

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

Case No: A124/2022

(1) Reportable: NO
(2) Of interest to other judges: NO
(3) Revised.

12 May 2023

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MHE Ismail

In the matter between: -

SIPHO GULIWE

APPELLANT

and

THE STATE

RESPONDENT

Neutral Citation: *Guliwe Sipho v The State* (Case No: A124/2022 [2023] ZAGPJHC 462 (11 May 2023))

J U D G M E N T

This judgment and order was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to Parties / their legal representatives by email and by uploading it to the electronic file of this matter on Case Lines.

Ismail J:

AD CONVICTION

1. This is an appeal against the conviction and sentence with the leave of the trial court.
2. The appellant was convicted of murder and robbery with aggravating circumstances. He was sentenced to life imprisonment in respect of the murder conviction and to 15 years' imprisonment for the robbery with aggravating circumstances.
3. In brief the deceased was killed at her home on the 21-22 December 2017. The robbers then fled the scene with the deceased motor vehicle, a Renault Clio, with registration number CV 33RW GP.
4. Mr Khoali, a witness, who was the accused landlord testified that he saw the accused parking the Renault Clio motor vehicle on the premises on either the 22 or 23 December 2017.
5. The appellant initially told Mr Khoali that his wife hired the car. Sometime later the appellant told Mr Khoali that Ndala borrowed the amount of R10 000.00 from him, the appellant, and the latter left the Renault Clio with him as security for the loan.
6. The police contacted Mr Khoali and enquired about the vehicle and he gave them accused telephone number.
7. The appellant was contacted telephonically by the investigating officer, Sigidi, regarding the car. The appellant undertook to contact the investigating officer on a specified day, however, he did not honour the appointment. The investigating officer thereafter called him on several times and each time he made arrangements to meet, but he failed to turn up as promised. Eventually,

the appellant was arrested by a colleague of the investigating officer from the tracing unit.

8. The appellant told the Sigidi that he obtained the car from Ndala, who borrowed R10.000.00 from him. He was unable to give the police further details about Ndala such as the latter's address or telephone numbers. No agreement was entered into between him and Ndala regarding the loan or the vehicle which was left as security.
9. The trial court summarized the evidence in great detail which can be gleaned in the judgement at pages 199-261 of the transcript. I do not propose to re-invent the wheel by regurgitating the trial court's findings on the witness's evidence, it is adequately and clearly motivated in the judgment.
10. The *court a quo* correctly appraised the evidence in my view and found that the *onus* was on the prosecution to prove its case beyond reasonable doubt. It alluded to the doctrine of recent possession pertaining to the motor vehicle which belonged to the deceased. In doing so the court relied upon the authority of *Motha v S* [2015] ZASCA 143 where the court said:

“The court must be satisfied that (a) the accused was found in possession of the property; (b) the item was recently stolen.”
11. When considering whether to draw such an inference, the court must have regard to factors such as the length of time that passed between the possession and the actual offence, the readiness with which the property can or is likely to pass to another person. There is no rule about what length of time qualifies as recent. It would depend on the circumstances generally and more particularly of the nature of the property stolen”.
12. In *S v Madonsela* 2012 (2) SACR 456 (EST) it was held that:

“A motor vehicle today is capable of exchanging hands literally within minutes and hours...”

Whilst a motor vehicle can be transferred to another person within a short space of time the circumstances under which such a transfer takes place must be examined.

13. In casu the vehicle was found within twenty-four hours in the possession of the accused. His explanation for being in possession of the vehicle kept changing. Firstly, he told the landlord that his wife hired the car, thereafter he told him that it was pledged as security to him by Ndala who borrowed money from him.

If the latter explanation was true why would he tell his landlord that his wife hired the car. Furthermore, he kept making promises to meet the investigating officer which he failed to do. His explanation that he was avoiding the investigating officer by not keeping the appointments was that he was scared of being arrested. In my view is just a convenient excuse for ducking and diving the investigating officer. Clearly his version kept changing from what he told the landlord and the investigating officer regarding the motor vehicle.

14. I am inclined to agree with the trial court's conclusion that the appellants' explanation was not reasonably and possibly true and that he was a party to the crime by virtue of being in possession of a vehicle which was stolen. See *S v Mavinini* 2009 (1) SACR 523 (SCA) at para 26 at 531 c-e.

15. In my view, for the reasons alluded to above the convictions on both counts are sound and the appeal should therefore be dismissed on conviction.

AD SENTENCE

16. The appellant was convicted and sentenced to life imprisonment for the murder charge and 15 years for the robbery with aggravating circumstances.

17. The life sentence was a prescribed sentence in the absence of substantial and compelling circumstances. In view of the fact that the deceased was killed during a robbery with aggravating circumstances took place.

18. The accused at the time of his sentence was a 50-year-old male and a father of two children aged 12 and 5 years old. He earned a living as a loan shark charging interest on monies he loaned. He had no previous convictions.
19. The all-important question is whether the life sentence imposed was an appropriate sentence, and whether there were any substantial and compelling circumstances which would have permitted the court to impose a lesser sentence than the prescribed sentence.
20. The deceased was killed in her home in a brutal manner, by the robbers who stole her vehicle, she was not safe in the sanctity of her own home when the robbers attacked and killed her. The crimes were of such a serious magnitude that the accused personal circumstances pales into insignificance. In *S v Vilakazi* 2009 (1) SACR 552 SCA at para 58 Nugent JA stated “in cases of serious crime the personal circumstances of the offender, by themselves, will necessarily recede into the background. Once it becomes clear that the crime is deserving of the substantial period of imprisonment the questions whether the accused is married or single, or whether he has two children or three, whether or not he is in employment, are in themselves largely in material...”
21. I am of the view that the trial court was quite “correct in its assessment that there were no substantial and compelling circumstances in this matter and it was therefore obliged to impose the minimum sentence, which it did.
22. Accordingly, in my view the appeal fails in respect of both conviction and sentence should be dismissed. Accordingly, the appeal fails on conviction and sentence.

**NP MNQIBISA-THUSI J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

I concur

**MHE ISMAIL J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

I agree

**R MOKGOATHLENG J
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

APPEARANCES:

For the State : Adv Mushwana from the office of the
Director of Public Prosecutions,
Johannesburg.

For accused : Adv S Hlazo instructed by Legal Aid
Johannesburg.

Date of hearing : 08 May 2023.

Judgment delivered : 12 May 2023.