

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: A 25\2020

(1)	REPORTABLE: <u>YES</u> / NO
(2)	OF INTEREST TO OTHER JUDGES: <u>YES</u> / NO
(3)	REVISED.
	<u>04/06/2020</u> DATE
	<u>Jabesele</u> SIGNATURE

In the matter between:

**ADILU JANGIA**

Appellant

And

**THE STATE**

Respondent

**MABESELE J AND FRANCIS-SUBBIAH AJ**

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**J U D G M E N T**

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**MABESELE, J:**

[1] On 6 August 2013 the Appellant was convicted in the Regional Court, Newlands, on three counts, namely; (i) robbery with aggravating

circumstances, read with section 51(2) of Act 105 of 1997; (ii) attempted murder and (iii) contravening section 49 (10) (a) of Act 13 of 2002 (unlawfully being in the Republic of South Africa). The Appellant was sentenced to 15 years imprisonment on count 1; 10 years imprisonment on count 2; 3 months imprisonment on count 3.

[2] It was ordered that half the sentence imposed on count 2 and the sentence imposed on count 3, run concurrently with the sentence on count 1. Consequently, the Appellant was sentenced to an effective term of 20 years imprisonment.

[3] It was further ordered that the Appellant serve two thirds of the sentence of 20 years imprisonment imposed on him before he is considered for parole.

[4] This appeal is against sentences only. It is contended that the sentences on counts 1 and 2 are startlingly excessive and induce a sense of shock.

[5] The facts in brief are as follows: On 15 August 2011, shortly after 07:00, the Appellant and his co-perpetrators robbed the complainant of her personal belongings and cash at her shop. The Appellant and the co-perpetrators were employed by the complainant. The Appellant is a foreign national and has no permit, allowing him to reside in the country.

[6] The complainant was 62 years old when she was robbed. She suffered from heart illness. Surely, her health condition must have been known to the

Appellant and the co-perpetrators since they were in the employ of the complainant. Regardless her old age and unfavourable health condition the complainant was thrown on the kitchen floor and strangled by three strong young men to the extent that she was unable to breath. She testified that she felt 'something tight around her neck.' One of the men sat on her back whilst she lay on her tummy, facing down. Subsequently she was punched on her mouth and lost two teeth. Since she could no longer endure pain as a result of the assault on her, she lay still and pretended to be dead until there was complete silence in the shop. Thereafter she managed to crawl to the counter next to the door and sought help from a cleaner who had just reported on duty. The complainant spent four days in the intensive care unit at the hospital due to the injuries she had sustained on her neck.

[7] The doctor testified that strangulation is a life-threatening incident that may cause stroke which may develop at a later stage in that the victim may develop a clot from the injured vessel in her neck, which could affect brain.

[8] The law is clear that when the court considers sentence it must take into account the personal circumstances of the accused, the gravity of the offence committed and the interests of society. Where the offence carries a prescribed minimum sentence, such sentence may not be departed from for flimsy reasons. "Substantial and compelling circumstances" must exist before the court can impose lesser sentence. This has been clearly stated in *S v Malgas*<sup>1</sup>

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<sup>1</sup>[2002] 3 All SA. 220 (SCA)

[9] The Appellant argues that insufficient weight was attached to his personal circumstances, in particular his clean record and age (22 years) and that he had already spent two years in custody awaiting finalization of this matter. He maintained his wife and a minor child before he was arrested.

[10] Since the Appellant is a foreign national it cannot be said with certainty that he has no previous convictions, nor can it be said he has previous convictions. In my view, absence of such information should not count in favour of the Appellant. Should it count in his favour, his purportedly 'clean record' unfairly add to other factors which, if taken together, may constitute "substantial and compelling circumstances" which may justify unconvincingly a departure from the prescribed minimum sentence. In my view, this factor should be neutral, in the interest of justice. The period that the Appellant had spent in custody, awaiting finalization of this matter is a factor to be considered together with other factors. This factor alone cannot constitute "compelling and substantial" circumstances unless the period spent in custody was unreasonably long and the appellant does not carry blame for it. Taking into consideration the volume of cases brought to the High Courts for trial, it cannot be said that the period of two years which the Appellant spent in custody, awaiting finalization of this matter was unreasonably long to the extent of justifying a departure from the prescribed minimum sentence on count 1.

