

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED

13/03/2023
DATE

SIGNATURE

CASE NUMBER: SS14/2022

In the matter between:

THE STATE

and

SMITH ANNERIZE LEONICE

ACCUSED

SENTENCE

DOSIO J:

SENTENCE

[1] The accused pleaded guilty to two counts. Count one is a count of murder read with the provisions of s51(1) of the Criminal Law Amendment Act 105 of 1997 ('Act 105 of 1997') and count two is a charge of defeating or obstructing the administration of justice.

[2] For purposes of sentence, this Court has taken into consideration the personal circumstances of the accused, the seriousness of the offences for which she had been found guilty and the interests of the community.

THE PERSONAL CIRCUMSTANCES OF THE ACCUSED

[3] The personal circumstances of the accused were derived from two reports, namely a two pre-sentence reports, one compiled by Xoliswa Budaza and Professor Labuchagne.

[4] The probation officer, namely, Xoliswa Budaza compiled her pre-sentence report by obtaining information from the accused, the accused's mother, the deceased's ex-wife, the deceased's son and a social worker at the Johannesburg correctional services.

[5] The accused is the first child of two siblings. She was raised by her parents in Eldorado Park. The accused's father had a substance abuse disorder and would use alcohol excessively. This resulted in domestic violence by the accused's father whilst under the influence of alcohol.

[6] The accused's parents separated in May 2022. The accused herself has never been married. She lost her eight-month old child in February 2020 which negatively affected her and she was never the same after that. The accused met the deceased in 2020 at the school where she was working. They cohabitated after months of dating. Three months into the relationship the deceased started abusing her, he would assault her with his hands and using objects. He would further accuse her of being unfaithful and would compare her to his ex-wife, thereby belittling her and continuously criticizing the manner in which she prepared his meals.

[7] She never opened a criminal case against the deceased as he was a teacher and she wanted to protect him from losing his job. She would often cover-up and lie about the injuries she sustained and when confronted with the injuries or bruises she had sustained, she would tell her mother that she had fallen. The accused's mother was not aware of the abuse.

[8] The accused is currently residing with her 50-year-old mother, sister and niece. She has also recently given birth to a baby.

[9] As regards her educational qualifications, the accused completed grade 1 to 4 at Eldorado Park primary school. She progressed to high school but did not pass grade 12. The accused is currently unemployed and relies on a R350 grant. The accused further relies on the

income derived from her mother's employment. The accused's mother is in a position to assume the parental role of the born baby should the accused receive a custodial sentence. The boyfriend of the accused also plays a supportive role in the accused's life.

[10] From the interactions with Ms Primrose Mqikela, who is a social worker at the Johannesburg correctional services, it appears as if the accused will be allowed to stay with her child for the first two years should a custodial sentence be imposed. The accused has been diagnosed with major depression for which she has been given medication.

[11] It appears that the accused can distinguish between right and wrong and she can make her own decisions and it appears there are no concerns regarding her mental health.

[12] Whilst the accused was living with the deceased, the deceased would sometimes force her to drink alcohol and it appears that after the accused's child died, the accused turned to alcohol for comfort. It appears that once the news of the current offense was made known, the accused started consuming alcohol excessively. The accused also started spending most of the time partying with friends. It appears that on the day of the offense the accused was in her sober senses.

[13] The accused has stopped consuming alcohol in July 2021. According to the accused's mother, the accused was not a violent person and she was shocked to hear what the accused had done. The story narrated to the accused's mother when the accused returned home after killing the deceased, is that she told her mother that the deceased had contracted covid and that she would return back to his house to check on him.

[14] The accused is a 26 year old female, first-time offender and has no pending cases against her. The accused stated that she stayed in the house for a week after killing the deceased, in a different room, as she was still recovering from the injuries sustained as a result of being assaulted by the deceased two days prior to her poisoning him.

[15] The story that she narrated when she left the house of the deceased was that the deceased was attending a funeral in Cape Town. Forty six (46 days) after she had committed this offense she was requested by the deceased's employer and the police to open the house, whereupon the deceased's decomposed body was found.

