



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

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Rajivee Soni v The State (465/2019) [2021] ZASCA 57 (5 May 2021)

Today, the Supreme Court of Appeal (SCA) upheld in part and dismissed in part an appeal against convictions and sentences by the appellant, Mr Rajivee Soni, to the extent reflected in the substituted order of the SCA for that of the KwaZulu-Natal Division of the High Court, Pietermaritzburg (the trial court).

On 19 September 2018, Mr Rajivee Soni was convicted on all six counts charged, namely on count 1, the murder of Dr Bhavish Sewram; on counts 2, 3, and 4, for defeating or obstructing the course of justice; on count 5, for assault with intent to cause grievous bodily harm; and on count 6, for contravening s 18(2)(a) of the Riotous Assemblies Act 17 of 1956 (conspiracy to commit murder). On 26 October 2018, Soni was consequently sentenced to an effective 30 years' imprisonment. On 11 April 2019, the trial court granted Soni leave to appeal to the SCA all the convictions and the sentences imposed. On 19 March 2020, the SCA granted Soni bail pending the outcome of the appeal.

The facts of the matter were as follows: On 13 May 2013, Dr Sewram was shot and killed outside his surgery in Raisethorpe, Pietermaritzburg. Brian Treasurer, Sabelo Advocate Dlamini and Mfaniseni Wiseman Nxumalo were convicted of Dr Sewram's murder before Soni's trial had commenced. It was common ground that Dr Sewram was assaulted, arrested and charged on the basis of false accusations of sexual assault, and was ultimately murdered by assassins acting for reward. The overarching issue to be determined was whether Soni orchestrated these actions against Dr Sewram to seek revenge for Dr Sewram allegedly

having an affair with Soni's wife, or whether there was an alternative explanation that was reasonably possibly true.

The SCA found that the evidence provided overwhelming proof that it was Soni who sought and, in many instances brought about, the actions against Dr Sewram that culminated in his murder. This was on the basis that, firstly, a number of witnesses independently confirmed Soni's obsessive desire to take revenge upon Dr Sewram; secondly, testimony evidence directly implicated Soni in securing that hostile actions be taken against Dr Sewram; thirdly, the cell phone call placed by Treasurer to Soni and the words 'the job was completed' incriminated Soni in the murder of Dr Sewram; and fourthly Soni's account as to what brought about the serial hostilities against Dr Sewram entirely lacked plausibility, and was not reasonably possibly true.

In the result, the SCA held that the appeal failed on counts 1, 2, and 4. Murder and two of the charges for defeating or obstructing the course of justice, respectively. On count 6, Soni's conviction on the charge of conspiracy was set aside and Soni was instead found guilty of the alternative charge of incitement to murder. The SCA held further that the appeal succeeded in respect of Soni's convictions on counts 3 and 5. He was thus entitled to an acquittal on these counts. These were in respect of one of the charges for defeating or obstructing the course of justice, and for assault with intent to cause grievous bodily harm.

In respect of sentence, the SCA considered the sentences imposed by the trial court on the remainder of the counts for which Soni was not acquitted, namely counts 1, 2, 4 and 6. With regard to count 1, for murder, the SCA found that the sentence of 25 years' imprisonment imposed by the trial court was not shockingly inappropriate. Soni had persisted on exacting revenge on Dr Sewram and ultimately conspired with and embarked on a campaign to kill him, and which resulted in the cold-blooded murder of Dr Sewram. Thus, the SCA held that 25 years' imprisonment on count 1 was an appropriate sentence in the totality of the circumstances.

The SCA found that the sentences imposed by the trial court on counts 2 and 4 (defeating the course of justice), in the circumstances of this case, were not excessive. On both counts a false complaint was laid against Dr Sewram at the instance of Soni, in order to satisfy Soni's desire to exact revenge on Dr Sewram. Thus, the sentences of 18 months' and 2 years' imprisonment, respectively, were appropriate and justified.

In regard to count 6, the SCA found that the conviction of Soni on the alternative charge of incitement to murder Dr Sewram was no less grave than the trial court's conviction of Soni on the conspiracy to murder Dr Sewram. The trial court imposed a sentence of 5 years' imprisonment on count 6. Accordingly, the SCA held that a sentence of 5 years' imprisonment was warranted in respect of the conviction for the incitement to commit murder.

The SCA found further that, given the circumstances under which the offences on counts 2, 4 and 6 had occurred, they were all closely linked to count 1. All these offences formed part of the scheme which Soni embarked upon, carefully planned, and which ultimately culminated in the commission of the offence on count 1. Thus, the SCA held that, in the light of the cumulative effect of the sentences imposed, the sentences on counts 2, 4 and 6 were to run concurrently with the sentence on count 1. However, the SCA found that it would be just and equitable for Soni to receive credit for the period of 17 months that he had already served before his release on bail pending the outcome of the appeal. The result was an effective sentence to 23 years and 7 months' imprisonment.

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