

NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE LOCAL DIVISION, PORT ELIZABETH)

In the matter between:

Case No: CC 2/2016

THE STATE

And

LUDONIAN ALLIES

Accused

Coram: **Chetty J**

Heard: **1 September 2016**

Delivered: **1 September 2016**

SENTENCE

Chetty:

[1] I found that the evidence adduced proved that the accused and *Jansen* shared a common purpose to kill the deceased. After the accused had been rebuffed by *Manuel*, he took umbrage, issued threats, swore at him and left the scene. Shots then rang out. Once the deceased exited

the steel gate, the accused and Jansen, who were both armed, had an altercation with the deceased whereafter both fired shots at him. Their return to the scene with firearms drawn compels the conclusion that they had a score to settle. When the deceased emerged from behind the gate, unarmed, they both fired shots at him and departed the scene. The assistance which the accused rendered to Jansen after the latter had been wounded establishes, as I remarked earlier, that the common purpose extended to their getaway.

[2] The convictions on counts 2 and 5 attract mandatory sentences of life imprisonment and fifteen years respectively pursuant to the provisions of s 51 (1) read with Part I of Schedule 2 of the ***Criminal Law Amendment Act***¹, unless the court is satisfied that there are substantial and compelling circumstances which militate against its imposition.

[3] The personal circumstances of the accused are that he is presently 25 years of age, unmarried but the father of three minor children, the two youngest residing with him and his fiancé and the eldest with its mother. I am informed that at some stage he was employed as an operator. He is not a first offender. On 2 February 2009, he was convicted of robbery and sentence to a fine of R1200, 00 or three years imprisonment which was however suspended for five years.

¹ Act No, 105 of 1997

[4] This case is yet another chapter in the on-going and escalating conflict between rival criminal gangs within Port Elizabeth and its environs. The congested court rolls and daily tabloid and television reports bear testimony to this unprecedented wave of violence which has reduced ordinary citizens to prisoners in their own homes. The brazenness of the gun toting protagonists bears testimony to their disdain for law and order and complete disregard for the community at large. The conflagration has reached epidemic proportions with no end in sight. When matters finally reach the courts, witnesses are too petrified to testify, as exemplified in this very case. The complainant on count 1, I was informed, refused to testify for fear of his life, notwithstanding being appraised of the repercussions.

[5] The shooting of the deceased appears to be a senseless act. Manuel's intimation to the accused that his drug of choice was unavailable for purchase triggered a violent reaction. It commenced with a veiled threat to the owner of the house, abuse towards *Manuel* and random shooting in the street prior to returning to the scene. Chaos then ensued and the deceased was shot and killed. In the run up to this trial, *Jansen* became another statistic in the war of attrition between the gangs. He too was shot and killed.

[6] This level of criminal conduct cannot be countenanced in any civilised community. Courts of law must become the bulwark for society's protection by meeting out appropriate sentences to offender such as the accused. The prescribed sentence on count 2 is to my mind entirely proportionate to the crime committed. The same can however not be said apropos the conviction on count 5. See **S v Beyi**². In the result the accused is sentenced as follows: -

1. Count 2 – life imprisonment;
2. Count 4 - 10 years imprisonment;
3. Count 5 - 5 years imprisonment;
4. Count 6 - 2 years imprisonment.

It is ordered that the sentences on counts 4, 5 and 6 run concurrently with that imposed on count 2.

D. CHETTY

JUDGE OF THE HIGH COURT

² 2011 (2) SACR 23 (ECG)

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