[16] The probation officer consulted with the deceased's ex-wife who informed her that the

deceased was an abuser and a terrorist. She informed the probation officer that during the relationship the deceased physically, verbally and emotionally abused her as well. The abuse was extended to her son and they would both be assaulted by the deceased. This abuse would happen when the deceased excessively consumed alcohol. The deceased's ex-wife stated that the physical abuse would be so severe that she would need medical attention. The physical abuse stopped when she opened up a criminal case against him, however the verbal and emotional abuse continued in that the accused would belittle her continuously. They separated and got divorced in 2020. Even after the divorce the deceased continued to abuse her. She stated that the impact of the knowledge of the deceased's death did not affect her much as she had blocked her emotional attachment to the deceased after their divorce. The ex-wife confessed that during the marriage she had thought about punishing the deceased by putting laxatives in his alcohol, but she never did.

[17] A further pre-sentence report was compiled by professor Labuschagne, who is a clinical psychologist, which has been marked at exhibit 'F'. Professor Labuschagne's report deals with the issues of violence, re-offending and rehabilitation prospects. This report was compiled by conducting two interviews with the accused as well as the accused's mother and the accused's pastor. Additional information used in the compilation of this report was a structured professional guideline referred to as HCR-20-v3 to assess the accused's risk of violence as well as training and experience of the professor in the area of clinical psychology, criminology, risk assessment and academic literature. The report first provided a discussion about violence risk assessment and then applied the HCR-20-v3 to the accused.

[18] Professor Labuschagne stated that in South Africa, thirty-three percent of the women convicted of murdering their partners stated that abuse by their partners was a precipitating factor to the killing. This finding is consistent with the results obtained by the learned author Botha ¹ in a 2006 study of South African women incarcerated for the murder of their partners, where most claimed to have killed the male partner in reaction to a threat on their lives or in self-defence. According to the learned author Botha (2006) most of the women who murdered their intimate partners measured low on self-esteem and high on anxiety, they displayed a marked sense of loss of control both socially and emotionally. According to the learned authors Pretorius & Botha, female offenders in South Africa tend to be in the age range of 36-45 years.² The learned authors Bourget & Gagné have found that murders are more likely

¹ Botha 2006, *Abused women who kill their partners: A psychological study*. Unpublished Doctoral thesis, University of Johannesburg, Johannesburg, South Africa.

to occur in cohabitating relationships than in marriage relationships.³

[19] Professor Labuschagne stated further that it is common with domestic violence that there are control mechanisms used by the domestic violence perpetrator, and this control is psychological (e.g. degrading the victim, isolating them from friends and family), sexual and violent in nature. This control often makes it difficult for the abused person to leave. In the matter *in casu* there were threats of harm towards her family should she have left the relationship. These would have played a role in her decision to poison the deceased, but cannot be seen as a complete excuse for her actions. There are no indications that the crime was to enrich herself, for example through a life-insurance claim, nor that the crime was particularly well thought out. Had the domestic violence not been present, it is unlikely that the murder would have occurred. According to Professor Labuschagne, had the accused not maintained the fiction that the deceased was still alive, it is very possible that the death might have been deemed a suicide, as rat poison is not a common method of committing murder and is more frequently associated with a suicidal death or accidental death.

[20] The accused came to testify. She stated that she met the deceased when she was 24 years old and the deceased was 40 years old at the time. The deceased was going through a divorce however they decided to move in together. They moved in together in September or November 2020. She was earning her own money working as a patroller and earned R2100 per month. The first sign of trouble in this relationship was when she attended a funeral and a lady came up to her and asked her if the deceased had abused her. The accused said “no” however, the deceased saw her speaking to this woman and he became furious. His behaviour changed thereafter and he was no longer loving or caring towards her. During the relationship they both drank alcohol, however, the deceased’s drinking habits changed and he started drinking every day up to the point where he would be drunk.

