



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

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Ntshongwana v The State (1304/2021) [2023] ZASCA 156 (21 November 2023)

Today, the Supreme Court of Appeal (SCA) dismissed an appeal against the judgment of the KwaZulu-Natal Division of the High Court, Pietermaritzburg (the full court), which dismissed an appeal against the conviction and sentence imposed by the KwaZulu-Natal Division of the High Court, Durban (the trial court) of the appellant, Mr Pindile Joseph Junior Ntshongwana.

The appellant was convicted by the trial court on all nine counts charged: four in respect of murder (counts 4, 7, 8 and 9); two in respect of attempted murder (counts 5 and 6); and one each in respect of assault with intent to do grievous bodily harm, kidnapping, and rape (counts 1, 2 and 3, respectively). The appellant was sentenced to life imprisonment on each of the four counts of murder and on the count of rape. On count 1, assault with intent to do grievous bodily harm, he was sentenced to 2 years' imprisonment. On counts 2, 5 and 6 (the attempted murder and kidnapping charges), he was sentenced to six years' imprisonment on each of the counts.

The charges were related to the following facts. During March 2011, an axe-wielding man brutally killed four people in the greater Durban area. He hacked them to death, decapitating three of them in the process. He also attempted to kill two more people. On further investigation, the perpetrator of these crimes was linked to two more incidents, four months earlier: an assault with intent to do grievous bodily harm of a man on 26 November 2010; and the kidnapping and rape of a woman on multiple occasions over a period of three days during 28 November to 1 December 2010. The appellant's defence was that he suffered from a mental illness, and that by reason of such mental illness, he lacked criminal capacity.

In respect of conviction, the sole issue for determination before the SCA was whether the appellant had discharged the onus in terms of s 78(1B) of the Criminal Procedure Act 51 of 1977 (the CPA) in proving that he did not have the capacity to act in accordance with an appreciation of the wrongfulness of his conduct. In relation to sentence, the issue was whether his capacity to act in accordance with his appreciation of the wrongfulness of his actions, was diminished by reason of his mental illness.

Ad conviction, the SCA found that, in regard to criminal responsibility, on a conspectus of all the evidence, the appellant failed to show any misdirection by the full court on the facts or the law. In addition, no circumstances had been shown which would entitle the SCA to interfere with the finding of either the trial court or the full court that the appellant was able to appreciate

the wrongfulness of his actions and that he was able to act in accordance with his appreciation of the wrongfulness of his actions during the commission of the offences.

In this regard, the SCA found that the trial court was correct in rejecting the evidence of Professor A E Gangat, a specialist psychiatrist (who testified on behalf of the appellant), and accepting that of the panel psychiatrists in terms of s 79 of the CPA (who testified on behalf of the State). There was therefore no misdirection on the facts. The evidence of the panel psychiatrists supported the trial court's conclusion that the conduct of the appellant during and after the commission of the crimes was indicative of a person that had criminal capacity, in that the appellant's actions were clearly indicative of conscious and goal-directed behaviour and were clearly not of a person who acted involuntary or in a state of automatism.

In regard to diminished responsibility, the SCA found that the finding of the trial court could not be faulted. In respect of the murder counts (counts 4, 7, 8 and 9) an inference was drawn, which was consistent with the proven facts, that the murders were planned and not impulsive acts committed in the spur-of-the-moment. As far as the rape conviction was concerned, the appellant's behaviour showed a conscious awareness of what he was doing and an ability to control his actions and to act accordingly.

Ad sentence, the SCA found that the appellant was a dangerous criminal who acted with flagrant disregard for the sanctity of human life and individual physical integrity. The SCA found that the concession by counsel for the appellant was rightly made, that in the absence of a finding of diminished responsibility there were no substantial and compelling circumstances justifying a departure from the prescribed minimum sentences imposed by the trial court.

Ponnan JA penned a separate concurring judgment, in which, by stepping back a pace to consider the mosaic of evidence as a whole, he sought to demonstrate that the broad hypothesis sought to be advanced on behalf of the appellant, that he was incapable of acting in accordance with the appreciation of the wrongfulness of his actions when he committed each offence, was equally unsustainable. This, because Ponnan JA found that this case dealt with someone who had committed a series of offences on diverse occasions over a protracted period. The appellant had the wherewithal to go about his daily life, drive to unfamiliar places to seek out his victims, perpetrate the offences and avoid detection. On at least two of those occasions, he stopped when disturbed, demonstrated an awareness of his surroundings, before fleeing the scene. It thus seemed inconceivable that over a period of many months the appellant suffered a complete loss of control only at the crucial time when committing each offence. Ponnan JA thus held that he could not subscribe to the view that the appellant did not have the capacity of self-control necessary to restrain himself from committing the acts that he knew to be unlawful.

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