

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO:

SS32/2003

DATE:

18-10-2004

In the matter of:

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THE STATE

versus

1. MOGAMAT PHADIEL ORRIE

SENTENCE

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BOZALEK, J:

This Court must now impose sentence on you Mr Orrie. In doing so I must consider your personal circumstances, the crimes themselves and the interests of society.

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As far as your personal circumstances are concerned, I take into account that you are a 29 year old married man with two young children. I also take into account that you have a clean record as far as previous convictions are concerned and that prior to your incarceration you had a record of stable employment and you supported your family. I also take into account that you have been incarcerated for the very lengthy period of three and a half years awaiting trial on these charges.

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As far as the legal framework is concerned, the State does not rely on the minimum sentencing dispensation as embodied in the Criminal Law Amendment Act 75 of 1997. It is a moot point as to whether those

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provisions apply inasmuch as the State did not apprise you in the charge sheet that it relied on them. I propose to approach the matter of sentence on the basis that those provisions do not apply since, in my view, in the circumstances of this matter, whether or not I am bound by those provisions, is largely academic. Accordingly, I have approached the question on what an appropriate sentence is for you on the basis that I have an unfettered discretion.

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Turning to the crimes themselves, you have been convicted of housebreaking with the intent to murder and the murder of Yusuf Enous and, on count 2, of murdering Fahiema Enous. In addition, you have been convicted of two contraventions of Act 75 of 1965, the Arms and Ammunition Act. All these convictions comprise in essence one course of conduct, namely breaking into the house of Fahiema and Yusuf Enous and killing them by repeatedly shooting them.

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You have been convicted on two counts of the most serious crime with which a person can be charged in our legal system, namely the deliberate and unlawful taking of someone else's life. There is only limited evidence before this Court as to your motivation in killing Yusuf and Fahiema Enous since you continue to deny - as is your right - that you committed the crimes. It follows from that of course that there can be no question of any expression of remorse on your part. Because of your denial of these murders and your failure to take the Court into your confidence, it is not clear to me whether your motive was simply to

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assist your brother, his fellow accused, or perhaps whether you had some wider or underlying political or social agenda behind your actions. No point is served by my speculating any further in this regard.

From the evidence before this Court, however, it would appear that you 5
did so in order to prevent, at the very least, Yusuf Enous from giving
evidence as a State witness in an urban terror case in which your brother
and other accused were involved. What is clear is that the crimes which
you committed were carefully planned and cold-bloodedly carried out.
The crimes themselves must fill every right-thinking member of society 10
with outrage. You broke into a house in the small hours of the morning
and shot dead a young and defenceless couple in the presence,
moreover, of their infant child. The murders themselves can best be
described as executions. Both of the victims were shot numerous times
with several fatal bullet wounds to the head. Clearly your intent was 15
that under no circumstances could either victim be left to ever speak
again.

In regard to Fahima Enous it is unclear whether she was to be a State
witness, but whatever the case, for your purposes, she could not be left 20
to live since this would lead to your identification as her husband's killer.
The Enouses died a terrible death, alone and defenceless and trapped in
a house far away from family, friends and protection. They fled from you
into their bedroom and it appears Mrs Enous died trying to protect her
young child. The terror which the Enouses must have suffered in the last 25

few seconds and minutes of their lives is awful to consider.

Through your actions you left two young children orphaned, never to know their parents again.

But not only did you take the lives of the Enouses, at the same time you 5
also struck a grievous blow against the administration of justice. There
can be no successful prosecution of criminal cases without the evidence
of State witnesses. Where such witnesses are threatened or harmed in
any way not only do such persons suffer but damage is done to the
criminal justice system as a whole. Where witnesses are murdered, 10
notwithstanding the fact that they are under a witness protection
program, the intended or unintended effect thereof is to strike fear into
the hearts of other persons in a similar position thereby discouraging or
inhibiting them from testifying, with the result that criminal conduct can
go unprosecuted or unpunished. 15

There is no doubt then that the fact that your underlying motive must
have been to prevent one or both Enouses from testifying is a highly
aggravating feature of these crimes. The system of criminal justice,
which includes the role played therein by State witnesses, exists for the 20
protection of society. It follows that where, in killing State witnesses,
you attack that system with impunity, society demands that the response
to such criminal conduct be a strong one, one which emphasises that
such actions will not be tolerated and will be severely
punished. 25

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It is also sobering to consider how close you came to escaping detection and prosecution for the crimes which you committed. Were it not for three tiny blood specks and the alertness of a policeman in Gouda on the night of the murders, these crimes might well have gone unsolved.

Whilst there are clearly many members of the South African Police Service who played a role in the investigation of this matter, the Court would particularly like to commend Mr Andries le Fleur, the police reservist who noticed your brother's vehicle in Gouda on the night of 25 December 2000. It was this observation that put the police on your trail.

I note that this witness himself had to go into a witness protection program. His diligence in performing his duties and the sacrifices which he had to undergo as a result of being drawn into this matter are to be commended.

Mr Orrie, I am afraid that your personal circumstances, mitigating as they are, are far outweighed by the existence of the aggravating factors which I have mentioned. When all factors, both positive and negative, are taken into account, there can, in my view, be only one appropriate sentence for your convictions on counts 1 and 2, namely for breaking into the Enouses house and killing them. Nor can any distinction be drawn between count 1 and count 2 for the purposes of sentence.

For the sake of completeness I would merely add that had I been applying the provisions of the minimum sentence legislation I would not have been able to find that there were any substantial and compelling

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circumstances such as to justify a lesser sentence than the minimum sentence prescribed.

As far as the convictions on counts 5 and 6 are concerned, I propose to take these together for the purposes of sentence. Will the accused please rise.

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Counts 5 and 6 are taken together for the purposes of sentence and you are sentenced to two years' imprisonment.

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In terms of the provisions of section 12 of Act 75 of 1969 you are declared unfit to possess a firearm.

In respect of count 1, your conviction of housebreaking with the intent to murder and the murder of Yusuf Enous, you are sentenced to life imprisonment in terms of section 276(1)(b) of the Criminal Procedure Act.

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In respect of count 2, the murder of Fahima Enous, you are likewise sentenced to life imprisonment.

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BOZALEK, J

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