

IN THE HIGH COURT OF SOUTH AFRICA
(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NUMBER:

SS02/2008

DATE:

11 FEBRUARY 2009

5 In the matter of:

THE STATE

versus

1. NAJWA PETERSEN

2. ABDOER RASJET EMJEDI

10 3. WAHEED HASSEN

4. JEFFERSON TION SNYDERS

SENTENCE

15 DESAI, J:

Sentence is always an unpleasant task and arriving at appropriate sentences in this matter has been especially difficult for several different reasons. Whatever has been said by counsel in mitigation of sentence, or what will be said by me during the course of this judgment, does not in any way lessen the sheer savagery of the accuseds' conduct. The deceased was murdered in his own home. His murder was patently premeditated and, worse still, accused number 1, in particular, doggedly persisted in securing that result.

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Mr Engelbrecht, accused number 1's counsel, is probably correct in the submission he makes that the stature of the deceased should not serve as an aggravating factor. But the untimely and abrupt end to the life of the deceased, who was a highly talented individual reaching new heights in his career, who prayed for and with his wife, accused number 1, because of her illness, who was a community figure of some significance, who was a devoted son and, quite obviously, a much loved father, highlights the inherent cruelty of those involved in his death.

I am fully aware of the continuing anger in this community at the manner in which the deceased died. This packed courtroom bears testimony to that. I cannot, however, sentence the accused solely on the basis of such anger. There is no place for raw vengeance in a civilised legal order. Sentencing involves balancing several diverse interests which include the seriousness of the crime, the specific situation of each of the accused and other societal interests.

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The first hurdle confronting the accused is the minimum sentence legislation. Unless substantial and compelling circumstances are shown to be present, I am obliged to sentence accused numbers 1, 2 and 3 to life imprisonment and accused number 4 to 15 years' imprisonment. Counsel for

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accused number 1, 3 and 4 led relevant evidence and advanced carefully considered arguments why the minimum sentences regime should not be applied in this instance. Counsel for accused number 2, Ms L Abrahams, led no
5 evidence. The arguments advanced by her was also singularly unhelpful.

It is apparent from the evidence placed before me that when the offence was committed, accused number 1 was a 46 year
10 old first offender. She has a nine year old minor child, a girl. She has been in custody for a period in excess of 20 months. There was the suggestion from Dr Irma Labuschagne, accused number 1's expert witness, a criminologist, to the effect, that accused number 1 is emotionally blunted. Although there was
15 insufficient expert evidence on record as to her mental health - the earlier evidence at the time of the bail application is somewhat contradictory - I shall accept that the long term use of mind-altering medication must have affected her adversely. In my view these factors viewed cumulatively, permit the Court
20 to deviate from the prescribed minimum sentence.

Somewhat reluctantly I come to a similar conclusion with regard to accused number 2. It seems that he is 42 years old. He has been in custody for 20 months and he is also a first
25 offender. He is a plumber by vocation and according to his

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counsel he was involved in an accident which left him wheelchair bound for some months. He has two sons who are students at a tertiary institution.

5 With regard to accused number 3, his substantial and compelling factors are more easily discernable. He readily conceded his involvement in this matter and profusely apologised to the family of the deceased. This displays some moral integrity. Moreover he is 36 years old and has been in
10 custody for 20 months. Although he has previous convictions, the most recent one was committed more than ten years ago. He left school at an early age in order to assist his family, more especially his younger siblings, financially. This aspect was eloquently corroborated by his aunt, Ms Francis Samson.

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In respect of accused number 4 there are several compelling factors which render the minimum sentence inappropriate. Accused number 4 was not involved in the planning of this offence. Upon his arrest he immediately and readily conceded
20 his role. He has also apologised to the family of the deceased. He is 33 years old and only has a previous conviction for driving under the influence of liquor, and he is a family man with small children.

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The personal circumstances of the accused are on record. I do not propose restating them herein.

One aspect of accused number 1's recent life engenders some sympathy for her. It appears from Dr Labuschagne's report that she was very attached to her father, who first had a heart attack and then tragically died in a motorcar collision while the accused was in custody for these offences. During the same period her mother suffered a stroke. I accept, without reservation, that the accused must have been severely traumatised by these events.

With regard to accused number 1's minor child, Zaynab, a report from the Family Advocate was requested. I have noted the contents of the report, as well as the comments by Dr Labuschagne on this aspect. I am fully aware of the need to preserve the best interests of a child at all times. However, in the peculiar circumstances of this matter, the long term separation of mother and her young child is inevitable.

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The offences committed by the accused are undoubtedly serious and warrant severe penalties. The offences were premeditated and committed by a group of persons acting in furtherance of a common purpose. They were planned for several days and the accused had sufficient opportunity to

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desist from their course of conduct. They failed to do so.

Accused number 1 was the principal player in this saga. She initiated the events which led to the death of her husband. 5 She contacted Fahiem Hendricks and pestered him until he relented and sought the assistance of accused number 2 to find persons to commit this foul deed. She played an active role on the scene to ensure that the task was completed, that is, she made sure that her husband was in fact killed. She has 10 not shown any remorse whatsoever. She has not furnished any explanation for her conduct.

Dr Labuschagne suggested possible motives such as emotional instability or a build up of rage and anger. That may be so, 15 but in the absence of any evidence from the accused in this regard, we simply do not know why she elected to do what she did. Accused number 1 endeavoured to paint herself as an emotionally unstable and timid woman. The evidence before this Court does not support this description of her. She was a 20 high income earner in control of large sums of money and, in particular, the family's finances. Furthermore she was hardly timid in the commission of these offences.

