



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

Date: 5 October 2021

Status: Immediate

The following summary is for the benefit of the media in the reporting of this case and does not form part of the judgments of the Supreme Court of Appeal

Rohde v The State (815/2019) [2021] ZASCA 134 (5 October 2021)

The Supreme Court of Appeal (SCA) today dismissed an appeal against the convictions and upheld an appeal against the sentences of the appellant, Mr Jason Thomas Rohde.

On 8 November 2018, Mr Rohde was convicted in the Western Cape Division of the High Court, Cape Town by Salie-Hlophe J (the trial court) on two counts; namely, the murder of his wife, Ms Susan Francis Rohde, the deceased (count 1); and defeating or obstructing the course of justice (count 2). Count 2 was based on the allegation that subsequent to the murder of the deceased, the appellant had rearranged the scene of the crime in an attempt to represent that the deceased had committed suicide. On 27 February 2019, the appellant was sentenced to an effective term of imprisonment of 20 years; that is, 18 years' imprisonment on count 1 and five years' imprisonment on count 2, of which three years' imprisonment were ordered to be served concurrently with the sentence on count 1. The trial court refused the appellant's application for leave to appeal against the convictions and sentences, but the SCA subsequently granted him such leave to appeal.

The facts of the matter were as follows. Over the weekend of Friday, 22 July 2016 to Sunday, 24 July 2016, a well-known real estate company held its annual conference at the Spier Hotel near Stellenbosch in the Western Cape. Mr Rohde, the chief executive officer of the company, attended the conference. His wife, Ms Rohde, accompanied him to the venue and attended the social events associated with the conference. During the morning of 24 July 2016, however, Ms Rohde was found dead in the bathroom of their suite at the hotel.

The issue at the heart of the appeal was whether the deceased died as a result of smothering and/or manual strangulation, as the respondent alleged, or whether she committed suicide by hanging herself from a hook affixed to the inside of the bathroom door with the use of the cord of an electric hair curler, as was the appellant's case.

The central question was whether the respondent proved beyond a reasonable doubt that the deceased had been killed by the appellant, or whether there was a reasonable possibility that she might have committed suicide.

The SCA found that the respondent had proved beyond reasonable doubt that the deceased was killed by manual strangulation and that only thereafter the ligature was applied to her neck. Thus, the trial court correctly convicted the appellant on both counts.

However, the SCA found that the trial court erred in finding that the deceased had been smothered. There were three reasons why this finding could not stand. The first was that the trial court made a material factual error. The pillowcase that it examined had been found on the right-hand side of the bed where the deceased slept. The evidence of the appellant in this regard was supported by that of Captain Joubert. Secondly, the far-reaching observations of the trial court in respect of the photograph of the pillowcase were not put to any witnesses or to the appellant and could by no means be said to be clear. The trial court's reliance on its own observations was thus wholly unjustified. In the third place, the aforesaid evaluation of the expert evidence demonstrated that external airway obstruction was not proved beyond reasonable doubt.

The SCA found further that it must regrettably be said that save for the findings that the appellant strangled the deceased and attempted to stage her suicide, the court a quo's 'vivid picture' constituted speculation in respect of both content and sequence. There was no evidential basis for the finding that the appellant had punched the deceased with his ring bearing fist. Moreover, that it was reasonably possible that the deceased was not smothered and that the right rib fractures were caused by attempted cardiopulmonary resuscitation (CPR).

The SCA found that these matters impacted on the question of an appropriate sentence. Accordingly, in respect of sentence the SCA held that the appellant must be sentenced on count 1 on the basis that he unlawfully and intentionally killed the deceased by manual strangulation, but did not assault her in any other way. The SCA found after due consideration of all the relevant facts and circumstances, that no substantial and compelling circumstances justified a departure from the prescribed sentence of 15 years' imprisonment on count 1. In addition, a sentence of three years' imprisonment was appropriate in respect of count 2. The sentence on count 2 was ordered to run concurrently with the sentence on count 1. The sentences were deemed to have been imposed on 27 February 2019.

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