

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

CASE NO: CC71/2020

|                           |                                                                                                                      |
|---------------------------|----------------------------------------------------------------------------------------------------------------------|
| (1)                       | REPORTABLE: YES/NO                                                                                                   |
| (2)                       | OF INTEREST TO OTHER JUDGES: YES/NO                                                                                  |
| (3)                       | REVISED: YES/NO                                                                                                      |
| <u>31-01-2024</u><br>DATE | <u>PD. PHAHLANE</u><br>SIGNATURE  |

In the matter between:

THE STATE

And

MERRIOD NDEBELE & 2 OTHERS

ACCUSED

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JUDGMENT ON SENTENCE

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PHAHLANE, J

- [1] Imposing sentence is one of the most difficult tasks which every presiding officer has to grapple with and has been described as a 'painfully difficult problem' which requires an evaluative and objective analysis, and a careful and dispassionate consideration of all the factors.
- [2] It is trite law that sentencing the accused should be directed at addressing the judicial purposes of punishment which are deterrence; prevention; retribution and rehabilitation<sup>1</sup>. In determining the appropriate sentence to be imposed on the accused persons, I must, in the exercise of my sentencing discretion, strike a balance and have due regard to the "triad" factors pertaining to punishment namely: "the nature and seriousness of the crimes committed by the accused; the personal circumstances of the accused and the interests of society"<sup>2</sup>. Added to these basic triad is the fourth element distinct from the three: 'the interests of the victim of the offence'.
- [3] The offences which the accused persons have been convicted for are very serious in nature. In respect of accused 1, she was convicted on all counts, that is, count 1 of **Murder** read with the provisions of sections 51(1) of the Criminal Law Amendment Act 105 of 1997 ("the Act"); count 2 for **unlawful Possession of Firearm** read with the provisions of section 51(2) of the Act; count 3 for **unlawful Possession ammunition**; count 4 for **Robbery** with aggravating circumstances read with the provisions of section 51(2) of the Act; and count 5 for **Defeating the Administration of Justice**.
- 3.1 In respect of accused 2, he was found guilty on counts 1 to 4. The provisions of section 51(1) and section 51(2) of the Act are applicable to counts 1, 2 and 4 respectively.
- 3.2 In respect of accused 3, he was found guilty of Murder read with the provisions of sections 51(1) of the Act.
- [4] The court in **S v Zinn** also recognised that the circumstances under which the crimes were committed as well as the victims of crimes are also relevant factors in respect of the last triad, where the interest and protection of society's needs should have a

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<sup>1</sup> S v Rabie 1975 (4) SA 855 (A).

<sup>2</sup> S v Zinn 1969 (2) SA 537 (A).

deterrent effect on the would-be criminals. This means that punishment should fit the crime, as well as the criminal, and it must be fair to society<sup>3</sup>. It is therefore imperative that these factors should not be over or under emphasized. Nonetheless, the court has a duty, especially where the sentences are prescribed by legislation, to impose such sentences.

[5] It is common cause that the deceased, Mr Farai Ndebele, died as a result of a gunshot wound to the head with a firearm procured by accused 1. This is confirmed by the post-mortem report compiled by Dr Charmain Van Wyk in which she recorded the cause of death as: “**single perforating gunshot wound to the head**”. The post-mortem findings revealed the following:

1. *“The deceased sustained a gunshot wound to his head.*
2. *The injuries sustained are consistent with those of a perforating gunshot wound to the head. It resulted in the following injuries:*
  - (a) *Severe craniocerebral injuries.*
    - I. *A diffuse subarachnoid hemorrhage.*
    - II. *Destruction and contusion of brain tissue in the bullet pathway.*
    - III. *Multiple linear fractures of the skull.*
  - (b) *As regards the gunshot wound, the following is noted:*
    - I. *There is a gunshot entrance wound over the right side of the head located 15cm right of the midline, 9cm below the top of his head and 1.5cm above the pinna of the right ear.*
    - II. *The pathway is through the skin. It perforates the right parietal bone, causing beveling of the inner table, and the projectile travels and perforates both hemispheres of the brain. It causes beveling of the outer table of the left parietal bone where it exits the head.*
    - III. *The exit wound is seen over the left side of his head, measuring 1.5 centimeters in length and 1cm in width. It is situated 10cm below the top of his head and 12cm left of the midline.*
    - IV. *The trajectory is right to left and slightly downwards”.*

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<sup>3</sup> S v Moswathupa 2012 (1) SACR 25A (SCA) at 261D.

