

IN THE HIGH COURT OF SOUTH AFRICA

(LOCAL CIRCUIT DIVISION FOR THE DELMAS CIRCUIT DISTRICT)

Case No. A5071/2006

Registrar Ref. No. CC 375/07

In the matter of:

THE STATE

versus

SITHEMBISO NKALANGA

Accused 2

JULY MONDLANE

Accused 3

SENTENCE

[1] I have convicted each of the accused, Sithembiso Nkalanga (accused 2) and July Mondlane (accused 3), of the murder of the late Mr Mandla Ben Mkhize (*count 1*), robbery with aggravating circumstances (*count 2*), the unlawful

possession of a firearm (*count 3*), and the unlawful possession of ammunition (*count 4*).

[2] The State, represented by Adv Cronjè, led the evidence of Mrs Charity Mkhize in aggravation of sentence. Both accused, represented by Adv Manzini, led no *viva voce* evidence in mitigation of sentence and they elected not to testify, but Adv Manzini placed facts before me in mitigation of sentence from the bar. Counsel for the State and for the accused addressed me on the matter of sentence.

[3] The death of the deceased was caused by the accused in committing robbery with aggravating circumstances and they acted in the execution of a common purpose. The murder for which they were convicted is accordingly an offence referred to in Part I of Schedule 2 to the Criminal Law Amendment Act 105 of 1997 (“the Act”) for which it is necessary, in terms of s. 51(1), to impose a sentence of imprisonment for life, and the robbery with aggravating circumstances for which they were convicted is an offence referred to in Part II of Schedule 2 to the Act for which it is necessary, in terms of s. 51(2), to impose a sentence of imprisonment for a period of not less than fifteen years, unless ‘*substantial and compelling circumstances*’ within the meaning of s. 51(3)(a) justify a lesser sentence.

[4] In considering whether or not substantial and compelling circumstances exist which would justify the imposition of lesser sentences than those prescribed, the traditional objectives of punishment, namely prevention, retribution, deterrence and rehabilitation, still apply, and I am enjoined to weigh the personal circumstances of each accused against the seriousness of the crimes committed by them and the interests of society.

[5] The murder and robbery crimes committed by the accused in this matter are very serious. They were armed and the Mkhize family defenceless. The Mkhize family was going about their private family life in the sanctity of their home during the early evening of a week night when accused 2, accused 3, and another now deceased person made their way into the Mkhize home and they, for the hour which followed, traumatized the Mkhize family, pointed fire-arms at them, threatened to kill them, shot and killed Mr Mkhize ("the deceased"), tied up Mrs Mkhize and their son, kicked their daughter, and stole items from their home.

[6] They shot the deceased in full view of his wife and his daughter. The motive for the murder is not clear, but from the surrounding circumstances it can be inferred that the deceased was shot either to prevent him from resisting the robbery or simply because of their callousness, unscrupulousness and inherent wickedness.

[7] The family was, and still is deeply affected thereby. Mrs Mkhize, their daughter Makhosazana and their son Fanyane experience great difficulty in coming to terms with the loss of the deceased. His death brought financial hardship to the family. He was the sole breadwinner of the family and his death resulted in a substantial reduction of their income with the consequence that Fanyane, who was to go to university this year, was unable to do so. Makhosazana experienced such a degree of difficulty in continuing to live in the house where the traumatic incident had occurred, that she moved to Durban where she very recently obtained employment.

[8] Our country at present suffers an unacceptable and distressing incidence of violence and the community demands that courts deal seriously and severely with such offenders and for appropriately severe punishments to be imposed for such crimes as those which have been committed by the accused.

[9] Accused 2 was born on 5 December 1972 and he is presently 35 years of age. Accused 3 was born on 17 August 1974 and is presently 33 years of age. They have never been convicted of any crime prior hereto.

[10] Accused 2 left school during his grade 11 year, which he did not complete. He immigrated to South Africa from Swaziland during 1992 and he is now a South African citizen. Ms Evelyn Thlatlahedi and he are *de facto* married. They

have three children aged nine, five and one years. He earns a living for himself and his family by selling artificial flowers and artistic works which he creates.

[11] Accused 3 has never enjoyed any formal education and he is illiterate. He immigrated to South Africa from Mozambique during 1988 and is now a South African citizen. He is married and has three children aged twelve, eleven and one years. He was previously employed by Kilyn Enterprises as a welder, but he lost that employment as a result of his arrest in this matter. He secured employment as a labourer doing welding work at an undertaking called WR21 upon his release on bail, and he was earning R1 500.00 per fortnight.

[12] It can be accepted that both accused came from deprived socio-economic childhoods. They have both qualified themselves in trades by which they support their families, which also point to some prospect of rehabilitation despite the complete absence of remorse on the part of each accused. They both appear to live within stable family units. Long term imprisonment will undoubtedly have negative financial consequences for them and their families, and their family units and relationships within their family units will suffer severely.

[13] In weighing the personal circumstances of each accused, the fact that they are first offenders, and their prospects of rehabilitation against the enormity of the crimes committed by them, and the public interest in appropriately severe punishments being imposed for such crimes, I am unable to find that substantial

and compelling circumstances exist for the imposition of lesser sentences than the minimum sentences prescribed by the Act. The circumstances are not such that injustices will result if the minimum sentences are imposed. This finding applies to both counts 1 and 2.

[14] In the result:

Accused 2, I sentence you to:

- A.
 - 1. Imprisonment for life pursuant to your conviction on count 1 (murder);
 - 2. Imprisonment for fifteen years pursuant to your conviction on count 2 (robbery with aggravating circumstances);
 - 3. Imprisonment for three years pursuant to your conviction on count 3 (unlawful possession of a firearm); and
 - 4. Imprisonment for 1 year pursuant to your conviction on count 4 (unlawful possession of ammunition).
- B. The sentences of fifteen years' imprisonment, three years' imprisonment, and 1 year imprisonment imposed upon you in respect of counts 2, 3, and 4 shall run concurrently with the sentence of imprisonment for life imposed upon you pursuant to your conviction on count 1.

Accused 3 I sentence you to:

- A.
1. Imprisonment for life pursuant to your conviction on count 1 (murder);
 2. Imprisonment for fifteen years pursuant to your conviction on count 2 (robbery with aggravating circumstances);
 3. Imprisonment for three years pursuant to your conviction on count 3 (unlawful possession of a firearm); and
 4. Imprisonment for 1 year pursuant to your conviction on count 4 (unlawful possession of ammunition).
- B. The sentences of fifteen years' imprisonment, three years' imprisonment, and 1 year imprisonment imposed upon you in respect of counts 2, 3, and 4 shall run concurrently with the sentence of imprisonment for life imposed upon you pursuant to your conviction on count 1.

P.A. MEYER
JUDGE OF THE HIGH COURT
18 June 2008