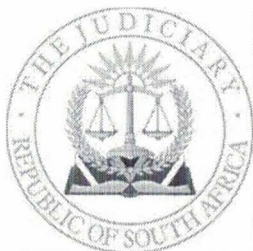


REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(Gauteng Local Division held at Johannesburg)

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED.
.....6.3.18.....	
DATE	SIGNATURE

R. Matthyys

Case number: SS 087/2017

In the matter between:

THE STATE

And

LERATO MONAMODI

Accused

Neutral citation: S v Monamodi [SS87/2017 GLDJHBHC 6 March 2018]

Coram: Matthyys AJ

Heard: 2- 27February 2018

Delivered: 6 March 2018

ORDER: SENTENCE

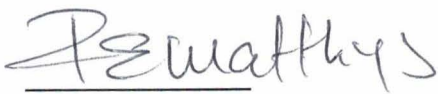
S v LERATO MONAMODI CASE SS087/2017

1. The accused is sentenced as follows :

Count 1: Murder read with the provisions in **section 51(1) of Act 105 of 1997** as amended.

One term of Life Imprisonment

2. In terms of **section 103 of Act 60 of 2000** it is ordered that the accused is unfit to possess a firearm.



Matthys R

Acting Judge of the High Court

Gauteng Local Division (Johannesburg)

Date: 6 March 2018

JUDGMENT ON SENTENCE

Coram Matthys AJ:

A. INTRODUCTION

[1] On 27 February 2018 this court convicted the accused (Ms Lerato Monamodi) on a charge of Murder as described in **Part 1 of schedule 2 of the Criminal Law Amendment Act¹**.

[2] I found as proved by the evidence, that the accused on the 5th day of March 2017 at Kempton Park with premeditation unlawfully and intentionally killed her mother Refiloe Rebecca Monamodi (hereinafter referred to as the deceased) aged 53 years, in that she throttled and or strangled her; stomped with her foot on the deceased head and ultimately forced her underwater in a swimming pool, causing death due to the application of pressure on the neck and drowning.

B. GENERAL PRINCIPLES OF SENTENCING

[3] At this stage of the proceedings it is my task to impose sentence upon the accused as a result of her criminal conduct. Sentencing is not an easy task, nor can it be said to be a

¹ Act 105 of 1997 as amended. (CLAA)

pleasurable duty, mindful that the offender remains a member of society, despite her iniquitous conduct, which infringed upon the ultimate rights of her own mother. By killing her mother the accused displayed antisocial behavior, which clashes with all good values and norms, which are intended to order life in any civilised society.

[4] In my endeavour to arrive at a fitting sentence I adopt a balanced approach, guided by the salutary principle that the sentence to be arrived at, should reflect the moral blameworthiness of the offender, in relation to the gravity of the crime; the personal characteristics and circumstances of the offender; not forgetting the interest held by society in the effective sanctioning of offenders.² I should also not disregard the unique interests held by the victim and the people close to her, such as her minor grandson, who was subjected to bear witness to the gruesome murder of his grandmother.

[5] Customarily it is in the interest of society, for sentences to be of a deterrent; preventative; rehabilitative and retributive nature, obviously with reference to the specific merits of the case.³ It is further vital to remind that when our courts are dealing with serious crime, such as the murder at hand it is warranted for the retributive aim of sentencing to come to the fore and for the rehabilitation of the offender, to play a lesser role.⁴ The retributive element of punishment is necessary for sentencing courts to give expression to society's loathing of the atrocious character of crimes committed⁵. I am however aware that

² See S v Zinn 1969 (2)SA 537 (A); S v Rabie 1975 (4) SA 855 (A)

³ See S v RO & another 2010 (2) SACR 248 (SCA) at [30]

⁴ Sv Swart 2004 (2) SACR 370 (SCA) para 12

⁵ S v Mhlakaza & another 1997 (1) SACR 515 (SCA)

sentencing, does not have, as its objective, to satisfy public opinion with vengeance, but that its aim is to serve the public interest.⁶

- [6] It is further required for the court to design the sentence in a manner which will accord with the deterrent aim of sentencing, in that it should not only serve to discourage the offender before court from re-offending, but should also be aimed at dissuading , would-be offenders from committing similar crimes.

C. GRAVITY OF THE CRIME AND THE INTEREST OF SOCIETY

- [7] The unlawful taking of human life, is a major transgression of societal norms and *in casu* the particular circumstances under which the deceased was killed by the accused is shocking to say the least. In general the prevalence of murder incidences in South Africa is a matter of worry to not only the broader public, but also the authorities. It is therefore no surprise that our courts have typified violent crime such as murder as social afflictions, which plagues our society to its core.
- [8] Consequently, persons like the accused before court, who make themselves guilty of murder, should expect a stern response by our courts in its sentencing duty. The serious light in which murder is viewed is further evidenced by the legislature's stance to ordain discretionary minimum terms of imprisonment, for the courts to consider when sentencing convicted persons. On the facts of the present case, a minimum term of life imprisonment

⁶ See *S v Maseola* 2010 (2) SACR 311 (SCA) at [12]-[13]

is provided for unless substantial and compelling circumstances justify the imposition of a lesser sentence.

[9] My approach to the assessment of sentence is further informed by the seminal decision in **S v Malgas**⁷ in which it was held to the effect that the prescribed sentence must ordinarily be imposed in the absence of substantial and compelling reasons, which may justify a deviation there from.