[21] When the deceased was drunk, he would be very disrespectful and would curse everyone and become violent. He would beat her with his hands and with any object that he found in the house. She never hit him back and she never reported the physical abuse as he told her that he knew lawyers and he knew various policemen. She also never sought medical help. As a result of the physical abuse she would sustain injuries to her legs and arms, to such an extent that she could not use her arms. She also had an injury on her leg which was

² Pretorius, H.G. & Botha, S. (2008), *The cycle of violence and abuse in women who kill an intimate male partner: A biographical profile*. South African Journal of Psychology, 39(2), 242-252.

³ Bourget, D. & Gagné, P. (2012) *Women who kill their mates. Behavioral Sciences and the Law*, 30, 598-614. DOI: 10.1002/bsl.2033.

sustained in a car accident and whenever he hit her on her legs, her legs would easily sustain injuries. She also occasionally had to wear makeup to hide a blue eye.

[22] According to the deceased, he became extremely jealous and whenever she returned home he would sniff her underpants to ensure that she was not sleeping around with other guys. As regards the death of her baby daughter, the accused stated she is still not over this, as her baby died in her sleep when she was eight months old. She stated that she has not received any proper psychological assistance to deal with this.

[23] As regards the incident of murder, she stated when the deceased came home that day he was very drunk and demanded that she cook for him. She was not prepared to cook for him as she was still in a lot of pain as a result of the injuries he had inflicted on her two days prior to this. He started assaulting her and pushing her to the floor. He also started kicking her in the ribs. The deceased rushed into the room and put blades between his fingers and stated he was going to cut off her neck. That same day, the deceased had come home with rat poison as there was a problem with rats in the house. When he demanded that she cook for him, she saw the rat poison and whilst the deceased was in the other room watching TV, she placed it in his food. She stated that something came over her and an idea entered into her mind that she needed to break free. There was no planning, it was just an idea that spontaneously materialized. She knew that if the deceased ate the rat poison he would die. In the early morning hours the deceased jumped out of bed and went to the toilet. He was sweating and requested that she bring him water. She gave him sugar water and she suggested that he use some vinegar water to remove the sweat. She could see he was not himself.

[24] She thought of getting medical assistance, but the deceased told her it was too late as he was already dying. The deceased removed himself from the bed and lay on the floor as it was little bit cooler. There was spit and mucus coming out of his mouth and he was making weird sounds. He then became unconscious and when there was no response from him she then put the deceased's body on a mattress and pulled a blanket over him. The time was now 03h00.

[25] The next morning, she did not contact anyone, however she started using the deceased's cell phone. She stayed in the house for a week and thereafter went to live with her mother. She took the cell phone with her and never told her mother what happened. She replied to all the messages received on the deceased's cell phone and she told everyone that the deceased had covid and that he was isolating himself. Although she felt free when the

deceased died, she started feeling sorry for him when people started looking for him.

[26] She stated that the domestic violence that she suffered as a child made her easily emotional and she no longer wanted to be mistreated or sworn at. She requested that this court deviate from the minimum prescribed sentence of life imprisonment and that she is willing to be imprisoned and that her new born child remain with her for the first two years of her incarceration.

[27] The accused made a statement in court indicating that she was terribly sorry for what she had done however, she could no longer take the abuse and could no longer walk around in public with the injuries sustained by the deceased. She requested that the family of the deceased forgive her for all the pain and suffering she has caused them.

[28] During the cross-examination of the accused she stated that she has no documents to prove she suffers from depression. She was also asked why she herself did not get medical assistance for the deceased when she saw he was dying, to which she replied that she thought she should ask the deceased first. It was put to her that she did not call for medical assistant as she wanted him to die. To this the accused had no comment. She stated that she was misleading the family and friends of the deceased by asking for money and telling everyone that the deceased had Covid.

