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

Case Number: **A229/2022**
(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO
DATE: 10 July 2023
SIGNATURE: **JANSE VAN NIEUWENHUIZEN J**

In the matter between:

SELINAH MOKGEPA Appellant

and

THE STATE Respondent

JUDGMENT

JANSE VAN NIEUWENHUIZEN J:

[1] On 7 September 1998 the appellant was convicted on three counts, to wit: count 1: murder, count 2: robbery and count 3: housebreaking with the intent to rob and robbery. The appellant was sentenced to 40 years imprisonment on the murder charge, 10 years imprisonment on the robbery charge and 10 years imprisonment on the housebreaking with the intent to rob and robbery charge.

[2] The court *quo* ordered that the sentence imposed in respect of count 2 run concurrently with the sentence imposed on count 1, resulting in an effective sentence of 50 years imprisonment.

[3] The court, furthermore, recommended that the appellant should serve at least 30 years imprisonment before she is considered for parole.

[4] On 19 November 2019 Ledwaba DJP granted leave to appeal against sentence. The reasons for the delay in the prosecution of the application for leave to appeal is not clear from the record.

Sentence

[5] In considering the sentence, it apposite to have regard to the circumstances under which the crime was committed.

[6] The conviction emanates from the murder of one Roelof Frederik Strydom ("the deceased") on 21 November 1995 on his farm in the district of Bronkhorstspruit and the robbery of an amount of R 792,18. The appellant, an erstwhile employee of the deceased, was aware that the deceased had cash in a safe in his house. The appellant also knew the layout of the house.

[7] The appellant was desirous of obtaining the cash and enlisted the services of Filix Dube and Noel Gcue to rob the deceased of the cash.

[8] In order to succeed in the robbery, the appellant hatched a well thought out plan. Filix and Noel, who were in the employ of the deceased, would, at the pre-arranged time, be assisting the deceased at the kraal. They had to enrage the deceased and whilst the deceased was in an enraged mood, they had to attack him and remove the keys to the safe from the front pocket of the deceased's pants. Thereafter Filix and Noel had to enter the residence through the front door and proceed to the master bedroom where the safe was. Armed with the keys to the safe, Filix and Noel should then unlock the safe and remove the cash from the safe.

[9] The appellant would be on the look-out for any unexpected visitors to the farm.

[10] The plan was put into action and on the afternoon of 21 November 1995, whilst working at the kraal, Noel hit the deceased with a pitchfork over his head whilst Filix stabbed him with a knife in the stomach. Noel hit the deceased once more with the pitchfork and removed the keys to the safe from his pocket. At this stage I must pause to mention, that the attack was extremely brutal and resulted in the deceased tragically losing his life due to the head injury.

[11] Unperturbed by the brutal attack, Filix and Noel proceeded to the residence and met the appellant at the front door. The appellant did not enter the residence and waited at the front door.

[12] Once inside the residence, Noel opened the safe and removed a tin container with money as well as a firearm. Filix took the firearm and walked out of the residence where he accosted Martha, the domestic assistant. Filix ordered Martha, who was quite shocked at the time, to proceed to the bedroom. Inside the bedroom Noel asked Martha where the money was and she removed another tin container from the safe.

[13] Noel took the two tin containers to the appellant, who was still at the front door and handed one container to her. Thereupon the three of them left the premises and ran in the direction of Tembisa. The appellant and her co-accused were arrested by the police shortly after the incident.

[14] In respect of the appellant's personal circumstances, the court a quo took into account that the appellant was 30 years of age and a first offender. The appellant left school after grade 6 and the court took note of the fact that she grew up in an impoverished environment under difficult social economic circumstances. The appellant had a 5-year-old boy and survived financially on her mother's pension. The appellant, had also spent two years in prison awaiting trial.

