

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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Please note that the media summary is for the benefit of the media and does not form part of the judgment.

The State v Matyityi
(695/09) [2010] ZASCA 127 (30 September 2010)

Media Statement

Today the Director of Prosecutions (Eastern Cape) succeeded before the Supreme Court of Appeal (SCA) in an appeal against an effective sentence of 25 years' imprisonment imposed by the East London High Court on Vuyisile Matyityi for murder and rape. Matyityi and two accomplices were indicted before the Eastern Cape High Court on one charge each of rape and murder and two of robbery. At the commencement of the trial, Matyityi, unlike his co-accused, expressed a willingness to tender a plea of guilty to all of the charges and after the trials were separated he was convicted as charged on his guilty plea. He was sentenced to 25 years' imprisonment on each of the murder and rape charges and in respect of each of the robbery counts to 13 years' imprisonment. The sentences were ordered to run concurrently. He was thus sentenced to an effective term of 25 years' imprisonment.

Aggrieved by the sentences imposed in respect of the murder and rape that were regarded as being too lenient, the Director of Public Prosecutions appealed to the SCA. The nature of the offences brought the matter within the purview of s 51 of the Criminal Law Amendment Act 105 of 1997, which prescribed minimum sentences, namely life imprisonment for each of the murder and rape convictions unless substantial and compelling circumstances were found to be present. The trial court found that the remorse displayed by Matyityi and his age were substantial and compelling circumstances within the meaning of that expression and accordingly departed from the prescribed minimum sentence. The SCA took the view that there was no evidence to support the conclusion that Matyityi was indeed remorseful. It held that a chasm existed between regret and remorse and that many accused persons might well regret their conduct but that does not without more translate genuine remorse. In respect of the respondent's age, the SCA held that at 27 he could hardly be described as a callow youth. At best for the appellant therefore his age constituted a neutral factor.

According to the SCA the crimes were breathtakingly brazen and executed with a callous brutality. The offences were committed five days apart during April 2008 in the vicinity of Leaches Bay, East

London. During the early evening of 16 April, 45-year old Anthony Cannon was seated alone in his vehicle enjoying a beer when he was attacked by Matiyi and his two accomplices. He was robbed of his cell phone, cash to the tune of R500 and his Honda Ballade motor vehicle. He was bound and tied to a tree in a secluded area. Whilst his attackers were away, ostensibly in search of an ATM to withdraw money from his bank account with his bank card and pin code that he had furnished to them, he managed to escape. Five days later the trio struck again. On this occasion their victims were Ms KD and her boyfriend Mr MF. Earlier that afternoon Ms KD a 31-year old divorcee and mother of four children had fetched her boyfriend Mr MF from his place of employment. At approximately 5 pm they made their way in her BMW motor vehicle to the beach. She was initially apprehensive about their safety but being reassured by Mr MF she parked her car in a secluded spot. After they had engaged in some intimacy Mr MF alighted from the motor vehicle. When Ms KD, who was seated in the driver's seat, became concerned that he was taking too long to return to the vehicle, she glanced over her shoulder and observed what she described as two men wrestling with Mr MF. She reached for her car keys that were lying in the console of the motor vehicle but before she could insert the key into the ignition a third person smashed the driver's window and the key was snatched out of her hand. During the attack on Mr MF he sustained four stab wounds. According to Dr Zondi, who conducted the post mortem examination, the fatal one, which was inflicted from behind with considerable force, caused his left lung to collapse. Mr MF was forced into the boot of the motor vehicle and the vehicle was driven to a more secluded spot where Ms KD was raped by each of the three men.

According to the SCA, an enlightened and just penal policy requires consideration of a broad range of sentencing options from which the most appropriate should be chosen. It was also necessary particularly in matters involving sexual assault that the sentencing process be victim-centred. It made reference to the UN Declaration of the Basic Principles of Justice for Victims of Crime and Abuse of Power and the Service Charter for Victims of Crime in South Africa both of which is based on the philosophy that adequate recognition should be given to victims and that they should be treated with respect in the criminal justice system. In South Africa victim empowerment is based on restorative justice, which seeks to emphasise that a crime is more than the breaking of the law or offending against the state – it is an injury or wrong done to another person. As in any true participatory democracy its underlying philosophy is to give meaningful content to the rights of all citizens, particularly victims of sexual abuse, by reaffirming one of our founding democratic values namely human dignity.

In this case, according to the SCA, had more relevant evidence been placed before the court as to: the prevalence of these types of offences; the public desire for protection from the kind of wanton criminality encountered here; the public interest in suitably fair, just and balanced punishment; and the harm suffered by Ms KD and those who survive Mr MF, the traditional triad of the crime, the criminal and the interests of society would have been better served. Instead the trial court emphasised the personal interests of Matiyi above all else. In so doing it failed to strike the appropriate balance.

Here the SCA emphasised that Matyityi and his cohorts had conducted themselves with a flagrant disregard for the sanctity of human life or individual physical integrity and acted in a manner that is unacceptable in any civilised society, particularly one that ought to be committed to the protection of the rights of all persons including women. It accordingly took the view that the minimum sentence was a manifestly fair and just one and altered the sentence to one of imprisonment for life.

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