



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Appeal number: A231/2015

In the matter between:

LEHLOHONOLO JOSEPH PHOLOANA
MORAPANA MAILE
MOLEFI JOHANNES KHAKALU

1st Appellant
2nd Appellant
3rd Appellant

and

THE STATE

Respondent

CORAM: VAN DER MERWE, J *et* MBHELE, J

HEARD ON: 18 APRIL 2016

JUDGMENT BY: MBHELE, J

DELIVERED ON: 26 MAY 2016

[1] This is an appeal against sentence. The three appellants were accused 1, 3 and 4 in the trial court, where there were 7 accused.

The appellants were convicted of murder by a regional court sitting at Botshabelo on 27 March 2015 and were each sentenced to fifteen years imprisonment on 17 April 2015. Leave to appeal against sentence was granted by the trial court.

- [2] The grounds upon which the appellants are challenging their sentence are briefly that the regional magistrate erred by overemphasising the aggravating factors and the interests of the society and disregarding the appellants' personal circumstances, more particularly, the medical condition of the 2nd and 3rd appellants. It is further submitted that he erred in finding that there were no substantial and compelling circumstances justifying deviation from the prescribed minimum sentence.
- [3] The facts that led to the appellants' conviction were that on 17 May 2014 the appellants took the deceased, put him in the trunk of a car and drove with him to M section Botshabelo to look for the property belonging to accused 7 which was lost due to house-breaking and theft at the parental home of accused 5, 6 and 7. They suspected that the deceased participated in the theft and had knowledge of the whereabouts of accused 7's stolen property. Upon their arrival at M section they could not find the possessor of the said property and the appellants assaulted the deceased, who directed them to T section in pursuit of the search where the efforts yielded no results. The deceased was subjected to further assault by the appellants and accused 7. He was later abandoned in the street at A section after being subjected to continuous assault. The deceased was inter alia hit on the head

with a wheel spanner and an iron rod . He died as a result of head injuries sustained during the assault.

- [4] We are called upon to determine whether the trial court improperly or unreasonably exercised its judicial discretion.
- [5] Mr. Nkambi, on behalf of the appellants, submitted that the above question must be answered in the affirmative. Counsel implored us to uphold the appeal and interfere with the sentence.
- [6] Mrs. Giorgi on the other hand contended that the question must be answered in the negative, counsel urged us to dismiss the appeal and confirm the sentences.
- [7] We have to take into account the appellants' personal circumstances.
- [8] First appellant was 30 years of age at the time of sentencing, he is single with no children, he went to school up to grade 7, he is a first offender, he was gainfully employed and earned R 800 per fortnight. He was staying with his grandmother and his siblings at the time of his sentence, both his parents are deceased and he was supporting his siblings with the money he generated from his employment.
- [9] Second appellant was 35 years old and single, he is a father to 3 children who were 12 years, 7 years and 3 years respectively at the time of his sentence. He is separated from the mother of his children and he was the sole breadwinner for his children. He

passed grade 12 at school, he was employed and earned a monthly salary of R1 500.00. He is a first offender.

[10] 3rd Appellant was 32 years old and single. He has one minor child who was 8 years of age. He went to school up to grade 4 and has no previous convictions.

[11] Sentencing is pre- eminently in the discretion of a trial court. The sentence can only be interfered with if the sentencing court exercised its discretion unreasonably or in circumstances where the sentence is adversely disproportionate.

(See **S v Pieters** 1987 (3) SA 717 of 727)

[12] The minimum sentence of 15 years imprisonment is applicable in this matter.

[13] Mr. Nkambi submitted that there were substantial and compelling circumstances justifying a departure from the minimum sentence prescribed by the Act. He further contended that the court has to look into circumstances that led to the offence. The test for existence of substantial and compelling circumstances warranting deviation from the prescribed minimum sentence is whether in all the circumstances of the particular case the relevant prescribed sentence is unjust. (See **S v Malgas** 2001 (1) SACR 469 SCA.

[14] It is common cause that the deceased was severely assaulted by the appellants and left to die in the street despite the appellants having been advised by a police officer to take the deceased to the police station for their matter to be investigated further. The

appellants took the law into their own hands and meted out vigilante punishment on the deceased. The behaviour displayed by the appellants undermined the justice system. The appellants took the deceased's life and showed no sense or contrition.

- [15] When weighing up the mitigating factors against the aggravating circumstances of this matter as well as the interest of community, I am not persuaded that the sentence imposed is unjust. I am of the view that the trial court exercised its discretion judiciously. There is no basis for us to interfere with the sentences.

ORDER

- [16] I make the following order:

The appeal fails and sentences are confirmed.

N.M. MBHELE, J

I concur

C.H.G. VAN DER MERWE, J

On behalf of applicant: Mr. Nkambi

Instructed by:
Bloemfontein Justice Centre
BLOEMFONTEIN

On behalf of respondent: Adv. Giorgi
Instructed by:
Office of the Director: Public Prosecutions
BLOEMFONTEIN