



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

Date: 12 May 2023

Status: Immediate

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Director of Public Prosecutions, Gauteng Division, Pretoria v D M S and A O L (69/2022) [2023] ZASCA 65 (12 May 2023)

Today, the Supreme Court of Appeal (SCA) upheld an appeal from the Gauteng Division of the High Court, Pretoria (high court) and replaced the order of the trial court with an order sentencing the first accused to life imprisonment and the second accused to 23 years' imprisonment.

The appeal revolved around the sentencing of the first and second respondents for the exceptionally brutal rape and murder of their minor cousin. On 7 December 2013, the respondents raped and murdered their 12-years old cousin and, after having mutilated her body, buried her body nearby in a shallow grave. In consideration of the sentences on appeal, this Court was required to examine whether the trial court overemphasised the personal circumstances of the respondents and failed to properly take into account the seriousness of the offences, especially in light of the interests of the community. Therefore, the central question before this Court was whether the sentences imposed were too lenient or too harsh.

This Court found that a number of personal circumstances were favourable in mitigation of the first respondent's sentence. However, the brutal nature of the crime, coupled with other aggravating factors far outweighed any mitigating factors. This Court considered a custodial sentence inevitable, especially in light of the pre-sentence report filed by the probation officer. Similarly, the circumstances of the second respondent were considered. Even though he was 17 years old at the time of the offence, he was on the verge of becoming a father, a delinquent and expressed that his anger was adequately vented through violent gang activity. The Court held that the nature of the offences, as well as the unlikely nature of the second respondent being rehabilitated and the likelihood of committing similar offences, were factors that strongly militated against mitigation of the sentence. The second respondent, however, was still a minor and an appropriate, yet lengthy, sentence had to reflect the provisions of s 77(4) of the Child Justice Act 38 of 2005.

In the result, the SCA upheld the appeal and replaced the order of the trial court with a sentence of life imprisonment with respect to the first respondent and 23 years' imprisonment in respect of the second respondent.

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