

Alarming rise in public executions via mob justice

The death penalty may have been abolished since 1995, but in many parts of SA it is still alive and flourishing, in the form of public executions. That much is clear from official police crime statistics, published last week.

In their breakdown of certain categories of crime, the police listed the 'causes' that lay behind offences, or rather behind those cases where this information is available. One such 'cause' is 'mob justice/vigilantism'. It is among the highest individual categories of motives for murder, and is known to have led to the deaths of 789 people last year.

But even without the statistics on public executions by mobs, the reality of public executions would have been clear to Avumile Nkuzwana, had he still been alive. Suspected of having stolen a cellphone, he was stripped naked, bound hand and foot by wire, and beaten to death, in the course of which his teeth were broken by a pair of pliers.

The day after the crime statistics were released, the case of one of those responsible for Nkuzwana's death came to the High Court on automatic appeal. Gladys Tsotetsi had been convicted of murder under the common purpose doctrine, and sentenced to life imprisonment.

By the time the first state witness in the trial, Nsikelelo Mvumvu, arrived on the scene, Nkuzwana was 'barely alive', said the court. Nkuzwana was suspected of having stolen the cellphone belonging to Tsotetsi's daughter or niece. Viciously assaulted by a 'vigilante mob', he was dragged to Tsotetsi's property, naked and bound with wire.

Mvumvu saw that Tsotetsi had pliers in her hand and was hitting Nkuzwana in the mouth, breaking his teeth. Mvumvu, unable to stop people from assaulting Nkuzwana, went to call the police.

A police sergeant gave evidence that she had called an ambulance, and that Tsotetsi had told her to leave the man in the yard to die. The police had difficulty getting the dying man into the ambulance because the mob – including Tsotetsi – tried to stop them.

That Tsotetsi was involved in some way was clear from various witnesses. But, the court said, while it was usually not difficult to find that the conduct of everyone in a group was unlawful and that everyone had the intention to kill, it was far more difficult to establish that each one's individual conduct was the cause of death.

According to the legal framework on common purpose, there is a particular category of person in a mob, known as a 'joiner-in'. This is someone who arrives on the scene while the person is still alive, and inflicts an injury that 'does not hasten the death of the deceased'. A 'joiner-in' is someone who associates with the common purpose of the rest of the mob, but only after the lethal wound has been inflicted. The position of this person is different from someone who is 'one of many who inflict a wound which, along with the other wounds, is the cause of death'.

Clearly, a 'joiner-in' is guilty of a crime and must be punished. But what exactly is the crime? It cannot be murder, since the 'joiner-in' was not part of inflicting the fatal wound. The answers have been teased out by the courts over many years, and depend on the timing – when an accused joined the mob – and the nature of the involvement.

In Tsotetsi's case the witnesses were very reluctant to give evidence, presumably out of fear. But that meant the prosecution was not able to prove beyond a reasonable doubt that Tsotetsi had been anything more than a 'joiner-in'. The evidence tended to show that by the time Nkuzwana was dragged into her yard, he was very badly beaten and the fatal injury had already been inflicted. True, there was evidence that she had used a pair of pliers on the man, and that his teeth were found to have been broken, but it was unlikely that this had contributed to his death.

She might have been convicted of an offence like assault with intent to do grievous bodily harm, said the judge. But because she formed a common purpose with the mob she should, in this case, have been convicted of attempted murder. Asked for argument on this issue, counsel on both sides agreed that an attempted murder conviction would be appropriate in this case.

As to sentence, Tsotetsi had no previous convictions but, according to the probation officer, she showed no remorse. The judge said it was necessary to consider 'the reality of lawlessness, mob violence and its tragic consequences' – not to excuse vigilante activity, but to help explain 'the frustration of a community that feels let down' by the police. In this case, for example, when the police arrived at Tsotetsi's house, people in the crowd complained to them that while they had responded quickly on this occasion the police were not prompt when the community needed their help.

Further, apart from her anger and her wish, voiced out loud, that Nkuzwana would die, Tsotetsi did not herself inflict any life-threatening injuries. Her anger was apparently caused by the violence perpetrated on her pregnant niece or daughter from whom the cellphone had been stolen. The life sentence was thus set aside, and she was given eight years in jail, half of it suspended.

Presumably, this case will be one further statistic to add to next year's figures on murder by mob justice/vigilantism. The figures show that of the 789 murders known to have been lynchings – defined as death by mob action without legal sanction, not necessarily only by hanging – 151 occurred in the Western Cape, where Nkuzwana was killed. Only Gauteng (158) and KZN (204) were higher. Vigilantism was also listed as a cause of kidnapping (88 such cases in KZN) and of assault GBH (994 cases with KZN and Mpumalanga the highest) as well as attempted murder.

An opinion article in Politicsweb points out that the stats for public executions this year alone were three times higher than the highest annual number of lynchings in the USA (that was in 1892). And if you add last year's figures of public executions to those of this year, the total of 1 635 such killings amounts to more than the combined, horrifying, number of hangings in the final 12 years of capital punishment in SA.

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- Carmel Rickard