



SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY – JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

FROM The Registrar, Supreme Court of Appeal
DATE 28 March 2018
STATUS Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal.

Thakeli v S (231/2017) [2018] ZASCA 47 (28 March 2018)

The SCA today set aside a decision of the Free State Division of the High Court and upheld the appeal against sentence imposed on the appellants. Both were indicted in the regional court, Welkom on a charge of murder, subject to the provisions of s 51(2) of the Criminal Law Amendment Act 105 of 1997(the Act) and convicted on the murder count and sentenced to 28 years' imprisonment in terms of s 51(1) of the Act, and declared unfit to possess a firearm.

At the close of the defences' case an application to re-open the State's case was allowed. Thereafter two witnesses called by the trial court testified. At the end of their testimony the trial court amended the charge sheet in terms of s 86(4) of the Criminal Procedure Act 51 of 1977, by deleting subsection (2) of s 51 of the Act, and stating that the amendment would not prejudice the appellants. Thereafter the appellants were convicted of murder in terms of s51(1) read with Part 1 of Schedule 2 on the basis of the amended charge sheet and sentenced to 28 years' imprisonment.

The SCA held that the effect of the amendment of the charge sheet was to expose the appellants to life imprisonment as opposed to the prescribed sentence of 15 years' imprisonment. This was done after all the evidence had been led and without affording the appellants an opportunity to address the court on the question of prejudice, and whether the amendment should be effected. The SCA held that an accused person must be apprised from the outset what charge he or she had to meet, so that he or she not only appreciated properly and in good time what the charges were that he or she was facing but also the consequences.

The SCA held that the failure to afford the appellants a full and proper opportunity to address the question of prejudice, and whether the amendment should be effected, constituted a fundamental irregularity that infringed the fair trial rights of the appellants, and destroyed the validity of the amendment. Had the appellants known that they were being charged with murder that was premeditated, or that they had a common purpose in killing the deceased, they may well have conducted their defence differently. This matter was thus to be distinguished from those in which it was held that an irregularity did not vitiate the proceedings. The SCA held that the appellants should have been sentenced in terms of s 51(2) of the Act. The SCA held further, that cumulatively the aggravating factors far outweighed the mitigating factors. There were no substantial and compelling circumstances justifying a deviation from the prescribed sentence of 15 years' imprisonment. Both the appellants were sentenced to 15 years imprisonment in terms of s 51(2) of the Act.