THE SERIOUSNESS OF THE OFFENCE

[29] This offence was planned in that the accused put rat poison into the food she cooked for the deceased. The deceased died in the early morning as a result of carbamate poisoning. The accused merely closed the door to his room for a week, concealing the crime and thereafter left the house and went to live with her mother, leaving the deceased inside the house. During the 46 days after the deceased died the accused told no one what had happened. It is only after the deceased's employer went out to the deceased's house that the body of the deceased was found in their bedroom. It is clear the accused wanted to hide the fact that she had killed the deceased from the employer of the deceased, as well as the community and the police.

[30] The deceased was killed in the confines of his house where he lived. The deceased and the accused were in a relationship which although acrimonious, did not justify the way in which the accused killed him. The accused had a choice to leave the deceased and go and live with her mother at an earlier stage, before resorting to this crime. In addition, she could have

resorted to the protection of the police as the deceased's ex-wife had done.

[31] Even though Professor Labuschagne has found no suggestive signs of anti-social behaviour or psychopathic tendencies there are certain aspects which have troubled this Court immensely. It appears that she stayed in a room next to the deceased's body for a week after she had killed him. The smell of the decomposing body must have been quite pronounced at this stage. The manipulative behaviour of continually smsing the family and friends of the accused for weeks after she had killed him, leading them to believe that he was still alive and asking for money from the deceased's son is seriously worrying to this Court and suggests that this accused had no empathy for what she had done. The additional evidence that was presented by Mr Francois Jardine that the dogs had been left to die and were not being fed by the accused suggests that this accused lacks empathy.

[32] This Court in the absence of conclusive evidence depicting a reoccurring cycle of incidents of lack of empathy cannot describe this accused as being a psychopath, however, her actions of not telling anyone for 46 days and concealing this murder for that long is also not normal behaviour in domestic violence cases. As stated by professor Labuschagne, this is the first time he has come across this as often woman who are entangled in continual domestic violence abuse and who kill their male partners, usually state quite quickly that it was possibly a housebreaking or a robbery that had gone wrong, yet in this case, this accused did nothing.

[33] Even though Professor Labuschagne states that she said nothing as she was scared to be found out, the accused's behaviour is extremely worrying as shortly after the murder she attended parties with friends and showed very little empathy for what she had done. As stated by Mr Jardine, the community were enraged when the death of the deceased was discovered and they closed down the main road and arranged a march. So, by implication, the accused had no choice but to own up.

[34] Death leaves much emotional discomfort for those family members left behind. This is evident from the deceased's son who is still battling with emotions caused by the passing of his father. The deceased's son was close to the deceased in that the deceased was financially dependent on him. He was hurt by the passing of his father and the fact that the accused maintained contact through the deceased's phone and would ask him for money on behalf of the deceased. The accused accordingly mislead him into believing that the deceased was still well and alive, whilst he was already dead. The accused's action hurt his family to the point that the deceased's two sisters passed on as they could not accept the deceased's passing. The

deceased's son is a Christian and it is against his belief to cremate, however, they had to deny his father a decent burial and had to cremate him, due to the serious state of decomposition of the body. They held a funeral but could not view the body, which is mandatory in his culture. He stated that due to the fact that this deceased was recently divorced, his legal bills amounted to approximately R70 000 which he has inherited and accordingly has to pay his father's lawyers. The deceased's son believes that a custodial sentence is necessary as a person of the calibre of accused does not belong in society.

[35] It is clear the community and the province has lost someone who gave back a lot to the community. He had a high position as deputy chief marker of grade 12 mathematic exams and he had mentored numerous young men in the community, having started rugby teams where he coached these young men and often would pay out of his own pocket to ensure they had transport and food to eat at the rugby matches.

INTERESTS OF THE COMMUNITY

[36] In respect of the interests of the community, this court has taken note of the fact that the community observes the sentences that courts impose and the community expect that the criminal law be enforced and that offenders be punished. The community must receive some recognition in the sentences the courts impose, otherwise the community will take the law into their own hands. If a proper sentence is imposed, it may deter others from committing these crimes.

