

NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)

In the matter between:

Case No: CC21/2014

THE STATE

And

NYANISO PATRICK ANELE MATINJWA

SIPHUMELELE PHETHELO

Accused

Coram: **Chetty J**

Heard: **3 May 2016**

Delivered: **4 May 2016**

Chetty J:

[1] When the accused were arrested they both reeked of alcohol. The presence of the empty beer bottles in the vehicle attests to the fact that after having murdered and robbed the deceased of his vehicle, they spent the evening drinking. Accused no. 2's

graphic account of their gallivanting that evening and the following morning the sale of the deceased's motor vehicle radio to enable them to purchase more liquor demonstrates a particular callousness. Accused no. 2's statement is of course not admissible against accused no. 1 but the absence of the radio and the presence of the empty beer bottles justifies the inference that the radio was sold to enable them to purchase more liquor. When they encountered the police the following day, they appeared unperturbed. Accused no. 2's penchant for violence is amply demonstrated by his robbing the boys of their possessions. This type of behaviour cannot be countenanced. The killing of the deceased was senseless. The accused must have been aware of the presence not only of other fishermen in the area but the inhabitants of the surrounding houses. Undeterred they shot the deceased in cold blood and nonchalantly stood around his vehicle for four (4) minutes before driving off. This conduct demonstrates a complete lack of respect and contemptuous defiance.

[2] It is common cause that the murder conviction attracts a mandatory sentence of life imprisonment absent a finding of substantial and compelling circumstances. I have been urged to find that the personal circumstances of the accused constitute the requisite factors which per se render the imposition of such a sentence unjust. The personal circumstances outlined by the accuseds' legal representatives are not unique. Millions of our citizens have similar backgrounds and yet refrain from similar conduct.

[3] The accused have throughout persisted in their denial that they killed the deceased. Why and for what reason the deceased was shot remains a mystery. This was clearly not a random shooting - It is apparent from the medical report that the deceased was summarily executed. The law enjoins me to impose a sentence of life imprisonment unless I find that there are substantial and compelling circumstances which militate against the imposition of such a sentence. In my judgment, this is precisely the type of case where the ordained sentence is the only appropriate one. Behaviour such as this cannot be countenanced in a civilized society. The accused are clearly a menace to society and deserve the ultimate sentence.

[4] **On Count 1: Robbery with aggravating circumstances**

Accused No.'s 1 and 2 are sentenced to 15 years imprisonment.

On Count 2: Murder

Each accused is sentence to imprisonment for life.

On Count 3: Robbery with aggravating circumstances

Accused no. 2 is sentenced to 15 years imprisonment

On Count 4: Unlawful possession of a firearm

The accused are sentenced to 3 years imprisonment.

On Count 5: Unlawful possession of ammunition

The accused are sentenced to 1 year imprisonment.

It is ordered that the sentences imposed on each of the counts run concurrently.

D CHETTY

JUDGE OF THE HIGH COURT