Court, Durban

BEFORE

Ndlovu

CASE / FILE NUMBER

CC 188/08

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IN

THE HIGH COURT FOR KWAZULU-NATAL, DURBAN

REPUBLIC

OF SOUTH AFRICA

CASE

NO. CC 188/08

DATE:

19 JANUARY 2011

In

the matter between

THE

STATE

And

THOZAMILE

TAKI

JUDGMENT

(On Sentence)

NDLOVU J

[1] This is one of the relatively few cases in the history of our criminal justice system, involving, amongst others, the serial

killing of human beings on a fairly large scale. On 23 December 2010 the accused was convicted of 13 counts of robbery with aggravating

circumstances and 13 counts of murder, committed on diverse occasions during the period February to September 2007. The matter was adjourned to 20 January 2011 for sentence. All the charges were subject to the provisions of section 51 (1) of the Criminal Law Amendment Act^[1] (the Act). In other words, unless I am satisfied that there are substantial and compelling circumstances as envisaged in section 51(3) of the Act, I shall be obliged to impose on the accused at least the respective minimum terms of imprisonment prescribed in the Act in respect of each of the robbery and murder counts.

- [2] It was established in evidence that the accused's typical *modus operandi* was to trick his victims (all young females) into believing that he was an employment agent and that he was recruiting for companies including Hulleys, Nestle, Illovo, Sezela and/or Toyota, most of which he alleged to the victims were situated in the Umzinto area in Kwazulu-Natal. He managed to persuade his victims into believing and trusting him in this regard. Using this shrewd and cunning tactic, the accused lured 11 of his victims to the Umzinto area and two of them to the KwaMajola area in Port St Johns in the Eastern Cape, where he ended up robbing the victims of their personal items and then killing them by strangulation or through other unknown means. The bodies of the deceased, which were all in an advanced state of decomposition, were found in Shayamoya sugarcane plantations in Umzinto and in KwaMajola tea plantation in Port St Johns.
- [3] The traditional approach in sentencing is that the courts look at three factors when determining an appropriate sentence, namely, the personal circumstances of the accused, the nature and extent of the crime and the interests of society.^[2] At the same time the four-fold objects of punishment are also to be taken regard of, namely, deterrence, prevention, rehabilitation and retribution.^[3]
- [4] In this instance Counsel addressed the Court on the accused's personal circumstances and other aspects related to mitigation of sentence which Counsel asked me to take into account. Indeed, I will do so. The accused is 39 years old. He is the eldest in the family of four children. When he was 19 years his father deserted the family and was never seen again. Since then the accused and other children were taken care of by their sickly mother who subsequently passed away when the accused was 19 years. At school level he went up to standard 2 which he did not even pass.
- [5] However, I can mention that, notwithstanding his professed low level of formal education, the accused showed himself out as a person of average, if not somewhat above average, intelligence on general life orientation issues. It required no genius to discern this. For instance, throughout the trial he kept taking down notes and occasionally beckoning to his Counsel and giving him instructions,

especially during cross-examination of State witnesses. No ordinary "standard 2" person would have the capacity to do that.

- [5] Another factor, which Counsel has sought me to consider, is that the accused has been in custody for some 39 months already. This was basically about all concerning Counsel's address in mitigation of sentence. Of course, I will also consider other

issues

relevant for this purpose which arose during the trial, including the fact that accused had 2 minor children aged about 6 and 4 years with his fiancé (or former fiancé) Vusiwe Daniso, who gave evidence for the prosecution. However, according to Vusiwe, the accused stopped supporting the children after she had found him with another woman in Chatsworth on a certain day prior to June 2007 when she had paid him an unannounced visit. Indeed, there was no submission from the Defence that the accused was a breadwinner.

- [6] I am not persuaded that there was anything extraordinary or compelling with the accused's personal circumstances as to have any favourable bearing on sentence. Concerning the fact of his incarceration for 39 months pending finalization of the case, this is, indeed, a mitigation factor. However, this factor is to be weighed against some aggravating features which are discussed

hereunder.