[37] From the probation officers report it appears this offense caused an uproar in the community as members wanted to stone the accused.

MITIGATING FACTORS

[38] The accused is the victim of abuse at the hands of the deceased. This is a pattern which the deceased's ex-wife also experienced. Although the relationship between the accused and the deceased was short it was filled with physical, verbal and emotional abuse. It appears that at the time of the commission of the offense both the accused, due to losing her child and the deceased, going through a divorce, were experiencing emotional turmoil. However, the cruel manner in which the accused poisoned the deceased could have been reversed had she immediately taken the deceased to the hospital when she saw that he was experiencing stomach cramps. In addition, she killed the deceased not on the day that she had not been assaulted.

[39] The evidence of Mr Jardine suggests that the deceased was not an easy man and was difficult. He himself states he did not have proper insight into the personality of the deceased with his intimate partners and wives.

[40] The probation officer suggests that the accused chose this specific manner to kill the deceased, rather than a violent action, as the latter action may have resulted in her having to defend herself. The probation officer believes that for the first time the accused felt the control and power lay with her and no longer with the deceased. It is important to note that this murder was not committed in self-defence. The disturbing aspect of this crime is what happened after the crime was committed, namely, she concealed the crime, attended parties and consumed liquor whilst keeping this serious secret all to herself and misleading the deceased's son that the deceased was still alive and needed money.

[41] In the further pre-sentence report compiled by professor Labuschagne he found the following:

- (a) Ms Smith has no previous convictions for violent acts. Similarly, collateral sources also reported no history of violent behaviour nor threats towards others.
- (b) There did not appear to be any history of problems with antisocial behaviour.
- (c) There are no indications of substance abuse. However, alcohol is used as a relief in times of stress, and it is recommended she undergoes courses in stress management.
- (d) Besides a period of mourning after the death of her infant child in February 2020, and her current diagnosis of major depression which can be related to her current life circumstances, there are no indications of major mental illness that would impact on her risk for violence.
- (e) There are no indications of an antisocial personality disorder or a psychopathic personality. There are no indications of other personality disorders that have caused interpersonal problems or affected her ability to function in various contexts.
- (f) The accused has a history of being exposed to parental conflict in the form of domestic violence, which would have affected how she views relationships and problem solving in relationships.
- (g) There are no indications of any history of violent attitudes.
- (h) There are no indications of problems with treatment or supervision. She has abided by her bail conditions even after conviction.
- (i) There are no indications of problems with insight or with a lack of awareness, understanding or appreciation of her functioning and killing of the deceased.

- (j) There are no indications of problems with violent ideation or intent.
- (k) The accused has a current diagnosis of major depression which is being treated with medication.
- (l) There are no indications of problems with treatment or supervision response or any reasons to suspect that the accused will experience future problems with treatment or supervision.
- (m) The accused has a supportive environment in terms of family and her current romantic relationship. These form a supportive social and personal network.
- (n) The accused has almost none of the risk factors usually associated with a concern for future violence.

[42] In respect to the murder on count one, s51 (1) of Act 105 of 1997 dictates that if an accused has been convicted of an offence referred to in part 1 of schedule 2, he or she shall be sentenced to life imprisonment. The probation officer has suggested that a custodial sentence should be imposed, but not the minimum prescribed sentence, due to the prevailing abuse prior to the commission of the offence.

[43] Section 51(3) of Act 105 of 1997 states that if any court referred to in subsection (1) or (2) is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in these subsections, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence.

[44] In the case of *S v Malgas*⁴, the Supreme Court of Appeal held that: 'if the sentencing court on consideration of the circumstances of the particular case is satisfied that they render the prescribed sentence unjust in that it would be disproportionate to the crime, the criminal and the needs of society, so that an injustice would be done by imposing that sentence, it is entitled to impose a lesser sentence.'⁵

[45] The court has notwithstanding the application of the prescribed minimum sentence in respect to count 1 considered other sentencing options. This court does not find that a fine, a suspended sentence or correctional supervision is appropriate in these circumstances.