- [6] In addition to what is noted on the post-mortem report, the photographs of the body of the deceased tell a story of their own. The photographs show the body of the deceased lying in a pool of blood, with a wound clearly visible on the left side of his head as depicted on photo 27, and a bloodied pillow with a hole in the middle as can be seen in photo 24. He was killed ruthlessly at close range by accused 2 who had no regard for human life. The photographs clearly show the horrendous and cold-blooded manner in which the deceased was murdered.
- [7] As it appears from the circumstances of this case, there was no reason or any justification why the deceased was killed in such a manner. Ms Mogale appearing for accused 1 submitted that the death of the deceased was the end result of accused 1's "*jealous boyfriend who wanted to own her*". She submitted further that accused 1 was blinded by love that obstructed her from thinking straight. The court was informed that the deceased was a good man and did not display any form of jealousy or aggression when accused 1 was living with accused 3. Further that accused 1 concedes that the deceased died in a brutal manner.
- [8] Murder and robbery are the most serious crimes which are prevalent in our country and the courts are inundated with these cases on a daily basis. While robbery has been described by the courts as an aggravated form of theft, namely, theft committed with violence, it has also been described as the most feared and despicable crime.
- [9] The Constitution<sup>4</sup> of our country provides in section 11 that ***everyone has the right to life*** - and is guaranteed as an unqualified right because human life cannot be intentionally terminated. The right to life is *the most basic, the most fundamental*, and the most supreme right which every human being is entitled to have and can never be compromised because every human being have the right not to have the quality of their life diminished.

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<sup>4</sup> Act 108 of 1996.

- [10] It is also important to remember that our constitution, including the Bill of Rights also protect all the citizens of this country, including the victims of crimes, and it is the duty of the court to protect every citizen and the society in general from the scourge of these violent actions, and to send a clear message that this behavior is unacceptable. It follows that the wilful taking of an innocent life such as the life of Mr Farai Ndebele in this case calls for a severe penalty.
- [11] In *S v Msimanga and Another*<sup>5</sup> the Supreme Court of Appeal held that violence in any form is no longer tolerated, and our courts, by imposing heavier sentences, must send out a message both to prospective criminals that their conduct is not to be endured, and to the public, that courts are seriously concerned with the restoration and maintenance of safe living conditions and that the administration of justice must be protected.
- [12] Having regard to the purposes of punishment, the Supreme Court of Appeal in *S v Mhlakaza & another*<sup>6</sup> pointed out that, “given the high levels of violent and serious crimes in the country, when sentencing such crimes, emphasis should be on retribution and deterrence”. In affirming that retribution should carry more weight because of the seriousness of the offences which an accused person has been convicted of – when the court considers the aspects relating to the purpose of punishment, the Supreme Court of Appeal in the case of *S v Swart*<sup>7</sup> stated that: “In our law, retribution and deterrence are proper purposes of punishment and they must be accorded due weight in any sentence that is imposed. Each of the elements of punishment is not required to be accorded equal weight, but instead proper weight must be accorded to each, according to the circumstances. Serious crimes will usually require that retribution and deterrence should come to the fore and that the rehabilitation of the offender will consequently play a relatively smaller role”.

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<sup>5</sup> 2005 (1) SACR 377 (A).

<sup>6</sup> 1997 (1) SACR 515 (SCA).

<sup>7</sup> 2004 (2) SACR 370 (SCA).

