

## SUPREME COURT OF APPEAL OF SOUTH AFRICA

### MEDIA SUMMARY – JUDGMENT DELIVERED IN SUPREME COURT OF APPEAL

FROM: The Registrar, Supreme Court of Appeal

DATE: 29 MAY 2006

STATUS: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

The Supreme Court of Appeal today gave judgment in an appeal brought by Hangwani Gardiner Rasengani against the sentences imposed on him by Mr Justice Hetisani in the Thohoyandou High Court on 14 December 2000.

The appellant, who was convicted on six charges, namely one of murder and two of attempted murder, plus three under the Arms and Ammunition Act 75 of 1969, for pointing a firearm, possessing an unlicensed firearm and the unlawful possession of ammunition, was sentenced to life imprisonment for the murder and various terms of imprisonment totalling 54 years, all of which were ordered to run concurrently with the sentence of life imprisonment.

The case was a sequel to a series of incidents which took place in Thohoyandou at 6 am on 13 July 1999 when the appellant gained entrance to the home of the deceased, an attorney who practised in Thohoyandou, by pointing a firearm at a domestic worker in the house, and thereafter fired shots at the deceased and his female companion, a doctor, who worked at the local hospital. The attorney died as a result of the injuries he sustained while his female companion was seriously injured. Subsequently, while trying to escape, the appellant fired a further shot at a policeman.

According to the evidence the appellant had previously been involved in a relationship with the doctor, who had terminated it at the end of February 1999. The appellant was unwilling to accept that the relationship had terminated and threatened on several occasions to commit suicide. He was during the period receiving treatment for depression and stress and was taking anti-depressants. Although the appellant had been examined by psychiatrists none of them was called to testify.

The trial judge said that the appellant had committed the crimes of which he had been convicted ‘seemingly under very severe provocation.’ He said that this factor could have counted very strongly in his favour but that there was no evidence before the court to support it. He said that he was obliged by the Criminal Law Amendment Act of 1997 to sentence the appellant to life imprisonment for the murder because it had been premeditated.

Mr Justice IG Farlam, giving judgment in the Supreme Court of Appeal, said that in order to do justice in the case the judge should have called one or more of the psychiatrists who interviewed the appellant to testify on the question whether the emotional stress the appellant was under and the depression from which he was suffering provided an explanation for his behaviour so as to constitute substantial and compelling circumstances under the Criminal Law Amendment Act justifying a lesser sentence than life imprisonment. He stated that the crimes the appellant committed were very serious and called for serious sentences but he said that this did not mean that the sentence prescribed for premeditated murder should have been imposed if substantial and compelling circumstances were present and that similar considerations applied in respect of the other sentences imposed.

He set the sentences imposed on the appellant aside and sent the case back to the High Court for further consideration.

Mr Justice KK Mthiyane and Ms Justice M Maya concurred.