



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable
Case No: 338/2018

In the matter between:

WELCOME BONGOKHULE MADLALA

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Madlala v The State* (338/2018) ZASCA 176 (2 December 2019)

Coram: Ponnann, Mbha, Mocumie, Mbatha JJA and Weiner AJA

Heard: 14 November 2019

Delivered: 2 December 2019

Summary: Criminal law – sentence – 15 years’ imprisonment and life imprisonment imposed for robbery committed with aggravating circumstances and murder respectively – no grounds to interfere with the sentences imposed – appeal dismissed.

ORDER

On appeal from: Kwazulu-Natal Division of the High Court, Pietermaritzburg, (Patel AJP (Sishi J and Moodley AJ concurring) sitting as court of appeal):

‘The appeal is dismissed.’

JUDGMENT

Mbha JA (Ponnan, Mocumie and Mbatha JJA and Weiner AJA concurring):

[1] The appellant was arraigned in the Kwazulu-Natal Division of the High Court, Pietermaritzburg (the trial court) with his erstwhile co-accused, as accused number 1 and 2 respectively, on one count of robbery committed with aggravating circumstances, and one count of murder. Both charges were read together with the provisions of s 51 of the Criminal Law Amendment Act 105 of 1997 (the Minimum Sentence Act).

[2] The appellant and his co-accused, who were legally represented, were each convicted on their plea of guilty, of robbery with aggravating circumstances and murder. After finding that there were no substantial and compelling circumstances that would justify a departure from the minimum sentences prescribed in the Minimum Sentence Act, the trial court sentenced both the appellant and his co-accused to 15 years’ imprisonment in respect of the robbery and to life imprisonment for murder. Both appealed, with leave of the trial court, to the Full Court (the full court), which on 25 May

2011, dismissed the appellant's appeal in *toto*. The appeal of the appellant's co-accused was partly successful as the sentence of life imprisonment on the murder charge was reduced to 20 years' imprisonment.

[3] The appellant appeals, with the special leave of this court, against the decision of the full court dismissing his appeal against sentence. The decision of the full court is attacked on the basis that it ought to have likewise reduced the appellant's sentence of life imprisonment, as it did with his co-accused

[4] As emerges from the statements of the appellant and his co-accused filed pursuant to s 112(2) of the Criminal Procedure Act 51 of 1977, the two of them and one Siphamandla, who was the apparent leader, hatched the plan to rob the deceased and his wife on their farm. Siphamandla was subsequently shot and killed by the police when they tried to apprehend him in connection with the offences giving rise to this case. The appellant described in detail his planned role during the robbery. He stood guard over the deceased's elderly wife with a firearm at the ready. After Siphamandla had shot and killed the deceased in a separate room, the appellant removed items from the house, including cash, a cellular phone and a DVD player. The DVD player was later sold to the appellant's cousin, Michael, a member of the SAPS for R140.00 and the cellular phone was sold for R200.00.

[5] The trial court considered all the relevant factors and struck an appropriate balance between the appellant's personal circumstances, the interests of society and

the seriousness of the offences. It found, correctly, that the aggravating factors far outweighed the personal circumstances of the appellant, which included that he had pleaded guilty to the offences and that he regretted his actions. In that regard, it found that the offences were well planned and that the robbery was not a spur of the moment event. Furthermore, the deceased and his wife were brazenly attacked in the sanctity of their home and that this was a violent attack on a defenceless and elderly couple. I am unable to fault the trial court in its reasoning when it found there were no substantial and compelling circumstances justifying a departure from the prescribed minimum sentences.

[6] With regards to the decision of the full court, in reducing the sentence of the appellant's co-accused from life imprisonment to 20 years' imprisonment for murder, the reasons for the differentiation in so far as the appellant is concerned was in my view, justified. The appellant's co-accused was 21 years old at the time of the commission of the offences in contradistinction to the appellant, who was 34 years old. The record also shows that the co-accused co-operated and assisted the police with the investigation of the crimes. The full court took into account the relative youthfulness of the appellant's co-accused as well as his unblemished record in concluding that he was a good candidate for rehabilitation. The same could not be said for the appellant.

[7] The appellant had serious and relevant previous convictions at the time of the commission of the offences. On 3 September 2009, a mere four days before the commission of the robbery and murder in this case, the appellant was convicted in the

Pietermaritzburg Magistrates' Court of culpable homicide and assault with the intent to commit grievous bodily harm. He was on the same day sentenced to nine years' imprisonment, which was suspended for five years on condition that he was not convicted of the crime of assault involving the use of a weapon. This factor clearly put paid to any suggestion or argument that the appellant is a good candidate for rehabilitation.

[8] I am unable to fault the full bench for dismissing the appellant's appeal against sentence. In the result, this appeal cannot succeed.

I make the following order:

'The appeal is dismissed.'

B H Mbha

Judge of Appeal

APPEARANCES:

For Appellant: Z Anastasiou

Instructed by: PMD Justice Centre, Pietermaritzburg
Bloemfontein Justice Centre, Bloemfontein

For Respondent: C Kander

Instructed by: The Director of Public Prosecutions, Pietermaritzburg