



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

JUDGMENT

Not Reportable

Case No: 274/19

In the matter between:

ADILU JANGIA

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Adilu Jangia v The State* (274/19) [2019] ZASCA 180

(02 December 2019)

Coram: Cachalia, Saldulker and Mokgohloa JJA, Tsoka and Dolamo AJJA

Heard: 13 November 2019

Delivered: 02 December 2019

Summary: Criminal Procedure – Appeal against a refusal to grant leave to appeal on petition – appeal successful – leave to appeal against sentence to the high court granted.

ORDER

On appeal from:

1. The application for leave to appeal is upheld.
2. The order of the High Court refusing leave to appeal is set aside and replaced with the following:

‘Leave to appeal to the Gauteng Division of the High Court is granted.’

JUDGMENT

Dolamo AJA (Cachalia, Saldulker and Mokgohloa JJA, Tsoka AJA concurring):

[1] This is an appeal against the refusal by the Gauteng Division of the High Court Johannesburg (the high court), of a petition in terms of section 309C of the Criminal Procedure Act 51 of 1977 (the CPA), for leave to appeal against a magistrate’s refusal to grant leave to appeal on conviction and sentence. Although an order from this court dated 9 March 2016 granted special leave against sentence to this court, the order was in truth leave against the refusal of the high court to grant leave against the decision of the magistrate. We shall approach the application for leave to appeal on this basis.

[2] The appellant was convicted in the regional court, Newlands, Johannesburg on a count of robbery with aggravating circumstances as contemplated in s 1 of the

CPA; attempted murder, and contravening s 49(1) of the Immigration Act 13 of 2002. He was sentenced to 15 years', 10 years' and 3 months' imprisonment, respectively. The trial court ordered, in terms of s 280(2) of the CPA, that half of the sentence of 10 years' imprisonment imposed in respect of the attempted murder and the sentence of 3 months imprisonment in respect of the contravention of s 49 (1) of the Immigration Act 13 of 2002 should run concurrently with the sentence of 15 years' imprisonment. In the result, the appellant was to serve an effective term of 20 years' imprisonment. The trial court also ordered, in terms of s 276B of the CPA, that the appellant must serve at least two-thirds of his sentence before he could be considered for parole.

[3] The crisp issue for determination is whether the high court erred in refusing to grant leave against the sentence imposed by the regional court.

[4] Briefly the factual background of the offences committed by the appellant are the following: on the morning of 15 August 2011, the appellant, his co-accused (who was accused 1 in the trial), and a third person who was never apprehended, attacked and robbed the complainant, a 62 years old manageress of a retail shop where they were also employed, of a sum of approximately R50 000.00, the sales taking for the previous 3 days, her purse containing a sum of R900.00, and keys. Although the appellant and his co-accused were arrested shortly after the robbery, only an amount of R900-00 was recovered.

[5] In the cause of the robbery, the complainant was severely assaulted: she was strangled, thrown to the floor and beaten. Accused 1 stuck his hand into her mouth and forced it down her throat in order to choke her. She was also threatened and scratched with a pair of scissors. The assault only stopped when she laid still and pretended to be dead. As a result, she was admitted to hospital where she spent 4 days in the intensive care unit.

[6] The severity of the injuries sustained, which led to the charge of attempted murder, were described by the medical doctor who examined the complainant and completed a medico-legal report (the J88), as consisting of multiple scratch marks on her face and neck, contusion and bruising to her face and neck, the latter injuries, according to the doctor, were life-threatening. These were consistent with attempted strangulation constituting a dangerous injury, which could later present life complications such as a stroke and damage to the blood vessels supplying blood to the brain. In addition to the physical injuries, the complainant was psychologically traumatised and required counselling.

[7] There was no dispute in this court that the appellant was correctly convicted. With regard to sentence it appears that the regional court misdirected itself in imposing a maximum sentence of 20 years' imprisonment. This sentence was imposed despite the fact that the appellant was a first offender, and in terms of s 51 (2) of the Criminal Law Amendment Act 105 of 1997 (CLAA) liable to a

minimum sentence of 15 years' imprisonment. The regional magistrate increased the minimum sentence of 15 years by five years without good reasons. As stated above, it is common cause that the appellant was a first offender and that he had spent more than two years in custody, awaiting trial and that he did not play a major role in the commission of the offences. It is also accepted that the imposition of the non-parole period was irregular.

[8] In my considered view, there are reasonable prospects that another court may come to a different finding than the one arrived at by the regional court. In the result the following order is made:

- (a) The application for leave to appeal is upheld
- (b) The order of the High Court refusing leave to appeal is set aside and replaced with the following:

'Leave to appeal to the Gauteng Division of the High Court against sentence only is granted.'

M J Dolamo
Acting Judge of Appeal

APPEARANCES

For Appellant: W A Karam
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 Justice Centre, Bloemfontein

For First Respondent: D Van Wyk
 Director of Public Prosecutions, Johannesburg
 Director of Public Prosecutions, Bloemfontein