

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG. PRETORIA)

CASE NO: A126/14

DATE: 29 AUGUST 2014

In the matter between:

T[...] M[...]

APPELLANT

and

THE STATE

RESPONDENT

JUDGMENT

RAULINGA J,

[1] This is an appeal against sentence only with leave of the court a quo.

[2] The Appellant pleaded guilty to two counts, one of murder and the other of unlawful possession of a firearm In the Regional Court of Mpumalanga held at Middleburg. He was subsequently convicted on both counts and sentenced to a period of life imprisonment on count one (1) and two (2) years imprisonment on count two (2) on 17 August 2012. The sentences were ordered to run concurrently. In addition, he was declared unfit to possess a firearm. He was legally represented during his trial.

[3] The circumstances under which the offences were committed are that the accused had been in a love relationship with one T[...].

[4] It seems to me that the accused was under a spell that the latter had infected him with the HIV virus as he had become ill and it was medically established that he was indeed HIV positive.

[5] The accused became very ill due to the infection from the virus. His girlfriend, T[...], became promiscuous to the extent that she would engage in sexual intercourse with other men in his presence. He

succumbed to anger and, obtained an illegal firearm. He acted in revenge and shot and killed a person sleeping in T[...]s bed thinking that it was her. He fired two shots through an open window in the cover of the night and killed the deceased who turned out to be T[...] s daughter.

[6] A court of appeal may not and will not interfere with sentence imposed by the trial court, unless it is convinced that the sentence discretion has been exercised improperly or unreasonably or where the sentence induces a sense of shock or is startlingly inappropriate,

[7] The principle regarding minimum sentences laid down in *S v MalQOS 2001(1) (SACR)n469 (SCA)* is not cast in stone. The dictum in the Malgas decision dictates that the court should not depart from the minimum sentences for flimsy reasons. The court however cautioned that the sentences to be imposed should be proportional to the offences committed, if not, they should not be imposed.

[8] Although the offences which were committed are serious and must usually be met with a term of imprisonment, it is trite that each case should be dealt with in accordance with its own facts. The sentence discretion must be exercised in such a manner to provide foij individualisation which might be called for. The factors relevant to sentencing and the purpose of punishment must be based on the facts of every *case*, be placed in a particular balance to one another -*SvDe Kock 1997(2) SACR171T*:

[9] The personal circumstances of the Appellant are that he was 34 years old when he was sentenced. The senjtence of life imprisonment meant that he will have tuned 59 years by the time he is released. He was employed as a plaster by Tener and he earned income in the sijm of R4 000.00 per month. He was eligible for rehabilitation. He pleaded guilty to bcjth counts, which is a sign of remorse. Moreover, he was a first offender.

[10] All the factors, cumulatively considered must be regarded as substantial and compelling circumstances which exonerate him from the imposition of a life sentence. It Is in this regard that the court a quo misdirected itself necessitating the reduction of sentence by this court.

[11] In the circumstances I propose the following order:

- (a) The appeal on sentence is upheld.
- (b) The sentence imposed by the court a quo is set aside.
- (c)The accused is sentenced to 20 years imprisonment on count 1.
- (d) The accused is sentenced to 2 years imprisonment on count 2.

(e) The sentences are ordered to run concurrently.

T J RAULINGA

JUDGE OF THE NORTH GAUTENG HIGH COURT

S STRAUSS

ACTING JUDGE OF THE NORTH GAUTENG HIGH COURT