

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

CASE NO: SS83/2021

DATE: 15-03-2023

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ / NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.

(3) REVISED.

DATE 28/03/2023

SIGNATURE

10 In the matter between

THE STATE

and

JACOBA JOHANNA HENNING

Accused

S E N T E N C E

STRYDOM, J: The accused in this matter has been convicted on a count of murder read with section 51(1) of the Criminal Law Amendment Act 105 of 1997 (CLAA). Also, on a count of defeating and/or obstructing the course of justice. The reference to section 51(1) of the CLAA means that as far as the murder count is concerned, the Legislature has prescribed a minimum sentence of life imprisonment. In terms of section 51(3)(a) of the CLAA the Court, if satisfied that substantial and compelling circumstances exists which

20

justify the imposition of a lesser sentence, then such sentence can be imposed*. I will get back to this aspect.

Sentencing is a serious matter and it involves the consideration of three aspects namely the interest of the community or society, the accused and the seriousness and nature of the offences. The structure of a sentence should be determined by a requirement for the balancing of the nature and circumstances of the offence, the characteristics and circumstances of the offender and the impact of the
10 crime on the community, its welfare and concern.

A Court should strive to accomplish and arrive at a judicious counterbalance between these elements in order to ensure that one element is not unduly accentuated at the expense of and to the exclusion of the others.

A sentence must be seen to be a deterrence for would be offenders and to secure the trust of society in the administration of justice by imposing a fair and just sentence for the offences committed by the accused in this matter.

As the prescribed minimum sentence for
20 premediated murder is life imprisonment, unless the Court can find the existence of substantial and compelling circumstances which justify the imposition of a lesser sentence, the Court will consider these factors together with other relevant factors, such as remorse shown and mercy, to ascertain whether there should be a lesser sentence

imposed as the minimum prescribed sentence.

The Court will start with the personal circumstances of the accused. She is currently 55 years old. She has no previous convictions. It should be mention at this stage already that it was submitted on behalf of the accused that this factor would mean that the accused can be rehabilitated. She has retired from her work at Telkom where she worked for many years. This is where she met the deceased. She got engaged with the deceased after she divorced her first
10 husband during 2016. Accused has been in custody waiting the finalisation of this matter for approximately four years and five months.

The accused lost her only daughter as a result of a house fire. According to the report of a social worker handed into court as EXHIBIT XX this led the accused to suffer from anxiety and depression. Later she abused alcohol, but at the time when these offences were committed she was rehabilitated as far as the abuse of alcohol was concerned.

20 In this same fire her son Juan was seriously injured and disfigured. He became a drug addict, he was living with the accused and deceased at some stage in their house, but as a result of him stealing from the deceased he was later banned from their home. This placed a strain on her relationship with the deceased as she was made to choose

between her son and deceased. She however elected to stay with the deceased but maintained a friendly relationship with Juan.

The evidence in this matter revealed that a week before the death of the deceased she went with Juan and his girlfriend to a restaurant to celebrate his birthday party.

According to the report of the social worker, the accused obtained her matric during 1984 and had a stable employment history from 1986 to 2019. There is also
10 nothing to indicate that accused did not have a normal upbringing as a child.

Now turning to the seriousness of the crimes. Murder is a very serious crime and even more so if it was planned and premeditated. This Court found the accused to be part of the planning of the murder of her fiancé. She and her son, Juan Henning, formed a common purpose to kill the deceased. He was the person whom she said she loved. He trusted her, but she misused this trust by giving him sleeping tablets which made him fell asleep shortly after he woke up
20 on the morning of 14 April 2018. She obtained those pills from Juan.

After the deceased fell asleep, she invited Juan, his friend William van Niekerk and Trisha Wolfaardt into the deceased's house for him to be killed. She was not prepared to look at the brutal killing and went to the shops for a short

while. On her return the deceased was already killed and blood was all over the place. Accused had her exculpatory version ready. She told the family of the deceased and the police the deceased went to play golf and never returned. She steadfastly stood by this version defeating the course of justice. She received the sympathy of friends and family of the deceased while she was responsible for the death of her fiancé.

In the accused's own plea explanation, she stated
10 that she was a beneficiary in the will of the deceased whilst the deceased was not a beneficiary in her will. She was nominated as a beneficiary in a living annuity which belonged to the deceased. She was going to get the amount of R2 799 733 upon the death of the deceased. After his death, she already obtained some of these funds but fortunately the majority of the funds were withheld from her by the administrator of the estate pending the outcome of this matter.

The Court can only describe the accused as a cold-
20 blooded murderess who was able to put up a face of innocence while she knew all along what happened. The killing of the deceased was brutal and cruel, but unfortunately for the accused, the execution and disguise of the murder was amateurishly done. The version of the accused that she, by coincidence, drank a Coca-Cola drink

which was “spiked” which put her in a comatose state for hours was so farfetched and inherently improbably that it highlighted the evil character of the accused. She thought that this lie would convince the Court of her innocence and that she was a victim who lost the love of her life.

In conclusion as far as the crimes are concerned, the crimes the accused have been convicted of are some of the most serious crimes a person can be convicted of and the appropriate sentence can only be a long term
10 imprisonment.

