

ZAMOKWAKHE QHOLIYANE BHENGU

APPELLANT

and

THE STATE

RESPONDENT

Judgment by:

NESTADT, JA

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between:

ZAMOKWAKHE QHOLIYANE BHENGU

APPELLANT

and

THE STATE

RESPONDENT

CORAM: VAN HEERDEN, NESTADT et VIVIER JJA

DATE HEARD: 13 NOVEMBER 1989

DATE DELIVERED: 15 NOVEMBER 1989

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JUDGMENT

NESTADT, JA:

Appellant, together with Bongani Cele, was convicted in the Durban and Coast Local Division of murder. They were each sentenced to 30 years'

imprisonment. Cele appealed against his sentence. This court, in a judgment delivered on 30 May 1989, allowed his appeal. The sentence of 30 years' imprisonment was set aside. One of 20 years' imprisonment was substituted. In addition, his sentences on two other counts on which he (and appellant) were convicted, were ordered to run concurrently with the sentence of 20 years' imprisonment.

Appellant did not originally appeal. He, however, now does so. This is in response to a directive, contained in the judgment referred to, that the judgment be served on appellant and on his former pro Deo counsel. As in the case of Cele, the appeal is against sentence only. It is brought with the leave of this court, which also condoned the late filing of appellant's petition for leave to appeal. The same grounds are relied on as were advanced before us on behalf of Cele.

For the reasons given in the judgment they must be upheld as regards appellant as well. It follows that the sentence of 30 years' imprisonment imposed on appellant must be set aside. There is no reason why he and his co-accused should be differently punished. They participated equally in the crime and their personal circumstances are much the same. Consequently a sentence of 20 years' imprisonment on appellant will be substituted. In addition, the periods of imprisonment imposed in respect of the other counts on which he was convicted will (as in the case of Cele) be ordered to run concurrently with the sentence of 20 years' imprisonment.

The following order is made:

- (1) The appeal succeeds.
- (2) The sentence of 30 years' imprisonment imposed on appellant in respect of count 1 (murder) is

set aside. A sentence of 20 years'

imprisonment is substituted.

- (3) The sentences of 1 year and 3 years' imprisonment on counts 2 and 3 are to run concurrently with the sentence of 20 years' imprisonment.

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NESTADT, JA

VAN HEERDEN, JA)  
                  ) CONCUR  
VIVIER, JA )