

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

CASE NO.: CC312022

Heard: 17, 18, 19 & 20 October 2022

Delivered: 21 October 2022

In the matter between:

THE STATE

Appellant

and

MANDILAKHE MATEBESE

Accused 1

PHILASANDE TUSANI

Accused 2

SENTENCE

MOLONY AJ:

1. The two accused in this matter have each been found guilty of one count of robbery with aggravating circumstances, and one count of murder.
2. In regard to the robbery count, a discretionary minimum sentence of 15 years' imprisonment is applicable, whilst a discretionary minimum sentence of life imprisonment is applicable in regard to the murder count.

3. It is trite that when determining an appropriate sentence, the nature of the crime, the circumstances of the offender and the interests of society must be considered, and that relevant mitigating and aggravating factors must be weighed in order to determine a sentence which is proportionate under the circumstances.
4. Accused 1's personal circumstances are the following:
 - 4.1 He was born on 27 August 1988, and is currently 34 years old.
 - 4.2 He is unmarried, and has two daughters, one who is 6 years of age, with the other being 8 years of age. Both children reside with their respective mothers in the East London area. It was not suggested that they rely on accused 1 for any form of financial (or other) maintenance.
 - 4.3 He has a grade 12 education, and was busy studying a course in business management, which he was forced to abandon due to financial constraints. It is known from his evidence during the trial that he abandoned these studies in 2013.
 - 4.4 Prior to his arrest he did odd jobs, including grass cutting, where he would earn R 450 per week.
 - 4.5 He was raised by both his parents. His father passed away several years ago.
 - 4.6 Prior to his arrest he was looking after his grandfather who is ill and lives alone. The grandfather is being assisted by a neighbour since accused 1's arrest.
5. Accused 1 has been in custody since his arrest. He applied for bail, but his application was refused.

6. Accused 1 has two previous convictions, one for assault with intent to cause grievous bodily harm, and one for common assault. Both convictions appear to stem from incidents occurring on 21 December 2014, with accused 1 being convicted in regard to both on 7 March 2017.
7. In regard to the previous conviction of assault with intent to cause grievous bodily harm, accused 1 received a sentence of 12 months' imprisonment, half of which was suspended for 5 years. It is noted that the offences in the present matter were committed prior to the 5 year suspension period having expired.
8. In regard to the previous conviction of assault, accused 1 received a sentence of 3 months' imprisonment.
9. Accused 2's personal circumstances are the following:
 - 9.1 He was born on 2 March 1998, and is currently 24 years old.
 - 9.2 He is unmarried and has no children.
 - 9.3 He went as far as grade 10 at school (but did not complete grade 10).
 - 9.4 He, similar to accused 1, does odd jobs such as grass cutting, for which he earns R 450 per week.
 - 9.5 From time to time he also performs as a hip hop artist in local taverns. He does this approximately twice a month, and earns approximately R 2 000 to R 3 000 on each occasion. He has been doing this since 2012.
 - 9.6 He was raised by both his parents. They separated when he was 12 years old, and since then he lived with his paternal grandmother.
 - 9.7 Accused 2 is a first offender.
10. Accused 2 has been in custody since the date of his arrest. He applied for bail but it was refused.

11. Mr Geldenhuys submitted, in mitigation, that the personal circumstances of both accused (aside from accused 1's previous convictions) are generally favourable and should receive proper recognition.
12. In regard to the robbery, he noted, correctly, that in rejecting the versions of the accused and accepting the evidence of the State, it was not found that a laptop had been stolen from accused 2. He noted further that this court is not in a position to know the value of the backpack and knife (belonging to the deceased) which were taken.
13. In regard to the murder, he submitted that the circumstances did not involve a typical robbery. The deceased and the accused appeared to be friends. Something which occurred between them caused the two accused to act in anger, which should receive acknowledgment.
14. He submitted that all of the aforementioned factors amount to substantial and compelling circumstances, and that the application of the discretionary minimum sentences would be disproportionate and unjust.
15. If it was decided to deviate from the discretionary minimum sentences, he submitted that an appropriate sentence for count 1 would be 10 to 12 years' imprisonment, and for count 2, 20 years' imprisonment. He submitted that it would be appropriate for the sentences to run concurrently.
16. When asked regarding whether there was reason for either of the accused to be treated differently to the other in terms of sentence, Mr Geldenhuys submitted that, aside from a difference in regard to previous convictions, there was no reason to treat them differently. He submitted that both should receive the same sentence.
17. Mr Obermeyer submitted that the following factors were aggravating:
 - 17.1 The accused acted with a common purpose.

17.2 Based on the actions of the accused, there was a clear direct intention to kill the deceased.

17.3 The assault on the deceased could only be described as brutal.

17.4 The deceased was in a defenceless position, on the ground, when he was stabbed. This took place in full view of children and other witnesses, in broad daylight. He submitted that this spoke to a certain arrogance on the part of the accused.

17.5 The fact that both accused had a form of income prior to arrest meant that the offences were motivated by greed, and not need.

17.6 Neither of the accused showed any remorse.

17.7 The evidence of the brother of the deceased, Mr Bombotho, described the financial and emotional effect which the death of the deceased had on his family.

18. He submitted further that:

18.1 Both accused were a danger to society, if regard was had to the brutality of the attack, which involved attacking a friend of the accused.

18.2 There was no accepted evidence before court as to provocation, which could be considered mitigating.

18.3 Offences of this nature undermine the feeling of safety and security within the community.

18.4 The discretionary minimum sentences were not inappropriate under the circumstances. Should this court be of a different opinion, then the discretionary minimum sentence in regard to the robbery remained appropriate, and a long term of imprisonment (such as 20 years) for the

murder, was requested (to run concurrently with the sentence for the robbery count).

19. In considering whether or not there are substantial and compelling circumstances present which justify the imposition of a lesser sentence, I will remain mindful of the guidance provided by the often cited matter of *S v Malgas*.¹

20. I will also remain mindful of the fact that both offences occurred during the same sequence of events.

21. The manner in which the deceased, who was a friend of the accused, was attacked, and the number of times he was stabbed, implies an element of anger on the part of both accused. This aspect is, however, limited to the aforementioned observation because, as Mr Obermeyer correctly noted, there is no accepted evidence before this court in regard to the issue of the presence of any provocation.

22. Having carefully considered and weighed the relevant mitigating and aggravating factors which need not be repeated, it is clear that the aggravating factors in this matter far outweigh the mitigating factors.

23. The attack on the deceased was brazen and callous (in that it occurred in broad daylight in full view of the public, including children), and involved a coordinated effort to stab the deceased multiple times in the back after pushing him to the ground, taking his property and leaving him to die. Neither of them has demonstrated an ounce of remorse. It is self-evident that such an incident would negatively affect the sense of safety and security of the local community.

24. I am accordingly unpersuaded that substantial and compelling circumstances exist (in relation to either accused) in regard to either the robbery count or the

¹ 2001 (2) SA 1222 (SCA).

murder count. In my view, the applicable discretionary minimum sentences are not disproportionate or unjust, given the circumstances of this matter.

25. I accordingly impose the following sentences:

25.1 Accused 1:

Count 1: 15 years' imprisonment.

Count 2: Life imprisonment.

25.2 Accused 2:

Count 1: 15 years' imprisonment.

Count 2: Life imprisonment.

N MOLONY

JUDGE OF THE HIGH COURT (ACTING)

For the State : Mr. Obermeyer

For the Accused : Mr. Geldenhuys