

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

Appeal No. : A107/2004

In the appeal between:-

PATRICK MALEFETSANE MOFOKENG

Appellant

and

THE STATE

Respondent

CORAM: RAMPAL J *et* MATHEBULA AJ

HEARD ON: 13 MARCH 2006

JUDGMENT BY: MATHEBULA AJ

DELIVERED ON: 23 MARCH 2006

[1] The appeal lies against the sentence imposed by the regional magistrate, Bethlehem, on the 26th July 2000. The appellant was sentenced to 15 (fifteen) years imprisonment for murder.

[2] The facts are briefly as follows:

On the 23rd January 1999 the appellant and his friend Letole Matthews Mahemu were drinking liquor at a tavern. The deceased was also there. A misunderstanding arose between the deceased and one of the patrons. They all went outside and a misunderstanding between the deceased and his girlfriend who was related to the appellant ensued. The girlfriend was staying at the house next-door to the tavern.

[3] The deceased started insulting his girlfriend and could not listen to any voice of reason to stop. The appellant went to the deceased who was now in the street and told him that he must stop insulting his relative. The deceased did oblige and this angered the appellant. The appellant pulled out his firearm and shot at the deceased but missed. The deceased continued with his insults.

[4] About ten minutes later the appellant fired a second shot at the deceased. On this occasion the insults stopped immediately and the deceased ran away. The appellant ran after him to the corner of the street and gave up the chase.

He returned to the tavern and continued drinking with his friends.

[5] Mr. Nkhahle submitted, on behalf of the appellant, that the court *a quo* over-emphasized the gravity of the offence and the interest of society at the expense of the personal circumstances of the appellant. He argued that the appellant was a first offender and had pleaded guilty to the offence which showed remorse on his part. He further submitted that the consumption of liquor played an important role in the commission of the offence.

[6] On behalf of the respondent, Mr. Chalale submitted that the court *a quo* was correct in not finding substantial and compelling circumstances. The appellant shot the deceased when he had nothing to do with him and posed no danger at all. He argued that the appellant exercised no mercy at all to the deceased when he shot at him twice which clearly showed his determination to kill him.

[7] It is trite law that the Court of Appeal is circumscribed to interfere with the finding of the trial court. See **REX v DHLUMAYO AND ANOTHER** 1948 (2) SA 677 (A) at 705; **S v PIETERS** 1987 (3) SA 717 (A) at 728 B – C and **S v PILLAY** 1977 (4) SA 531 (A) at 535 E – F. The Court of

Appeal may interfere if the trial court misdirected itself or the sentence is shockingly inappropriate.

[8] In this matter the deceased posed no danger at all to the appellant. The appellant fired shots at the deceased on more than one occasion without any reason. He was brutal in his actions. The court in **RAMMOKO v DIRECTOR OF PUBLIC PROSECUTIONS** 2003 (1) SACR 200 (SCA) at 204 – 205 emphasized that the objective gravity of the offence plays an important role. The appellant, after he mercilessly shot the deceased, still chased him only to return a few minutes later and continued to consume liquor with his friends. That is how cheap life is to him. The appellant simply executed the deceased.

[9] The taking of another person's life is a serious offence. In **S v WEARNE** 1979 (1) SALR 820 (A) at 823 C – E the court held that in certain circumstances the personal circumstances should yield to the seriousness of the offence. It was held in **S v MOHASE** 1998 (1) SACR 185 (O) at 193

that it was important that the court in imposing a sentence it should send out a clear message to potential offenders.

[10] I am of the view that the gravity of the offence committed and the interest of society outweigh the personal circumstances of the appellant. The message must be send out to other licensed firearm owners that firearms are lethal weapons which must be used with great care. Reckless usage of a firearm with dire consequences like in this matter will be severely punished. Perhaps that is why stringent requirements have been imposed by the legislature for aspirant firearm owners. In my view, the magistrate was correct in not finding substantial and compelling circumstances to warrant a lesser sentence. The appeal ought to fail.

[11] Accordingly my order is the following:

11.1 The appeal is dismissed.

11.2 The conviction and the sentence are confirmed.

M.A. MATHEBULA, AJ

I agree.

M.H. RAMPAL, J

On behalf of appellant: Adv. R.J. Nkhahle
Instructed by:

Justice Centre
BLOEMFONTEIN

On behalf of respondent: Adv. S. Chalale
Instructed by:
Director Public Prosecutions
BLOEMFONTEIN

/sp