

IN GAUTENG SOUTH HIGH COURT OF SOUTH AFRICA

JOHANNESBURG

CASE NO: SS31/08

DATE: 10/06/2009

10 In the matter between

THE STATE

and

TWALA, MZWANDILE VINCENT THOMAS

ACCUSED

S E N T E N C E

WILLIS, J:

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[1] It is well established in these courts and reflects the accumulated wisdom of many generations that sentence should fit the criminal as well as the crime, be fair to the State and to the accused and be blended with a measure of mercy. It must also reflect the interests of society.

[2] The accused was 32 years of age at the time of commission of these crimes. He grew up in rural Empangeni in Kwa-Zulu /Natal. His educational attainments ended at standard 6. He moved to Johannesburg in 1992. He has fathered three children by two different women. I accept that there may well have been difficulties in adjustment in moving from Empangeni to Johannesburg. I accept, too, that he had the disadvantage of having grown up fatherless. I also accept that he grew up in circumstances of economic depravation. These circumstances are not
10 different from that of millions of his compatriots.

[3] Notwithstanding what I hope was a reasoned judgment finding the accused guilty on innumerable counts, he has persisted in denying any involvement whatsoever. He therefore has shown no remorse for these crimes at all.

[4] In view of the overall circumstances of this case, it is largely irrelevant whether the form of intention relating to the murder count was *dolus eventualis* or *dolus directus*. *Dolus directus* is present where there is a
20 deliberate wilful endeavour to ensure the death of another person. *Dolus eventualis* occurs where a person may not directly wilfully intend the death of a person, but persists with conduct in circumstances where he must foresee the possibility of death ensuing. The extraordinary brutality with which the accused and his co-perpetrator set about assaulting the deceased repeatedly and viciously is such that, even if the form of

intention was *dolus eventualis*, the moral reprehensibility of nature of the intention it differs so marginally from *dolus directus* in this particular case that it hardly bears serious consideration.

[5] The accused perpetrated a reign of terror. The circumstances in which he committed these crimes amount to most people's worst nightmare. In the sanctity of their own homes, indeed in the special sanctity of their own bedrooms, victims were brutally awoken in the dead of night, physically abused and also had numerous other insults hurled at them. Their
10 properties were ransacked and precious items of jewellery that did indeed have sentimental value were taken from people.

[6] The lives of all the victims in these cases have been irrevocably damaged. No family that was subject to these crimes will ever fully recover. A woman has been deprived of the love and comfort and support of a husband. The children of the deceased have been deprived of the advice and guidance that an older man can give them. His grandchildren have been deprived of a grandfather.

20 [7] The targeted victims of the accused were Indians and whites. From the evidence presented in this court regarding the racial abuse that the accused directed at his white victims it seems clear that he has a special hatred for white people.

[8] As a white person, it is difficult for me to sit in judgment on such racial

antipathy. I accept that the accused has been shaped by our history. Nevertheless, I would ask the accused, during the long years that he will spend in prison, to reflect on the fact that one of his victims was an elderly woman of 80 years of age who supplemented her meagre pension by baking pastries. That, I hope, will be for him an example of an honest days work. It also provides an excellent example of the fact that it is simply not true that every white person sits upon ill-gotten gains and can therefore be abused in the manner in which the accused thought it was his right to do.

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[9] In addition to what I have said in the opening lines of this judgment, sentence also has five important functions.

(i) It must act as a general deterrent. In other words, it must deter other members of the community from committing such acts or thinking that the price for wrongdoing is worthwhile.

(ii) It must act as a specific deterrent. In other words, it must deter this particular individual from being tempted to act in such a manner ever again.

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(iii) It must enable the possibility of correction unless this is very clearly not likely.

(iv) It must be protective of society. In other words, society must be protected from those who do it harm.

(v) It must serve society's desire for retribution. In other words society's outrage and serious wrongdoing must be placated.

[10] Clearly, in this case a lengthy period of imprisonment is warranted in order to serve each of these five functions. I have no doubt that the community as a whole cries out aloud for a lengthy and severe sentence in a case such as this.

