

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Shane Jaipal v The State

CCT 21/04

Decided on: 18 February 2005

MEDIA SUMMARY

The following explanatory note is provided to assist the media in reporting this case and is not binding on the Constitutional Court or any member of the Court.

Mr Shane Jaipal was charged with murder in the Durban High Court. According to the State, he poured petrol over the deceased, Mrs Argentina Pento Loutsaris, and set her alight on 21 October 1997. Mr Jaipal pleaded not guilty. He was convicted of murder and sentenced to twenty years imprisonment, by the judge who sat with two assessors.

Mr Jaipal appealed unsuccessfully to the Supreme Court of Appeal (SCA). He then applied to this Court for leave to appeal against the decision of the SCA, based on an alleged irregularity in his trial in the High Court.

The trial was supposed to take place in the Durban High Court building. Because of a lack of accommodation, a courtroom was made available at the Pinetown Magistrate's Court. During the trial, counsel for the defence requested the judge to make a special entry on the record that the proceedings in the trial were irregular, because the two assessors shared an office with the prosecutor, the investigating officer and deceased's son, who was a state witness.

The State submitted that this situation occurred because of a shortage of office space in the building. The prosecutor and the investigating officer were from time to time obliged to make telephone calls from the office used by the assessors. The situation was unavoidable due to a lack of resources and a huge back log of cases. The use of the office happened in full view of Mr Jaipal, members of his family and the public.

In a unanimous judgment, Van der Westhuizen J holds that the presence of the prosecutor, investigating officer and state witness in the office used by the assessors, in the absence of the accused's legal representative, was indeed irregular. However, in view of the specific circumstances of this case the irregularity did not result in an unfair trial. The circumstances include the explanation given in open court in the presence of the accused, his lawyer and the public, the fact that he did not request the recusal of the assessors when the judge gave him the opportunity to do so and the fact that there is no evidence that the assessors discussed the case with the other people in the office, or that they were in any way influenced by them. Mr Jaipal's conviction and sentence are confirmed.

However, this Court warns that similar irregularities could well result in a conviction and sentence being set aside. The important role of assessors as members of a court must be respected, and all those involved in the administration of justice must do their utmost to protect the right to a fair trial, even when limited resources create difficulties.