

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No. : A61/10

In matter between:-

DAVID L LERALAU

Appellant

and

THE STATE

Respondent

HEARD ON: 28 February 2011

CORAM: VAN DER MERWE et MOLOI J J

JUDGMENT BY: K.J. MOLOI, J

DELIVERED ON: 3 March 2011

APPEAL JUDGMENT

MOLOI, J

[1] This is an appeal against the sentence of 15 years imprisonment imposed by the Regional Court Bloemfontein on a charge of murder. The appellant was given leave to appeal against the sentence by the trial court.

[2] The main grounds of the appeal are that the trial court

overemphasised the seriousness of the offence and the interest of the community over the personal circumstances of the accused and thus failed to balance these factors properly. This argument is based on the suggestion that it was common cause that the appellant was under the influence of intoxicating liquor when the offence was committed, the offence was not planned and the appellant's admission to causing the deceased's death had to be considered as showing remorse for the deed.

- [3] It was furthermore submitted that the trial court erred in not finding that substantial and compelling circumstances existed entitling it to deviate from the imposition of the minimum sentence of 15 years imprisonment as required by the provisions of section 51 of Act 105 of 1997.
- [4] The evidence showed that inside a shebeen owned by one Mrs Baartman and in the presence of witnesses, a confrontation between the appellant and his own brother, the deceased, ensued. Those present attempted to calm down the appellant, who was the aggressor to no avail. The confrontation was over the deceased's money which the appellant demanded from him. The deceased thereupon left the shebeen. The appellant followed him. Later the

deceased's body was found outside with several stab wounds from which he succumbed. There was no denial that the wounds were inflicted by the deceased.

- [5] In considering an appropriate sentence the trial court did not take into account the previous convictions the appellant had for various crimes and the various sentences imposed as they were not considered to have any bearing on the present offence and thus treated him as a first offender. The trial court took into account that the appellant, though unmarried, had a nine year old child who was taken care of by the maternal family. He had no one to maintain. The trial court acknowledged that the consumption of alcohol played a part on the happenings of the night. The appellant did not deny his actions led to the deceased's death and thus facilitated the court's decision on the question of guilt. The trial court took all the factors relevant to the imposition of appropriate sentence into consideration and balanced them the one against the other.

- [6] The trial court, to my mind, correctly found that no substantial and compelling circumstances existed to entitle it to impose a lesser sentence than the prescribed minimum sentence of 15 years

imprisonment as there was nothing substantial and compelling from the appellant's personal circumstances individually or cumulatively. There is no requirement that substantial and compelling circumstances be exceptional but should not be frivolous and unjustified. In S v Malgas, 2001(1) SACR 469 SCA at 481(h)-(j) (paragraph 31) it was held that in the absence of such substantial and compelling circumstances:

“Courts are required to approach the imposition of sentence conscious that the Legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the sentence that should ordinarily and in the absence of weighty justification be imposed for the listed crimes in the specified circumstances” Malgas, *supra* at 481 (h) – (i).

- [7] Sentencing discretion lies squarely in the hands of trial court: S v Kibido 1998 (2) SACR 207 (SCA) at 216 G-H because of its proximity to the proceedings and the Court of Appeal has limited aspects on which it may interfere with the exercise of such discretion e.g. if such imposed sentence is unreasonable or unjust or is vitiated by irregularities: S v De Jager 1965 (2) SA 626(A) at 629 A-B or if it

is “*shocking*”, “*startling*” or “*disturbingly inappropriate*” even in the absence of material misdirection: Malgas, *supra* at 478 F-H. In addition the aggravating circumstances must also be considered in the assessment process. The appellant inflicted several stab wounds on the deceased for no justifiable cause. The deceased was his own brother. The appellant was on parole at the time which was meant to give him an opportunity to rehabilitate and break away from the trend of committing crimes.

- [8] Malgas’ case warned the courts to be consistent in carrying out their duties in terms of the law and not to deviate therefrom lightly when it comes to sentencing. The same appeal to the courts by the Supreme Court of Appeal to ensure standardisation of sentence in specified offences was repeated in S v Matjiti 2011(1) SACR 40 (SCA) paragraph 23 at paragraph 53 c - f where the courts were reminded that they were:

“Obliged to impose those sentences for certain specified offences unless there are truly convincing reasons for departing from them. Courts are not free to subvert the will of legislature by resort to vague, ill-defined concepts such as ‘relative youthfulness’ or other equally vague and ill-founded

hypotheses that appear to fit the particular sentencing officer's personal notion of fairness. Predictable outcomes, not outcomes based on the whim of an individual judicial officer, is foundational to the rule of law which lies at the heart of our constitutional order". (My emphasis).

- [9] For the above reasons, in my view, there is no justification to interfere with the exercise of the sentencing discretion of the trial court and would dismiss the appeal. Accordingly the sentence of 15 years imprisonment imposed by the trial court is confirmed and the appeal is DIMISSED.

MOLOI, J

I concur and it is so ordered.

VAN DER MERWE, J

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