⁴ *S v Malgas* 2001 (1) SACR 469 SCA.

⁵ *Ibid* paragraph I.

[46] This court cannot only consider the accused's personal circumstances, but must also consider the interests of the community as well as prevention and deterrence. To focus on the well-being of the accused to the detriment of the interests of the community would result in a distorted and warped sentence. The accused is a danger to the community.

[47] Diminished capacity has always been regarded by the courts as a factor which lessens the blameworthiness of the accused and which must be taken into consideration for the purposes of sentence. In the case of *Director of Public Prosecutions, Transvaal v Venter* ⁶ the Supreme Court of Appeal held that:

'...diminished criminal responsibility is recognised in our law, particularly its relevance to sentence. Properly understood, this state of mind can be stated to be the diminished capacity to appreciate the wrongfulness of one's actions and/or to act in accordance with an appreciation of that wrongfulness.'⁷

[48] In the case of *S v Van der Westhuizen* ⁸ the Supreme Court of Appeal held that an accused:

'who acted with diminished responsibility is guilty, but his...conduct is morally less reprehensible because the criminal act was performed when the accused did not fully appreciate the wrongfulness of the act, or was not fully able to act in accordance with an appreciation of such wrongfulness'.⁹

[49] In the case of *S v Mnisi* ¹⁰, the Supreme Court of Appeal held that there were several decided cases of the Supreme Court of Appeal where a lesser sentence was imposed on account of a finding that the accused had acted with diminished responsibility. Certain of these cases are *S v Campher* 1987 (1) SA 940 (A), *S v Smith* 1990 (1) SACR 130 (A), *S v Shapiro* 1994 (1) SACR 112 (A) and *S v Ingram* 1995 (1) SACR 1 (A).¹¹

[50] In the case of *S v Mtshali* ¹² the High Court held that the accused's 'diminished responsibility...[which resulted]...in a depressed and emotional state at the time of the killing of her two young children was considered a substantial and compelling circumstance for purposes of section 51 (3) (a) of the Criminal law Amendment Act 105 of 1997.'

[51] Accordingly, this court finds that the depressive disorder and the emotional instability of the accused, coupled with the physical abuse inflicted on her, amounts to

⁶ *Director of Public Prosecutions, Transvaal v Venter* 2009 (1) SACR 165 (SCA).

⁷ *Ibid* para 21.

⁸ *S v Van der Westhuizen* 2011 (2) SACR 26 (SCA).

⁹ *Ibid* para 31.

¹⁰ *S v Mnisi* 2009 (2) SACR 227 (SCA).

¹¹ *Ibid* para 4.

¹² *S v Mtshali* 2012 SACR 255 (KZN).

substantial and compelling circumstances not to impose the minimum prescribed sentence of life imprisonment.

[52] This court is aware of a number of Supreme Court of Appeal cases where an accused who was suffering from diminished capacity was sentenced to very lenient sentences. These cases are *S v Laubscher*¹³, *S v Smith supra*, *S v Kalogoropoulos*¹⁴ 1993 (1) SACR 12 (A), *S v Shapiro supra*, and *S v Ingram supra*. All these accused were sentenced prior to the minimum sentences legislation came into operation.

[53] Accordingly, this Court will consider a case where diminished responsibility was prevalent and where the accused was sentenced after the commencement of the minimum prescribed sentence. This is the case *Director of Public Prosecutions*¹⁵.

[54] In the matter of *Director of Public Prosecutions*¹⁶, the accused was suffering from temporary non-pathological diminished criminal responsibility and the Supreme Court of Appeal regarded the diminished responsibility arising from the emotional instability of the accused as amounting to substantial and compelling circumstances. The accused was sentenced to 18 years imprisonment on each count of murder.