[11] The court is obliged, in terms of Section 51 of the Criminal Law Amendment Act, No. 105 of 1997, to impose a sentence of life imprisonment where the accused is over 18 years of age at the time of commission of the murder, the murder having been committed in the
10 course of a robbery. There is, in addition, a compulsory minimum sentence of 15 years for the robberies with aggravating circumstances. This section is saved by the provisions of (3), which permit a lesser sentence if there are substantial and compelling circumstances, which justify the imposition of such a lesser sentence.

[12] There are no substantial and compelling circumstances present to justify the imposition of a lesser sentence than life imprisonment for the murder count, or a lesser sentence than 15 years for the robbery committed with aggravating circumstances.

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[13] The facts and circumstances of this case are, *par excellence*, the kind of facts and circumstances that Parliament must have had in mind when it had enacted the compulsory minimum sentence legislation. In any event, even if there was no such legislation and even if I were to have a judicial discretion in the matter, unfettered by the Criminal Law Amendment Act, I

would have imposed life imprisonment for the murder and 15 years on the robbery count.

[14] In terms of the Correctional Services Act, No. 111 of 1998 the accused, after 25 years' imprisonment, will be eligible to be considered for parole, notwithstanding, the sentence of life imprisonment in respect of the murder count. The authorities, at that time, will have to take into account all relevant circumstances including the convictions and sentences in respect of the other counts. Certain of the complainants are
10 here in court today. It is my duty to inform them, in terms of Section 299(a) of the Criminal Procedure Act 51 of 1977, as amended that, by reason of the offences in respect of which the accused has been convicted, they will have the right to be consulted at the time when the accused is considered for parole. To this end, I advise them that, whenever they move, they should notify the Department of Correctional Services. It would also be helpful, I respectfully suggest, if they were to keep in touch with the Investigating Officer over the years.

[15] In regard to the sentences which the court will impose, I shall use the
20 numbering of the counts as they appeared in the indictment, in order to avoid confusion. For example, the accused was acquitted on the 1st count, the count of theft but I shall immediately proceed to pronounce the sentence in terms of count 2 as it appeared originally in the indictment.

[16] The following are the sentences which the court imposes.

Count 2, housebreaking with intent to rob and robbery with aggravating circumstances 15 years imprisonment.

Count 3, assault with intent to cause grievous bodily harm: five years imprisonment.

Count 4, housebreaking with intent to rob and robbery with aggravating circumstances 15 years imprisonment.

Count 5, assault with intent to cause grievous bodily harm: five years imprisonment.

10 Count 6, murder: life imprisonment.

Count 7, housebreaking with intent to rob and robbery with aggravating circumstances: 15 years imprisonment.

Count 8, attempted rape: eight years imprisonment.

Count 9, assault with intent to do grievous bodily harm: five years imprisonment.

Count 10, assault with intent to cause grievous bodily harm: five years imprisonment.

Count 11, unlawful possession of a firearm: three years imprisonment.

Count 12, unlawful possession of ammunition: six months imprisonment.

20 Count 14, housebreaking with intent to rob and robbery with aggravating circumstances: 15 years imprisonment.

Count 15, housebreaking with intent to rob and robbery with aggravating circumstances: 15 years imprisonment.

Count 16, robbery with aggravating circumstances: 15 years imprisonment.

Count 17, assault with intent to do grievous bodily harm: five years imprisonment.

Count 19, attempted murder: eight years imprisonment.

Count 20, attempted murder: eight years imprisonment.

Count 21, attempted murder: eight years imprisonment.

Count 24, unlawful possession of a firearm: three years imprisonment.

Count 25, unlawful possession of ammunition: six months imprisonment.

The accused is declared unfit to possess a firearm.

- 10 [17] Items 1, 3 and 4 of the exhibits are to be returned to the Mohammed family. Items 2 and items 5 to 21 are to be returned to the Munga family. Items 22, 23, 24 and 25 are to be returned to the Kotze family. Item 27 is to be returned to Mrs Moolman. All other items that were exhibits other than item 30 are forfeited to the state. Item 30, the identity book of the accused, is to be returned to him.