[11] The sentence of 10 years imprisonment on count 2 seems too harsh and calls for interference, if regard is had that no dangerous weapon or instrument was used when the offence was committed and the victim did not suffer severe injuries. It is noted that although the victim felt a pair of scissors on her neck, it was not used to brutally injure her, even though she was at their mercy. This, notwithstanding, a severe punishment must be imposed on the Appellant in order to send a clear message to the public in general and men in particular that gender-based violence has no room in society.<sup>2</sup> Women have suffered for too long in the hands of men<sup>3</sup> and still suffer. Women, alike men are equal under our Constitution and their dignity be respected and protected, amongst others, so that they are no longer viewed as “*articles of no commercial value*”<sup>4</sup> by men who have no respect for women. They too are human beings who are entitled to enjoy same privileges as everyone else and be considered equal to everyone else in terms of socio-economic, cultural, political and religious status.

[12] Strangling an old and defenseless woman who does not enjoy good health is not only barbaric but heartless. Over and above strangulation the complainant was hit on the mouth and lost teeth. Had she not pretended to be dead, probably she could have been strangled to death by three physically strong men. This conduct deserves a sentence not less than 5 years on count 2. The result is that this appeal succeeds in respect of the sentence on count 2 only.

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<sup>2</sup> Tshabalala V the State case CCT 69\19 (CC)

<sup>3</sup> Of course not all men abuse women

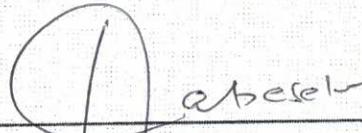
<sup>4</sup> See an essay titled: “Say No Black Woman Say No’ in How Long? Not Long (1990) p.23 Julius Nyerere: Women’s Freedom: Women are Eagles, Not chickens 2013

[13] The *court a quo* ordered that the appellant is to serve two third of the effective term of 20years imprisonment before he is considered for parole. My view in this regard is that the issue of parole falls squarely within the province of the prison authorities and the parole board. Therefore an order that a prisoner must not be considered for parole even though the prison authorities are satisfied that he has compiled with all the requirements and is eligible for release on parole, will to a greater extent interfere with the right of the prisoner to his freedom. It is for this reason that the order of the *court a quo* is set aside.

[14] Therefore the following order is made:


1. The appeal against sentences is upheld, partially.
2. The appeal against sentence in respect of count 1 is dismissed.
3. The appeal against sentence in respect of count 2 succeeds to the following extent:
  - 3.1 The sentence of 10 years imprisonment is set aside and substituted with the sentence of 5 years imprisonment.
4. The sentence of 3 months imprisonment in respect of count 3 is confirmed.
5. The sentence of five (5) years imprisonment on count 2 must run concurrently with the sentence on count 1.

6. The sentence on count 3 must run concurrently with the sentence on count 1.
7. Accordingly, the Appellant is sentenced to an effective term of 15 years imprisonment.
8. The sentence is backdated to 06-08-2013.
9. The order of the *court a quo* that the Appellant is to serve two third of the effective term of 20 years imprisonment before he is considered for parole is set aside.



**M. M MABESELE**  
**JUDGE OF THE HIGH COURT**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

I agree:



**R. FRANCIS-SUBBIAH**  
**ACTING JUDGE OF THE HIGH COURT**  
**GAUTENG LOCAL DIVISION, JOHANNESBURG**

Date of hearing : 4 June 2020

Date of judgment : 4 June 2020

APPEARANCES

For the Appellant : Adv W.A Karam

Instructed by : Legal Aid S.A

For the Respondent : Adv D Van Wyk

Instructed by : The Director of Public Prosecutions