THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

REPORTABLE
CASE NO: 431/2004

In the matter between

THUSUKULA SENATSI **FIRST APPELLANT**

SOKOLISILE QOSHA-QOSHA **SECOND APPELLANT**

and

THE STATE **RESPONDENT**

CORAM: **FARLAM, MTHIYANE and NUGENT JJA**

HEARD: **18 MAY 2006**
DELIVERED: **26 MAY 2006**

Summary: Sentence – whether the sentences imposed by the trial court were appropriate – Delay in bringing appeals before Appeal Court to be avoided.
Neutral Citation: This judgment may be referred to as Thusukula Senatsi & Another v The State [2006] SCA 61 (RSA)

JUDGMENT

MTHIYANE JA:

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[1] The appellants were arraigned in the Cape High Court before Griesel AJ and two assessors on counts of murder, attempted murder, robbery with aggravating circumstances and three counts of assault with intent to do grievous bodily harm. Both were convicted and sentenced to long terms of imprisonment. The first appellant was convicted on all of the above counts and sentenced to a total of 30 years' imprisonment. He received 25 years for murder, 12 years for attempted murder, 2 years for robbery and 1 year's imprisonment on each of the three counts of assault with intent to do grievous bodily harm. The 12-year sentence was ordered to run concurrently with the sentence imposed in respect of murder. The second appellant was sentenced to 20 years' imprisonment for murder and 12 years for attempted murder. Similarly the latter sentence was ordered to run concurrently with the 20 years sentence imposed on the murder count.

[2] The facts giving rise to the above charges are the following. On the morning of Friday 30 December 1994 Mr Alexander Peter Hall ('the deceased'), an attorney of the Cape High Court, was on his farm when he was approached by the two appellants and one other person. They pretended to be looking for work. The first appellant was known to the deceased and other members of his household as he had worked on the farm previously. The deceased did not need to employ them as he had an adequate staff complement. But he nevertheless agreed to hire them as casual workers for the day.

[3] On that day the deceased and his household were preparing for a braaivleis to be held the following evening to celebrate New Year's Eve. The appellants and their companion joined in the preparations. While the deceased was going about his chores the first appellant sneaked from behind him, and quite unexpectedly grabbed hold of him and stabbed him in the back of his neck. As he cried out in pain, attracting his wife's attention, the appellants set upon her too and stabbed her several times in the upper part of her body. When one of the workers, Mr Patrick Rabele, charged at them with a shovel in his hand, the first appellant pointed a gun at him stopping him in his tracks. Rabele fled to the neighbouring property where he sought assistance. In the meantime the first appellant went into the house, where he confronted the domestic workers, Ms Jeanette Links and Ms Elsie Rabele, assaulted them and robbed them of R70-00 in cash and a bunch of keys.

[4] At some stage the deceased, who was then severely injured, managed to get to the front door where he confronted the first appellant and struck him with a shovel. The first appellant snatched the shovel from the deceased and attacked him with it until he succumbed to the injuries he had sustained. As he lay bleeding, his three year old son, Ashley, instinctively ran towards him. The first appellant, seemingly not content with the violence he had already unleashed on the deceased and his wife and the others, kicked the toddler in the mouth, causing two of his teeth to be expelled from his mouth. The alarm having been raised by Rabele, a man from the neighbouring property, Adam, emerged carrying an axe and amazingly drove the two appellants and their companion off the premises. The appellants' companion was never found.

[5] The appellants appealed against their sentences, the first appellant, with leave granted by Judge President of the Cape High Court, on 18 March 1996 and the second appellant by this Court. On appeal the sentences were attacked on five grounds. The first is that the trial judge accorded little weight to the mitigating factors, especially to the appellants' relative youth. (Both were 22 years at the time of the offence.) Secondly, it was argued that due regard was not paid to the element of mercy; thirdly, that the trial judge overemphasized the interests of the community; fourthly, that the rehabilitative effect of sentence was not considered, and fifthly and finally, that too much weight was accorded to the deterrent element of punishment.

