

SOUTH AFRICA / JUDGMENT

Wesi v S (CA17/2015) [2017] ZANWHC 67 (13 October 2017)

[2017] ZANWHC 67

COURT

North West High Court, Mafikeng

BEFORE

Kgoele, Gutta

CASE / FILE NUMBER

CA17/2015

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH

WEST DIVISION, MAHIKENG

CA

17/2015

THABISO

WESI

Appellant

and

THE

STATE

Respondent

CRIMINAL

APPEAL

KGOELE

J, GUTTA J

DATE

OF HEARING

: 15 SEPTEMBER 2017

DATE

OF JUDGMENT

: 13 OCTOBER 2017

COUNSEL

FOR THE APPELLANT :

Mr Babane
COUNSEL

FOR THE RESPONDENT : Advocate Chulu

JUDGMENT

KGOELE J.

- [1] The appellant was convicted in the Regional Court held at Taung on a charge of attempted murder and sentenced to fifteen (15) years imprisonment. He now appeals against the sentence only with leave granted by the trial Court.
- [2] The facts that led to the conviction of the appellant are briefly that the complainant was on this particular day tied with a wire on his hands by the appellant whilst inside his kraal where his (appellant) goats are kept. One of his feet was also tied to a pole inside in the kraal. The appellant went to fetch a container having petrol, poured the complainant with the petrol and set him alight. This incident occurred after the appellant found the complainant mysteriously in his yard during the night. The police were called and they found the appellant still assaulting the complainant and rescued him. The complainant was severely burnt when the police found him. The medical report was handed in to show the severity of the injuries. The trial Court convicted the appellant with attempted Murder.
- [3] On appeal against the sentence imposed by the trial Court, the appellant's legal representative submitted that:-

3.1 The trial Court erred in giving no regard to the fact that a long term of imprisonment means the appellant's life stock will be left with no one to take care of, perpetuating theft of the said stock;

3.2 The trial Court erred in finding that the appellant's family will be able to sustain themselves during his absence since his wife is receiving social grants to the tune of R1200-00. He argued that the family depends on the life stock for their survival and that if the stock is stolen the R1200-00 will not be sufficient to sustain them;

3.3 The sentence of fifteen years imprisonment imposed by the trial Court is strikingly inappropriate and induces a sense of shock, taking into account the circumstances of this case and the mitigating factors in favour of the appellant;

3.4. The offence was not premeditated, the appellant was actually a victim of circumstances. Appellant being the first offender, is not a hardened criminal, but was actually provoked to commit this offence. He is a suitable candidate for rehabilitation. The trial Court could have imposed a lesser sentence coupled with an order that the appellant be sent for anger management therapy, further and/or alternatively, that the appellant be ordered to compensate the complainant in terms of section 300 of the Criminal Procedure Act 51 of 1977 as amended.

3.5 The trial Court over emphasized the seriousness of this offence and gave little regard to the circumstances under which it was committed, and that as a result punishment was meted with a degree of anger.

3.6 The trial Court misdirected itself in holding that “this is a case where rehabilitation of the offender must play a smaller role and deterrence and retribution must come to the fore”.

[4] He referred the Court to the case of S v SMM 2013 (2) SACR at page 292 where the Supreme Court of Appeal held that....

“One should not approach punishment in a spirit of anger and that sentencing must be assessed dispassionately, objectively and upon a careful consideration of all relevant factors”.

[5] Counsel representing the respondent agreed with the above submissions made by the legal representative of the appellant and further conceded to the fact that the sentence handed out by the trial Court is severe and shockingly inappropriate.

[6] The personal circumstances of the appellant are as follows:-

- (a) He was 53 years of age at the time of conviction;
- (b) Married with no minor children;
- (c) A first offender;
- (d) Was a farmer;
- (e) His wife receives a grant.

[7] It is apparent from the facts of this matter that the appellant was indeed convicted of a serious offence. In addition, the manner in which the assault took place was brutal to say the least. A quote from the evidence of one of the police officers who rescued him quite succinctly described how serious the injuries of the complainant were. He said:-

“On our arrival at the scene we found the accused lying down on the ground being tied with a “bloudraad”, both of his hands and feet and he was ugly burnt with acid on his body, including the following body parts:- Head, hand and all over his upper body, especially his chest and the clothes he was wearing was also burnt, being a blue overall jacket and a Bafana T-shirt. His mouth, including lips, was swollen and bruises on his body. The body skin was removed by the acid used to burn him and while we were further observing the victim some skin was still falling from his body and he was full of blood on his body”.

[8] Although it is clear that the appellant was a victim of stock theft and suspected the complainant of stealing his live-stock as he found him in his yard, he took the law into his hands and applied drastic measures by tying the complainant and pouring petrol over him instead of simply calling the police. It is aggravating because the complainant was rendered helpless by the appellant after he tied him to the pole in the kraal and could not flee whilst he was so burning.

[9] Even though there are aggravating circumstances in this matter, I fully agree with both legal representatives that there are some favourable factors which the trial Court overlooked. They are:-

- (a) It is undisputed that the appellant has been a victim of stock- theft which caused him sleepless nights;
- (b) The presence of the complainant at the premises of the of the appellant during the night was quite suspicious;
- (c) The appellant depended on the live-stock for his living as both he and his wife were not working;
- (d) The offence was not pre-meditated;
- (e) The appellant was a first offender at the age of 53 years.

[10] In the case of S v Machongo 2014 JDR 2472 (SCA) the following was stated:-

“17. There is no doubt that the interest of society need to be protected. It is settled law that Courts must send a strong message that crime will not be tolerated – however Courts should not be expected, by society, to avenge and apply the rule of an eye for an eye. The sentence to be imposed ought to be balanced without over-emphasising one part of the trial over another. The objects of punishment – retribution, rehabilitation and deterrence also ought to be balanced”.

[11] Having considered the personal circumstances of the appellant, the mitigating factors favourable to him, the circumstances of this matter as well as the aggravating factors, I am of the view that this Court is entitled to interfere with the sentence imposed by the trial Court because it is too harsh. I am of the view that a suitable punishment which is none other than imprisonment but for a lessor period of time will be appropriate in the circumstances of this matter.

[12] Consequently the following order is made:-

12.1 The appeal is upheld;

12.2 The sentence imposed by the trial Court is set aside and is replaced by the following sentence:-

“Ten

(10) years imprisonment”

12.3 The sentence is antedated to 25 September 2013.

KGOELE J

JUDGE OF THE HIGH COURT

I agree

GUTTA J

ATTORNEYS

For the Appellant : Legal Aid South Africa

For the Respondent : Director of Public Prosecutions

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