Grounds of appeal

[15] The appellant, in this appeal, has relied on the following grounds of appeal:

15.1 that the recommendation of a term of non-parole was irregular;

15.2 that the sentence is shockingly harsh and disproportioned to the facts of the case;

15.3 that the court *a quo* erred in:

15.3.1 over-emphasising the seriousness of the offence and the interest of society;

15.3.2 failing to order that the sentences run concurrently in totality;

15.3.3 failing to take the cumulative effect of the sentences into account; and

15.3.4 failing to take the prospects of rehabilitation into account.

[16] Mr Botha, counsel for the appellant, to his credit, did not persist with the first ground of appeal. A mere recommendation by the could a quo could clearly not be irregular. It remains the prerogative of the Department of Correctional Services to consider the appellant for parole in terms of the applicable legislation and guidelines.

Legal framework

[17] The principles applicable to an appeal against sentence is trite and was aptly summarised in *S v Rabie* 1975 (4) SA 885 A at 857 D-E, to wit:

"1. In every appeal against sentence, whether imposed by a magistrate or a Judge, the Court hearing the appeal –

(a) should be guided by the principle that punishment is "pre-eminently a matter for the discretion of the trial Court";

and

(b) should be careful not to erode such discretion: hence the further principle that the sentence should only be altered if the discretion has not been 'Judicially and properly exercised"

2. The test under (b) is whether the sentence is vitiated by irregularity or misdirection or is disturbingly inappropriate."

[18] Having carefully considered the judgment in respect of sentence, I am unable to find that the judgment is *"vitiated by an irregularity or misdirection."*

[20] The question then arises whether the sentence is disturbingly inappropriate.

[21] The death penalty which was regularly imposed in cases in which a murder was exceptionally brutal, was abolished on 6 June 1995. Thereafter and at the time the appellant was sentenced the most severe sentence that could be imposed for such murders was life imprisonment. The Criminal Law Amendment Act, 105 of 1997, that makes provision for the imposition of minimum sentences in respect of murder charges, only came into operation on 13 November 1998 and was not applicable at the time sentence was imposed on the appellant.

[22] In *S v Schoeman* 1995 (1) SACR 423 T, Van der Walt J (Nugent J and Els J concurring) held that the death penalty and life imprisonment had the same purpose, namely to remove an offender of a serious offence permanently from society. Bearing the aforesaid in mind, the court held that any sentence of imprisonment for less that the remainder of an offender's natural life could also be a proper and appropriate sentence. The court upheld a sentence of 30 years imprisonment and stated that it is incorrect to regard long term imprisonment, whether it be 10, 20-, 25-, 30- or 40-years' imprisonment, shockingly inappropriate merely because of the length of the term of imprisonment.

Discussion

[23] Bearing the meticulous planning and the brutality of the murder in mind, I do not deem the term of 40 years imprisonment imposed on the murder charge to be shockingly inappropriate. The court a quo had due regard to the appellant's personal circumstances and the interest of society in imposing the sentence.

[24] The robbery charge is premised on the removal of the key to the safe from the deceased's possession. The housebreaking with the intent to rob and robbery charge, [s premised on the remainder of the events that transpired after the initial robbery.

[25] Mr Botha, counsel for the appellant, did not contend that the sentence of 1O years imprisonment imposed n respect of each charge, is in itself shockingly inappropriate. It appears that the appeal is rather directed at the cumulative effect of the sentence as a whole.

[26] In directing that the sentence on count 2 run concurrently with the sentence on count 1, the court *a quo*, no doubt. duly considered the cumulative effect of the sentence as a whole.

[27] In the result, I am of the view that the appeal should be dismissed.

ORDER

I propose the following order:

1. The appeal against sentence is dismissed.

N. JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

I agree.

L BARIT

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

I agree and it is so ordered.

R TOLMAY
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

DATE HEARD:
8 May 2023

DATE DELIVERED:
10 July 2023

APPEARANCES

For the Appellant:	Advocate Botha
Instructed by:	Legal Aid South Africa
For the Respondent:	Advocate Maritz
Instructed by:	The State