[55] The defence has referred this court to the case of *Ferreira and Others v the State*¹⁷ where the Supreme Court of Appeal imposed a sentence of six years imprisonment on a female accused aged 39 years old who had her intimate partner aged 69 years old killed as a result of repeated mental and physical abuse inflicted on her by the deceased. The facts of the matter of *Ferreira* are distinguishable from the matter *in casu*, for the following reasons:

- (a) The accused did not kill the deceased herself, she employed and paid others to kill the deceased.
- (b) The deceased and accused had lived together for seven years as opposed to two years in the matter *in casu*.
- (c) The incidents relating to the physical abuse were witnessed by others and- she sought medical attention which is not prevalent in the matter *in casu*. Even when she was locked up in a room for a week without food a fellow labourer brought her food. In the matter *in casu* the injuries were never seen by anyone. The accused in the matter of *Ferreira* had

¹³ *S v Laubscher* 1988 (1) SA 163 (A).

¹⁴ *S v Kalogoropoulos* 1993 (1) SACR 12 (A).

¹⁵ *Director of Public Prosecutions* (note 6 above).

¹⁶ *Director of Public Prosecutions* (note 6 above).

¹⁷ *Ferreira and Others v the State* 2004 All SA 2373 (SCA) dated 1 April 2004.

her fingers broken and due to the severe throttling of the deceased she had to receive corrective throat surgery. None of the injuries in the matter *in casu* are as severe to have warranted the action of the accused. The deceased administered numerous punishments on the accused in the *Ferreira* matter. The deceased also isolated her from her children which is not prevalent in the matter *in casu*. The accused also sought the assistance of the police on three occasions which is absent in the matter *in casu*. She was also raped and threatened by the deceased that he would call other men to rape her.

- (d) The deceased was also murdered by strangling him which led to his immediate death by the men the accused had employed to kill him. This is different to the lingering manner in which the accused in the matter *in casu* watched the helpless deceased as he took his last breath.
- (e) The deceased was also not an active member of the community or as revered and looked up to by the young men he had mentored by the deceased as in the matter *in casu*.

[56] The defence has argued that it is worse to get people to kill one's partner as compared to killing one's partner oneself. This Court does not agree. The facts of the matter *in casu* are more severe as this accused watched over the deceased and did not call the ambulance to assist. If there was any moment of brief realization for what she had done in that lingering moment leading to the deceased's death, she would have shown empathy and remorse and would have been able to reverse her actions. Even though she expressed remorse in the court after she was found guilty, the facts of her behaviour after committing the offence and the extended period of concealing this death and manipulating the deceased's family for money and leading them to believe he was still alive is heinous and deserves a harsh punishment.

[57] In the light of the tragic nature of the accused's actions in the matter *in casu*, the proper sentence would have been life imprisonment. This court has tempered its sentence with mercy, bearing in mind the substantial and compelling circumstances present in this matter which are the plea of guilty and the remorse shown by the accused, her major depressive state at the time of committing the murder, the continued physical and verbal abuse at the hands of the deceased and the death of her 8-month year old child. Taking into account all the above factors, this court finds that a sentence of 16 years imprisonment is suitable in respect to count one. In respect to count two, a sentence of five years imprisonment will be imposed which in terms of s280(2), 51 of 1977 the sentence imposed on count two will run concurrently with the sentence imposed on count one.

[58] Due to the fact that the matter of Director of Public Prosecutions did not deal with domestic violence coupled with major depression, this court will impose a term of 15 years imprisonment in respect to count one.

[59] In the result, the accused is sentenced to the following:

Count 1

Sixteen (16) years imprisonment

Count 2

Five (5) years imprisonment

In terms of s280(2) of the Act 51 of 1977, the sentence imposed on count two will run concurrently with the sentence imposed on count one. In terms of s103(1)(g) of The Firearms Control Act 60 of 2000 the accused is declared unfit to possess a firearm.



D DOSIO
JUDGE OF THE HIGH COURT

Date Heard	13 March 2023
Judgment handed down	13 March 2023

Appearances:

On behalf of the State	Adv. E Makua
On behalf of the Accused 1 and 2	Mrs Simpson