- [7] There can be no doubt that, particularly considering his modus operandi and the large number of victims robbed and murdered, the accused has been convicted of the most atrocious and heinous crimes and, for that, he deserves nothing but severe custodial punishment. In *S v Holder*[4] it was, among other things, stated:

"In the application of the principle that imprisonment ought to be avoided, the penal element must, in serious offences, of whatever

nature, come to the fore and be properly considered, if punishment still has any meaning in the criminal law. The community expects that a serious crime will be punished, but also expects at the same time that mitigating circumstances must be taken into account and the accused's particular position deserves thorough consideration. That is sentencing according to the demands of our time."

- [8] In the well-renown dictum of Schreiner JA in *R v Karg*[5] stated, in part :

"It is not wrong that the natural indignation of interested persons and of the community at large should receive some recognition in the sentences that Courts impose, and it is not irrelevant to bear in mind that if sentences for serious crimes are too lenient, the administration of justice may fall into disrepute and injured persons may incline to take the law into their own hands. Naturally righteous anger should not becloud judgment".

[9] All persons are entitled to enjoy the basic and fundamental right to life, which is not only enshrined and entrenched in the Constitution, but also declared therein as a non-derogable right.[6] Therefore, the unlawful and intentional taking of human life is always treated as one of the most serious crimes in the list of all crimes. On this basis and depending on the circumstances of the case, the most severe punishment ought to be meted out to offenders convicted of unlawful and intentional homicide.

[10] According to the medico-legal post-mortem reports all the 13 bodies and human remains were in such a state of decomposition that the cause of death in respect of 11 of them could not be determined or ascertained at autopsy alone. However, although this was the case, physical evidence on some of the bodies was found at the autopsy which gave some clue as to the probable or suspected cause of death in respect of the victims concerned. I give examples hereunder.

10.1 In three cases the following remarks were included as part of the chief post-mortem findings: “Ligature tied around the wrists and around cervical bones” (exhibit RR), “Wire type brassier was seen entangled around the neck” (exhibit GGG) and “A ligature was seen around the wrists and fixed at the back”. (exhibit PP).

10.2 Indeed, a ligature (a green rope) on the human remains can also be seen in the photo album (photos 15 and 16 of exhibit T).

10.3 In two cases the causes of death were recorded as follows “Head injuries/Compression injury to neck”. (exhibit LLL) and “Multiple injuries due to blunt trauma” (exhibit PPP).

10.4 In at least two instances where the cause of death was recorded as unascertained, the following remarks were added: “Ligature compression of the neck must be considered” (exhibit PP) and “Compression of the neck by ligature must be strongly considered” (exhibit RR).

[11] On the basis of the abovementioned observations and the fact that the accused was operating on a typical modus operandi it seems safe to conclude that he probably killed all the deceased by strangulation. Whether or not he was acting alone, this was an issue not before the Court and, therefore, not correct even to speculate on. However, the evidence of Dudu Ntetha tended to suggest, for example, that where the accused had acquired more than one “client” to travel with at the same time he found some way to separate them once they arrived at the Umzinto CBD and thus enable himself to deal with one at a time. This, he did to Dudu and the deceased Nombali Ngcobo. That was how Dudu eventually managed to escape the death trap.

[12] It is also been held that the courts will, in general, consider a show of lack of remorse as aggravating the offence.[7] Hence, a convicted person’s display of absence of contrition will most probably count against him or her in the determination of appropriate sentence. The

accused in the present case showed absolutely no flicker of emotion and remorse whatsoever for his evil and cowardly deeds. I had to remind his Counsel on this point immediately I discerned that he had said nothing about it during his address on sentence. However, Counsel had made no mistake. He advised me that he had no instructions from the accused on this particular issue. Indeed, throughout the trial I watched the accused's conduct and demeanour. It was callous and insensitive, to say the least. For instance, at times he just smiled when he saw witnesses crying due to emotional distress, apparently occasioned by the reality of the brutal death of their beloved ones.