Ms Galloway, counsel for the State, suggested in argument 25 that there was no clear diagnosis of her condition and the

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accused "used this malingering illness to manipulate the deceased emotionally". I hesitate to describe accused number 1 as a malingerer. However, it is patently clear that the offences committed by her were the product of a rational but
5 wicked mind. I agree with Ms Galloway that accused number 1 cold bloodedly used her son and his wife on the night of the incident as witnesses to her being robbed in order to conceal her own role in the death of the deceased. There was no other reason for her to take the other accused into her son's room
10 that night.

The level of accused number 1's inhumanity is graphically illustrated by her attempt to hug the deceased at the time
15 when he must have known that she was orchestrating the events which led to his death. This was a contract killing, in itself a most reprehensible offence, with the contractor, in this instance, remaining on the scene to ensure that the hired killer carried out her instructions.

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Although accused number 2 was not on the scene, he played a vital role in the execution of this crime. He, together with Fahiem Hendricks, was the link between accused number 1's instructions and the actions of accused numbers 3 and 4.
25 Accused number 2 was paid for his role and unlike accused

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number 4, he accepted the payment. Save for the factors already set out earlier on in this judgment, little else can be said on his behalf in mitigation of sentence. This accused has also not expressed any remorse.

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Accused number 3 played a significant role in committing these offences. He, however, accepts his guilt and has unconditionally apologised to the victim's family. An aggravating feature in his case is that he was the man with the
10 firearm. He was also convicted on the charge of being in possession of an unlawful firearm. This is significant in that he was previously convicted on a similar charge, although that offence was committed more than ten years ago. Accused number 3 quite clearly shows the potential for rehabilitation
15 but that fact in itself does not mean that an appropriately severe sentence should not be imposed. He, together with accused number 1, was on the scene when the fatal shot was fired. The deceased was shot with accused number 3's firearm.

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Accused number 4, although convicted only on the robbery charge, also played a significant role in the events which led to the death of the deceased. He helped tie up the deceased, more seriously he kicked the deceased in a brutal manner.
25 Although I have no option but to jail him, I do so with some

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reluctance. His immediate display of remorse at the time of his arrest shows, at the very least, some decency. His father, who testified in mitigation of sentence on behalf of the accused, is an impressive individual. Accused number 4, it
5 seems, comes from a decent family and has no significant previous convictions. On the other hand he invaded the home of the deceased in circumstances which led to his death. That fact cannot be under-emphasised.

10 With the death of Mr Taliep Petersen, Cape Town and the music world lost one of its favoured sons. No sentence which I am at liberty to impose can undo that fact. Accused number 1's expert witness fairly and properly conceded that the deceased was killed in an extremely callous manner. That is
15 indeed so. He was not simply shot, he was first tied up and humiliated. He was murdered at the instance of his wife, the mother of his child, with whom and for whom he prayed each night. He recognised her for what she was when he refused to hug her. Instead he recited his "kalimah", affirming his belief
20 at the time of his impending death.

This Court was privileged to hear Mr Petersen senior speak of his son, their friendship and love for each other. We also heard Ms Mynie Grové speak of her personal pain in losing a
25 friend and the significance of the deceased in the music world.

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The gallery of this court has been full on each day of the trial. I fully understand the desire to see justice being done in this instance. However, I cannot over-emphasise the interests of the community at the expense of the personal circumstances of each accused and other relevant considerations - to do so would result in a miscarriage of justice.

In deciding upon appropriate sentences, I have endeavoured to give due weight to all of that.

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In the result the accused are sentenced as follows.

On count 1, the murder charge, accused number 1 is sentenced to 28 (TWENTY EIGHT) YEARS' IMPRISONMENT.

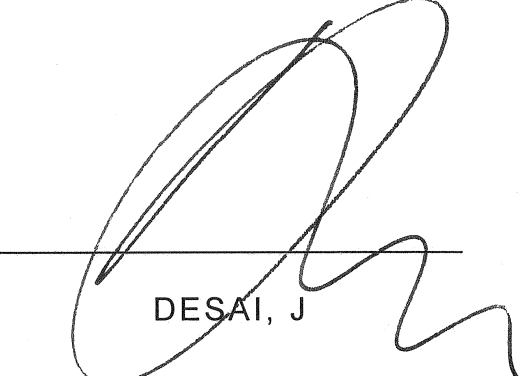
15 On the robbery charge she is sentenced to 10 (TEN) YEARS' IMPRISONMENT. The latter sentence is to run concurrently with the sentence imposed on count 1. The effective sentence is thus 28 (TWENTY EIGHT) YEARS' IMPRISONMENT.

20 Accused number 2, on count 1, sentenced to 24 (TWENTY FOUR) YEARS' IMPRISONMENT. On the robbery charge, he is sentenced to 10 (TEN) YEARS' IMPRISONMENT. The latter sentence is to run concurrently with the sentence imposed on count 1. His effective sentence is 24 (TWENTY FOUR)
25 YEARS' IMPRISONMENT.

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Accused number 3, on count 1, the murder charge, he is sentenced to 24 (TWENTY FOUR) YEARS' IMPRISONMENT. Counts 2 and 3 are taken together for the purposes of sentencing. On these counts he is sentenced to 3 (THREE) YEARS' IMPRISONMENT. Two years of the said sentence are to run concurrently with the sentence on count 1. On the robbery charge he is sentenced to 10 (TEN) YEARS' IMPRISONMENT. This sentence is to run concurrently with the sentence in respect of count 1. His effective sentence is 25 (TWENTY FIVE) YEARS' IMPRISONMENT.

Accused number 4 was only convicted on the robbery charge. On that charge he is sentenced to 10 (TEN) YEARS' IMPRISONMENT. Three years of the said sentence are suspended for five years on condition that he is not convicted of robbery or robbery with aggravating circumstances committed during the period of suspension.


DESAI, J

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