[6] I do not think there is any merit in any of the points raised by Mr Jurgens for the appellants. The trial judge gave a detailed and carefully considered judgment. He accorded weight to all the important elements of punishment and there is no basis for contending that any was over emphasized at the expense of the others. The judge gave a fair, balanced judgment and afforded the appellants mercy which they did not see fit to extend to their victims. This is manifest in his judgment on sentence where he ordered the twelve-year sentence for attempted murder to run concurrently with the sentences imposed on the count of murder. The judge properly addressed himself to the objects of punishment and sufficiently considered the appellants' capacity to reform. He did so by reference to the dictum in *S v Shabalala*[1], a judgment of Goldstone JA, where the learned judge of appeal said:

'When giving consideration to the objects of punishment (deterrent, preventive and retributive) it may be said that the three appellants are capable of reform. However, in this type of case the deterrent and retributive objects come to the fore. All members of

[1] 1991 (2) SACR 478 (A) at 483 c-e.

our society are entitled to security in their own homes. It is unfortunately a fact of modern living that precautions, and sometimes elaborate and costly precautions, are taken to safeguard life and property. In the isolated rural areas of this vast country those precautions are more difficult to effect than in urban areas. Our farming community too frequently falls victim to the violent criminal. The justifiable outrage understandably caused thereby must be a relevant factor in the imposition of a proper sentence in this kind of case. Such a sentence should act both as a deterrent to others who may be tempted to murder or rob defenceless and innocent people. It should also, in a suitable case, reflect the retribution which society demands in respect of crimes which reasonable persons regard as shocking.'

[7] Counsel for the state submitted, correctly in my view, that the trial judge was entitled to give due weight to the deterrent and retributive effect of punishment. He was not obliged to give equal weight to each of the elements of punishment. In this regard the following remarks of Nugent JA in *S v Swart*[2] are applicable:

'What appears from those cases is that in our law retribution and deterrence are proper purposes of punishment and they must be accorded due weight in any sentence that is imposed. Each of the elements of punishment is not required to be accorded equal weight, but instead proper weight must be accorded to each according to the circumstance. Serious crimes will usually require that retribution and deterrence should come to the fore and that the rehabilitation of the offender will consequently play a relatively smaller role.'

In the present matter the relative youth of the appellants must give way to the deterrent and retributive effects of punishment. The aggravating features of the case justify such an approach. This is one of those cases where any law abiding and self respecting citizen would be repelled by the conduct of the appellants. They took advantage of a man whose only sin was to offer them work. The punishment meted out by the trial judge

[2] 2004 (2) SACR 370 (SCA) at 378 c-e.

fits the particular circumstances of this case and there is no basis for us to interfere.

[8] I would accordingly dismiss the appeal.

[9] There is a further aspect that merits consideration. As already indicated leave to appeal was granted by the Judge President of the Cape High Court to the first appellant on 18 March 1996, i.e. more than 10 years prior to the hearing of the appeal in this Court. Upon the enrolment of the appeal for hearing in this court the President of this court on 13 March 2006 directed the registrar to enquire from the Director of Public Prosecutions as to why there had been a delay in presenting the appeal. On 29 March 2006 the DPP responded that his office had been unaware that leave had been granted. The first inkling they had of an appeal was when they received a letter from the second appellant in December 1999 seeking leave to appeal. It was then explained to the second appellant what steps he needed to take to apply for legal aid. On 8 January 2002 he wrote to the Registrar of the Cape High Court enquiring about his application. He followed this up with a letter dated 18 June 2002 in which he indicated that his application for legal aid had been refused. In July 2002 the Head of the Prison wrote to the registrar of the Cape High Court enquiring about the first appellant's appeal. Between August 2002 and September 2004 attempts were made to obtain a copy of the record of the proceedings from Sneller Transcriptions. The record runs into 18 volumes. Although the appellants filed their heads of argument in December 2004 the respondent only received a copy in October 2005.

[10] It was still not clear whether leave to appeal had been granted to the second appellant and if so, by whom. In order to expedite the matter

this court granted condonation of the late noting of the appeal and in so far as it might be necessary, leave to the second appellant to appeal against the sentences imposed on him.

[11] In the appeal before us Mr van der Vijver, for the State assured us that steps have now been taken in the DPP's office to ensure that appeals, especially those lodged by unrepresented accused, are not lost in the system. One can imagine the prejudice that would have occurred if the appeal by the two appellants had been upheld or sentences of less than the period they have already served had been imposed. The office of the DPP is urged to ensure that such delays do not occur in the future. Such delays deny justice to the persons concerned by preventing a speedy disposal of their cases. Sadly this is not the first time this has occurred. In *S v Joshua*[3] this court had to deal with a case in which there was a delay of some six years before the appeal was heard. Fortunately the accused was out on bail in that case. Not so in the present matter. Such delays are to be avoided at all costs.

[12] In the result the appeals of both appellants are dismissed.

KK MTHIYANE
JUDGE OF APPEAL

CONCUR:

FARLAM JA
NUGENT JA

[3] 2003 (1) SACR 1 (SCA) at para 35.