[10] It was held that in cases where it is found that there are weighty reasons to deviate from the sentence prescribed, the legislation has an augmented impact on the sentence to be imposed, in that the prescribed term of imprisonment serves as a benchmark and accordingly should result in the imposition of a heftier sentence, than what would otherwise have been the case.

[11] Nevertheless, as held in the authority cited, I considered that although the minimum sentencing legislation shifts the emphasis to the objective gravity of crimes and the need for a uniform response to the specified serious offences, the Legislature deliberately left it to the courts to judiciously exercise its discretion, with reference to the unique circumstances of any particular case, to decide whether a deviation from the prescribed sentence, would be warranted.⁸

⁷ 2001 (1) SACR 469 (SCA) para 25 A -J

⁸ Also see S v Dodo 2001 (3) SA 382 (CC)

- [12] The facts of this case hold aggravating features that cannot be discounted. Here we are dealing with an accused person, who was the deceased only child. Their domestic relationship as mother and daughter, one would expect to have been blessed with mutual respect; support and protection. However, the historical background of physical and financial abuse by the accused in relation to her mother, as testified to by the state witnesses proved the opposite.
- [13] The unchallenged evidence is that the deceased despite her disability; financially supported the accused and *inter alia* provided her with a home and the use of a vehicle. In addition the accused was remunerated for taking care of her disabled mother by the RAF.
- [14] As I see it, it was only required of the accused to be tolerant and to employ a measure of compassion and understanding for her mother's unfortunate condition whilst serving her as a caregiver. Since the evidence shows, that the deceased was protective of her daughter, despite her numerous complaints to the police. The testimony by Seargent Ditshego was that the deceased never requested for the accused to be arrested when he attended to her domestic violence complaints. The thought is inevitable that it appears that the deceased spoiled her daughter, which had fatal results.
- [15] Despite, the deceased's motherly concerns for the well-being of the accused, the accused testified that she experienced her duty as caregiver to her mother as a taxing burden. In fact, the general impression I gained from her testimony is that she held a coldhearted

attitude towards her mother and is uncaring regarding the murder committed. The vicious and callous attitude of the accused was demonstrated as testified by the state witness Madeleine Pieterse, when the accused did not stop at assaulting her mother when she heard the witness shouting that she will call the police.

- [16] The fact that the accused who is a mother herself, could have displayed such brutality in the presence of her own son of a tender age, evokes a sense of abhorrence and deep concern for the aftermath, the violent incident may have on the child psychologically.
- [17] Bearing in mind that the accused is a healthy adult who should be able to maintain herself and her offspring, it is difficult to comprehend why she did not walk away from the burden of having to take care of her hemiplegic mother, when it became intolerable as she suggested. I find that on the facts of this case, the accused criminal conduct was cowardous and selfish.
- [18] It is further noteworthy, that the accused did not at any stage demonstrate or verbalise remorse for the heinous crime she committed. Her cynical smiles throughout the proceedings are beyond belief. I find that the logical consequence is that her lack of remorse may impede her prospects of rehabilitation. The criminal conduct was found to be premeditated, which conduct is normally sentenced more robustly, than that committed on the spur of the moment.

D. PERSONAL CIRCUMSTANCES AND CHARACTERISTICS OF THE ACCUSED

- [19] I have been informed of the accused personal circumstances and prefer to feature the following. She is 33 years of age, single and the mother of a boy child aged between six and seven years at present. The evidence is that the child is now in the care and custody of his father.
- [20] She was employed as a pattern designer although no significant income from her employment was mentioned. It was submitted that her main source of income was from the payments made by the RAF to her, as the deceased registered caregiver. This is the accused first clash with the law and she was held in custody awaiting the finalisation of the trial, having been found in breach of her bail conditions.

E. SUBSTANTIAL AND COMPELLING CIRCUMSTANCES

- [21] I now turn to consider whether there are substantial and compelling reasons in the facts of the case, which may justify the imposition of a lesser sentence than the prescribed term of life imprisonment. It has been authoritatively acknowledged that the concept “substantial and compelling circumstance” in the context of the provisions of **CLAA**, denotes an amalgamation of factors that defies precise definition.
- [22] In general, the existence of such weighty circumstance will be present when the case is one in which the trial court, in the exercise of its sentencing discretion, is convinced that

the prescribed sentence, would be unjust or disproportionate to the crime, the offender and the legitimate needs of society. Should that be the case a court is entitled to typify the individual or combined weighty factors, as substantial and compelling and accordingly deviate from the sentence prescribe by the legislature.⁹

- [23] Having applied my mind to the unique merits of this case, and in adherence to the well know general sentencing principles, I conclude that there are no substantial circumstances compelling enough that may persuade me to deviate from the ordained term of imprisonment here applicable. The aggravating factors by far outweigh the personal circumstances of the accused and which factors cries out for the ultimate sentence to be imposed. I find that no injustice will result if the accused is sentenced to life imprisonment. The following order is made :



Matthys R

Acting Judge of the High Court

Gauteng Local Division (Johannesburg)

Appearances

1. Counsel for the State: Adv Khumalo
2. Counsel for the accused : Attorney Mr J Penton (Judicare) as instructed by LASA

⁹ See S v Malgas Supra; See Tafeni v S [2016] JOL 34336 (WCC).