



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
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Mukona v The State (97/15) [2015] ZASCA 128 (28 September 2015)

The Supreme Court of Appeal (SCA) today handed down judgment in a criminal appeal in which it upheld the appellant's conviction for murder, arson and three counts of attempted murder due to his failure to refute the State's case.

The State presented evidence during the trial was that the appellant, Mr Mukona, was unhappy that his former wife, Ms Mulondo, had formed a relationship with Mr Thagwana and that they were living together as husband and wife. He had tried on several occasions to win Ms Mulondo back but she declined his advances. When all these attempts failed, jealousy got the better of him and at midnight on 20 October 2001, Mr Thagwana and Ms Mulondo were woken from their sleep to find their house on fire. Mr Thagwana and Ms Mulondo suffered burns from the fire. They noticed an open two litre petrol container and a small blue shawl lying next to the entrance of the house, soaked in petrol and had been used to start the fire. Ms Mulondo recognised the shawl as belonging to her daughter, Mulanda, who together with her son was living with the appellant at the time. She reported this to the police. When the police went to the appellant's house, they saw him coming out, and when they called him he ran away and disappeared into the bush. One of them knew the appellant very well and it was broad daylight and thus positively identified him. In the appellant's home, they found the appellant's two children, both of whom had been hewn in the head with an axe. The son was dead but Mulanda the daughter, although grievously injured, was alive and was moving her hand. Fingerprints taken from the axe matched those of the appellant.

Despite this evidence, the appellant elected not to testify and thus did not materially dispute the State's case. Resultantly, the trial court convicted the appellant based on the evidence and inferences drawn from it. The appellant further failed to testify in mitigation of sentence and the aforementioned sentences were resultantly given. The court a quo found that there were no substantial and compelling circumstances justifying a deviation from the prescribed minimum sentences under s 51(1) of the Criminal Law Amendment Act 105 of 1997 (the Act). It sentenced him to life imprisonment in respect of the murder of his minor son; ten years' imprisonment for arson; ten years' imprisonment on each of the two counts of the attempted murder of his former wife Ms Mulondo and of Mr Thagwana, the subsequent husband of Ms Mulondo. And, lastly, the court sentences the appellant to 35 years' imprisonment in respect of the attempted murder of his daughter Mulanda. The

sentences in respect of the three counts of attempted murder (counts 3, 4 and 5) were ordered to run concurrently with the sentence in respect of murder (count 1). The total effective sentence imposed by the court a quo on the appellant was life imprisonment. The appellant was granted leave to appeal to the SCA by the court a quo against the convictions and sentences.

On appeal, the conviction was challenged on the basis of the inferences drawn by the trial court; while the sentences were attacked on two grounds. First, that the court below applied the provisions of the Act without prior warning to the appellant. Secondly, that the sentence imposed by the trial court was shockingly inappropriate because the trial court relied on brief personal information before sentencing the appellant and failed to direct that a presentencing report be obtained.

The SCA held in respect of the conviction that when assessing circumstantial evidence, courts need to be careful not to approach such evidence on a piecemeal basis, but to consider it in its totality. In this regard the SCA held that rules of logic must be borne in mind and it found that viewed holistically, the evidence pointed toward him being perpetrator of the crimes, and it called for him to explain his version, which he failed to do and leading to the negative inferences drawn against him.

The SCA held in respect of the sentences that:

- (a) the appellant was represented and must have been aware of the provisions of the Act as his counsel alluded to the provisions during sentencing and that nothing showed that the appellant was prejudiced by the State's failure to draw attention in the charge sheet to the minimum sentences he faced.
- (b) The appellant's contention that there were substantial and compelling circumstances existed is not supported by any evidence due to the appellant's reluctance to adduce evidence and that in the result the trial court was obliged to impose the minimum sentences.

The SCA found that no explanation was given why the trial court imposed a sentence of 35 years' imprisonment in respect of appellant's attempted murder of his daughter and that it was out of proportion to the nature of the offence. The court found that a sentence of 15 years' imprisonment would be appropriate.

The SCA accordingly dismissed the appeal against the conviction and sentence of the appellant, upheld the appeal against sentence in respect of the attempted murder of the appellant's daughter and ordered that the sentences run concurrently.

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