The interest of society requires from Courts to deal appropriately with convicted criminals. Each person in society should respect the lives of others. If this is not done, offenders must be made aware that except in exceptional cases Courts will impose severe sentences on them. It has been repeatedly emphasised by our Courts that the prescribed minimum sentences should not be deviated from lightly. See *S v Malgas* 2001 (1) SACR 469 (SCA) at 482 C to D. See also *S v Vilakazi* 2009 (1) SACR 552 SCA
20 at paragraph 58 which I quote,

“The personal circumstances of the appellant, so far as they are disclosed in the evidence, have been set out earlier. In cases of serious crime, the personal circumstances of the offender, by

themselves, will necessarily recede into the background.

10 Once it become clear that the crime is deserving of a substantial period of imprisonment, the questions whether the accused is married or single, whether he has two children or three, whether or not he is in employment, are in themselves largely immaterial to what that period should be, and those seem to me to be the kind of 'flimsy' grounds that *Malgas* said should be avoided. But they are nonetheless relevant in another respect. A material consideration is whether the accused can be expected to offend again. While that can never be confidently predicted his or her circumstances might assist in making at least some assessment. In this case the appellant had reached the age of 30 without
20 any serious brushes with the law. His stable employment and apparently stable family circumstances are not indicative of an inherently lawless character."

Accused in this matter is not a young person, she is 55 years old. She is a first offender and maintained a good working

record throughout her working life. She already spent four years and five months awaiting the finalisation of this matter. These are the factors which the Court must take into consideration in its decision whether compelling and substantial circumstances exist to deviate from the prescribed minimum sentence. See in this regard S v Vilakazi supra at paragraph 60 and I quote,

10 “While good reason might exist for denying bail to a person who is charged with a serious crime, it seems to me that if he or she is not promptly brought to trial it would be most unjust if the period of imprisonment while awaiting trial is not then brought to account in any custodial sentence that is imposed.”

Although accused's son, Juan Henning, was sentenced to life imprisonment for the same murder, the personal circumstances of accused are different. She only now, for the first time, have been found guilty of anything. Juan
20 Henning had previous convictions and has been previously convicted of defeating the ends of justice and of theft.

Having considered the personal circumstances of the accused, the seriousness of the crime, the interest of society, I am of the view that accused personal circumstances is as such that substantial and compelling

circumstances were established to deviate from the prescribed minimum sentence. See in this regard what was found in *S v Abrahams* 2002 (1) SACR 116 at paragraph 27 where it was found that despite such a finding it does not mean that long term imprisonment should not be imposed. I quote from paragraph 27 of this judgment,

10 As indicated earlier, the general manner in which the judge determined whether substantial and compelling circumstances existed was correct. He took into account all factors traditionally relevant to sentencing. These included accused's personal circumstances, the nature of the crime and the circumstances attending its commission. In my view, the judge correctly concluded that factors of substance compelled the conclusion that a sentence other than life imprisonment is appropriate.

20 The accused's age is not in itself a mitigating factor; that he reached his middle years without criminal conviction certainly is."

Having found the existence of substantial and mitigating circumstances, this Court must then decide what an

appropriate sentence would be. In *S v Abrahams supra* Cameron JA held as follows at paragraph 26 and I quote,

10 “Even when substantial and compelling
circumstances are found to exist, the fact
that the Legislature has set a high
prescribed sentence as ‘ordinarily
appropriate’ is a consideration that the
Court are ‘to respect, and not merely pay lip
service to’. When sentence is ultimately
imposed, due regard must therefore be paid
to what the Legislature has set as the
‘bench mark’. The Constitutional Court has
held that the approach enunciated in *Malgas*
steers an appropriate path-- *‘which the*
Legislature doubtless intended, respecting
the Legislature’s decision to ensure that
consistently higher sentence are imposed in
relation to the serious crimes covered by s
51 and at the same time promoting ‘the
20 *spirit, purport and objects of the bill of*
rights’.”

Again, the Court will consider the personal circumstances of
accused already mentioned, but there is another aggravating
factor and that is that the accused has shown no remorse
whatsoever. She steadfastly maintains that she is innocent.

In the pre-sentence report this becomes clear. In the report it was stated as follows and I quote,

“She is adamant that she is innocent and does not understand why she is charged with the aforementioned offences.”

And further,

10 “The accused was convicted of the
aforementioned counts and does not accept
any responsibility for the offences as she is
adamant that she is innocent.”

In my view, the only appropriate sentence would be a long-term imprisonment. This would give effect to the main purposes of punishment being to act as a deterrent to other would-be criminals. It would prevent the accused of getting herself involved in other criminal activities but at the same time it will offer her an opportunity to rehabilitate herself. It will also serve the other purpose of sentence being retribution.

20 As was stated in *S v Rabie* 1975 (4) SA 855(A) at
862 A to B,

“Punishment should fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy according to the circumstances.”

The conviction on the count of defeating and obstructing the

course of justice is also a serious crime. Through misleading the police as to what transpired, police resources were misdirected. Justice was delayed and accused walked free for too long.

Having considered all the relevant factors and accumulative effect of various sentences, the Court is of the view that the following sentenced would be appropriate.

On count 1, the murder count, the accused is sentenced to 20 years imprisonment.

10 On count 3, the count of defeating or obstructing the course of justice, the accused is sentenced to 5 years imprisonment.

Effectively, the accused is then sentenced to 25 years imprisonment.

A handwritten signature in black ink, appearing to read 'J. Strydom', is written over a horizontal dotted line.

STRYDOM, J

JUDGE OF THE HIGH COURT

DATE: 15/03/2023