

3/11/12

IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)

CASE No. A 1053/11

(1) REPORTABLE: NO
(2) INTEREST TO OTHER JUDGES: NO
13/11/12
DATE
SIGNATURE

In the appeal of:-

CHARLES BONGANI SIMELANE

Appellant

and

THE STATE

Respondent

JUDGMENT

Van der Byl AJ:-

[1] This is an appeal, lodged with leave of the magistrate, against sentence only.

(I will for the sake of convenience refer to the Appellant as "*the Accused*")

.../...

[2] The Accused was charged in the regional court, sitting at Nigel, of Murder in that upon or about 19 July 2010 and at or near KwaThema he did unlawfully and intentionally kill one Ntembentsha Montsasa, a female person.

[3] The Accused pleaded guilty and in a statement in terms of section 112(2) of the Criminal Procedure Act, 1977, stated that he and one "*Siphiwe*" in the early hours of the morning on 19 July 2010 went to the house of the deceased. He was under the influence of liquor. He kicked the door open and the deceased asked them what they wanted. He did not answer, whereupon, she stormed at him and grabbed him. He then took a knife *Simphiwe* had with him and stabbed her. Although he couldn't remember how many times he stabbed her, but it was more than once. He nevertheless know that he stabbed her once in the chest and once in the neck. *Siphiwe* then took a cellphone and they left.

[4] He was, thereupon, duly convicted on the charge of Murder.

[5] The State proved six previous convictions of theft, housebreaking and theft, arson and malicious injury to property against the Accused. It, furthermore, appears, that he was at the time also serving a sentence of 18 years imprisonment imposed upon him for robbery with aggravating circumstances and unlawful possession of a firearm and ammunition on 23 August 2011.

[6] It would appear to have been common cause -

- (a) that he was at the time 28 years old;
- (b) that he is not married but is the father of two children aged at the time three years and one year;
- (c) that he reached standard 9 at school;
- (d) that he was until his arrest gainfully employed;
- (e) that he was detained awaiting trial for approximately 14 months;
- (f) that he lost his father when he was only 9 years old.

[7] The Accused was, the magistrate having considered his personal circumstances, his previous convictions, the fact that he was serving a period of 18 years imprisonment, the seriousness of the offence and that he pleaded guilty, sentenced to 20 years imprisonment on 14 October 2011 and ordered, more than fairly, that 10 years of the 20 years imprisonment should run concurrently with the sentence he was already serving.

[8] It has now been contended on behalf of the Accused that the magistrate erred in, due regard being had to his personal circumstances, not having found any substantial and compelling circumstances.

[9] I am unpersuaded that the magistrate erred in not having found that there were substantial and compelling circumstances justifying a lesser sentence.

[10] As a matter of fact, the circumstances show a cold-blooded and absolutely senseless killing of the deceased in the privacy of her own home in the course of an apparent robbery perpetrated with aggravating circumstances which, had it been indicated in the chargesheet that the charge should be read with section 51(1) of the Criminal Law Amendment Act, 1997 (instead of section 51(2)) he could in all probability have been sentenced to life imprisonment.

[11] Much reliance has been placed on the fact that he pleaded guilty which, so it was submitted, is indicative of remorse. I am not persuaded that his plea of guilty in itself and the indication in his plea explanation that he regret what he had done, indeed constitutes remorse.

[12] In ***S v Matyityi 2011(1) SACR 40 (SCA) at 47A, para [13]*** one finds the following informative and particularly realistic exposition of what remorse entails:

"Remorse was said to be manifested in him pleading guilty and apologising, through his counsel (who did so on his behalf from the bar) It has been held, quite correctly, that a plea of guilty in the face of an open and shut case against an accused person is a neutral factor. The evidence linking the respondent to the crimes was overwhelming. ... There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus genuine contrition can only come from an appreciation and acknowledgement of the extent of one's error. Whether the offender is sincerely remorseful, and not simply feeling sorry for himself or herself at having been caught, is a factual

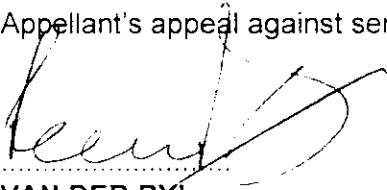
question. It is to the surrounding actions of the accused, rather than what he says in court, that one should rather look. In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence. Until and unless that happens, the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of, inter alia: what motivated the accused to commit the deed; what has since provoked his or her change of heart; and whether he or she does indeed have a true appreciation of the consequences of those actions."

[13] Apart from the foregoing the Accused has a long list of previous convictions of which all show that he has very little respect for the rights, privacy and lives of others.

[14] In my view he is an absolute danger to society.

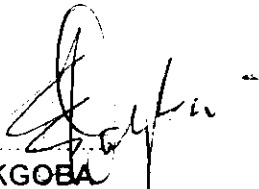
[15] In the circumstances the following order is made:

The Appellant's appeal against sentence is dismissed.



P C VAN DER BYL
ACTING JUDGE OF THE HIGH COURT

I agree



E M MAKGOBA
JUDGE OF THE HIGH COURT

ON BEHALF OF THE APPELLANT

ADV KGARARA

ON BEHALF OF THE RESPONDENT

ADV J P VAN DER WESTHUIZEN

DATE OF HEARING

13 NOVEMBER 2012

DATE OF JUDGMENT

13 NOVEMBER 2012