

REPUBLIC OF SOUTH AFRICA
SOUTH GAUTENG HIGH COURT
(JOHANNESBURG)

CASE NO: 65/2011

DPP REF NO: JPV2011/0045

DATE: 18/11/2011

NOT REPORTABLE

In the matter between

THE STATE

and

MTSHENGISENI MABASA

ACCUSED

J U D G M E N T
(SENTENCE)

VAN OOSTEN J:

[1] The accused has been convicted of four very serious crimes. He must now be sentenced. In the consideration of an appropriate sentence to be imposed, this Court is enjoined to carefully and dispassionately consider and balance the gravity of the offenses, the personal circumstances of the accused and the interests of society.

[2] The facts of this matter reveal the tragic consequences that followed upon the accused burning the deceased's shack: three women senselessly lost their lives in the most agonising circumstances when they burnt to death. From the evidence presented by the State in aggravation of sentence it appears that Cebisile Nkosi was the mother of a 4 year old child and that the deceased, Sibongile Zinhle Ngobese, the mother of two children, aged 8 and

5 years. These children, for all practical purposes, have been left orphaned by the loss of their mothers and their care and custody have since been entrusted to family members under extremely difficult and often adverse circumstances. They will moreover have to endure the reality and misery of having to grow up without their mothers. The evidence furthermore revealed the grief, sorrow and devastating losses suffered by the families of the deceased.

[3] The accused's conduct was pre-planned, resulted from jealousy and was purely aimed at self-gratification. Considerable damage was moreover caused to the shack. I accept that the accused was under emotional stress at the time but then he could have availed himself of the more than sufficient time for reflection and the several opportunities that arose for seeking help. This kind of behaviour where people take the law into their own hands cannot be tolerated in a civilised society and the community with ample justification expects the courts to impose heavy deterrent sentences when this occurs.

[4] This brings me to the personal circumstances of the accused as advanced in his evidence in mitigation of sentence. The accused is 22 years old, single and the father of a child, 6 years old, currently in the care of its mother and grandmother. He left school at the age of 14, having reached grade 7. He has quite clearly not had the advantage of proper education and a sophisticated background. Having left school he performed odd jobs including cleaning for a living. The accused has no previous convictions.

[5] Having considered all the circumstances of this case I have come to the conclusion that there are substantial and compelling circumstances justifying a lesser sentence than the statutory prescribed minimum sentence on count 1. In this regard I take into account the accused's relatively youthful age and the fact that his actions followed upon emotional stress. I am moreover satisfied that the ultimate sentence this court can impose would be disproportionate to the crimes he has been convicted of. I furthermore consider differentiation between the sentence to be imposed for the murder on the one hand and the culpable homicides on the other, as appropriate. In regard to the convictions of culpable homicide the accused's conduct, as I

have referred to in the judgment on the merits, was grossly negligent. He plainly took no steps at all to satisfy himself that there were no occupants in the shack. Having further regard to the cumulative effect of the sentences I intend imposing, some concurrence will be ordered.

[6] In conclusion I have no doubt that the long term prospects of rehabilitating the accused within the prison environment, at his age, are real, which therefore ought to be reflected in the sentence that I am about to impose. In his evidence the accused lamely proffered some remorse and extended some sympathy to the families of the deceased. Although somewhat belatedly and understandably frowned upon by one of the deceased's family members who gave evidence in aggravation of sentence, this indeed is an encouraging indication towards rehabilitation. The gravity of the offences, however, demands the imposition of a long term of effective imprisonment.

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

7.1 On count 1 (murder): 20 years' imprisonment.

7.2 On count 2 (culpable homicide): 10 years' imprisonment.

7.3 On count 3 (culpable homicide): 10 years' imprisonment.

It is ordered that the sentences imposed on counts 1, 2 and 3 be served concurrently.

7.4 On count 4 (arson): 5 years imprisonment.

The effective term of imprisonment therefore is 25 years' imprisonment.

FHD VAN OOSTEN
JUDGE OF THE HIGH COURT

COUNSEL FOR THE STATE

ADV (MS) P MARASELA

COUNSEL FOR THE ACCUSED

ADV (MS) M LEOTO

DATE OF JUDGMENT

18 NOVEMBER 2011