- [13] It also appeared that it was part of the accused's modus operandi that the victims would pay for his fare in the taxi to Umzinto. This was the impression gained from the evidence of Dudu Ntetha who told the Court that the accused had instructively told her and the deceased Nombali Ngcobo that they must pay his taxi fare

since he was going to get them employment. Dudu had volunteered to pay for the forward trip on the understanding that Nombali would pay for the accused's fare on the return trip. Clearly, the unsuspecting victims did not know that they were thereby facilitating things for their own murderer. This was yet another demonstrable evidence of cruelty and shamelessness on the part of the accused who, I ponder to imagine, was ostensibly charming and compassionate towards his vulnerable victims who were desperate to find greener employment pastures. He was the real jackal in a sheepskin.

- [14] The accused's criminal record shows that he is not a stranger to crimes involving violence and theft. On 23 January 1997 he was convicted of housebreaking with intent to steal and theft for which he was sentenced to 3 years imprisonment. Again on 25 February 1999 he was found guilty of robbery and sentenced to 5 years imprisonment.

- [15] In the circumstances of this case I have reason to believe that had the accused not been apprehended on 24 September 2007 he would have continued on his killing spree. In my view, there is simply no prospect that he would ever become rehabilitated. He is an extremely dangerous person who deserves to be removed from society permanently. His presence outside of prison would always remain an imminent deadly threat to any young woman whom he met in the street. Therefore, his permanent incarceration is the only way to ensure that he does not commit similar crimes again. It is also the only way to bring some degree of consolation to those parents whose children they will never see again as a result of the accused's wicked and malicious actions.

- [16] The fact that the accused has been in custody for 39 months awaiting the final date of this case is, in my view, far-outweighed by the extremely aggravating features I have just alluded to. In the event, I am satisfied that there are no substantial and compelling

circumstances present, as envisaged in section 51(3) of the Act, in respect of all 26 counts, which would justify me to impose lesser sentences than the sentences prescribed in the Act.

- [17] All relevant factors considered, the accused is sentenced as follows:

Counts 1 to 11 inclusive, 23 and 25 (i.e. 13 counts of Robbery with aggravating circumstances):

16 YEARS IMPRISONMENT ON EACH COUNT

Counts 12 to 22 inclusive, 24 and 26 (i.e. 13 counts of Murder):

LIFE IMPRISONMENT ON EACH COUNT

It is ordered that the sentences imposed in respect of the robbery counts shall run concurrently with the life sentences imposed in respect of the murder counts. The effect of this sentence is that the accused is sentenced to 13 life sentences plus a total of 208 years imprisonment, subject to the order preceding hereto. The sentence is to reflect my intention that the accused should remain in prison for the rest of his life. The relevant authority in the Department of Correctional Services is earnestly urged to take serious cognizance of this intention and to refrain from ever considering the accused for release on parole.

By operation of the law the life sentences shall run concurrently.[8]

Date of conviction: 23 December 2010

Date of sentence: 19 January 2011

[1] Act 105 of 1997.

[2] This is commonly known as Zinn triad. See *S v Zinn* 1969

(2) SA 537 (A) at 540G – H.

[3] *S v Banda & others* 1991 (2) SA 352 (BG) at 354D-H. See also *S v M*

[2007] ZACC 18; 2008 (3) SA 232 (CC) para 10.

[4] 1979 (2) SA 70 (A) at 72H (headnote) and 81B.

[5] 1961 (1) SA 231 (A) at 235H- 236C. This dictum has been applied with approval in many cases. See *S v Khumalo & others*

[1984] ZASCA 30; 1984

(3) SA 327 (A) at 330E-G, *S v Khumalo* 1984 (4) SA 642 (W) at 643G-H, *S v B* 1985 (2) SA 120 (A) at 123F-G, *S v Dingiswayo & others* 1985 (3) SA 175 (Ck) at 182G-H, *Shifidi v Administrator-General for South West Africa & others* 1989

(4) SA 631 (SWA) at 638C-D, *S v Mncube en ‘n ander*

[1991] ZASCA 24; 1991 (3) SA 132 (A) at 156H-I.

[6] Section 11, read with section 36, of the Constitution of the Republic of South Act 108 of 1996.

[7] *S v Scheepers* 2006 (1) SACR 72 (SCA) at para [6].

[8] Section 39(2)(a) of the Correctional Services Act 111 of 1998

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Prepared on 12 October 2026 · Esheria