- [13] It is on record that all the accused have been warned of the provisions of section 51(1) and section 51(2) at the commencement of the proceedings. In respect of the count of murder, the prescribed minimum sentence is life imprisonment. In *S v Madikane*<sup>8</sup> the court aptly stated that “the value of human dignity lies at the heart of the requirement that a sentence must be proportionate to the offence”. With regards to the count of robbery, it carries a mandatory sentence of fifteen (15) years imprisonment for a first offender, twenty (20) years for a second offender and twenty-five (25) years imprisonment for a repeated offender.
- [14] With regards to count 2 of unlawful possession of a firearm, Schedule 4 of Act 60 of 2000 read with the provisions of Section 121 of the Act, prescribes a sentence of 15 years imprisonment in the event of contravention of Sec 3 of the Act. This court found that accused 2 was in possession of a 9mm Parabellum Calibre Norinco Model 213 **semi-automatic** Pistol, which was procured by accused 1 from Ndebuo, and was used to kill the deceased in this matter. Both accused 1 and 2 have been found guilty for such unlawful possession as they have no license, permit, or authorization to possess same. Accordingly, a term of 15 imprisonment as prescribed by legislation **must** be imposed as an appropriate sentence. Nonetheless, both their counsels have correctly submitted that a term of 15 years imprisonment is applicable.
- [15] To avoid these sentences as prescribed by legislation, the accused persons must satisfy the court that substantial and compelling circumstances exist, which justify the imposition of a lesser sentence than the prescribed minimum sentences. For a court to come to that conclusion, it must evaluate and consider the totality of the evidence before it, including weighing the mitigating factors with the aggravating factors, and to decide whether substantial and compelling circumstances exist<sup>9</sup>.
- [16] Having said that, the court is enjoined with the powers in terms of section 51(3)(a) of the Act, to deviate from imposing the prescribed minimum sentences, thus keeping in line with the principle that the imposition of a sentence is pre-eminently in the domain

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<sup>8</sup> 2011 (2) SACR 11 (ECG).

<sup>9</sup> S v Sikhipha 2006 (2) SACR 439 (SCA) at para 16.

of a sentencing court. Where the court is of the view that a deviation from the imposition of a prescribed sentence is warranted, it shall enter such circumstances on the record of the proceedings and thereupon impose a lesser sentence, however, the specified sentences are not to be departed from lightly, and for flimsy reasons<sup>10</sup>.

[17] This highlights the importance of the general principles governing the imposition of a sentence in terms of the Act as articulated by the Supreme Court of Appeal in ***S v Malgas*** that a court that is required to impose a sentence in terms of the Minimum Sentences Act is not free to inscribe whatever sentence it deems appropriate, but the sentence that is prescribed for the specified crime in the legislation". This principle was reaffirmed by the Supreme Court of Appeal in ***S v Matyityi***<sup>11</sup>.

[18] All the accused elected not to testify in mitigation of sentence or call any witnesses, and their counsels addressed the court from the Bar. On behalf of accused 1, the following personal circumstance were placed before court:

1. She is 47 years of age and was married to the deceased for 25 years.
2. She has two children aged 31 years and 25 years respectively, and she also has six (6) grandchildren.
3. Her father is deceased, and her mother is currently taking care of her children and grandchildren.
4. As regards her educational background, she went as far as Grade 12, and has been employed as a domestic worker. She was also doing extra work by sewing and she earned an income of R 10 000 per month.
5. She is a first offender and has been in custody for four (4) years and eight (8) months awaiting finalization of her case.

[19] It was submitted that her personal circumstances taken cumulatively constitutes substantial and compelling circumstances which should persuade the court to deviate from imposing the prescribed minimum sentence in respect of counts 1, 2, and 4.

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<sup>10</sup> *S v Malgas* 2001 (1) SACR 469 (SCA)

<sup>11</sup> [2010] ZASCA 127; 2011 (1) SACR 40 (SCA); [2010] 2 All SA 424 (SCA).

[20] Furthermore, it was submitted that “although she did not benefit anything from the death of the deceased, she regrets and states that she should have divorced the deceased and set him free, instead of participating and planning to kill him because their marital relationship was a unique one where the deceased would allowed her to be with other men for financial gain”. Referring to the case of ***S v Rabie***, counsel argued that the court should treat accused 1 with an element of mercy and that she should not be crushed with a severe and heavy sentence, taking into account, her degree of participation in the offences which she has been convicted for.

[21] On the same token, Ms Mogale submitted that accused 1 did not take the court into her confidence by pleading guilty or accepting the responsibility for her actions, but that she agrees with her conviction and exhibits remorse for her unlawful action.

[22] The State on the other hand argued that, it is clear from the submissions made on behalf of accused 1 that ‘the motive for killing the deceased was jealousy of a boyfriend who wanted to have accused 1 for himself’, considering that accused 1 had indicated - as confirmed by her counsel - that accused 1’s husband did not have a problem with her for having a relationship with accused 3, as long as she brought money home. In this regard, it was submitted that there was no justification for accused 1 to have planned the murder of the deceased.

[23] On behalf of accused 2, the following personal circumstance were placed before court:

1. He is 40 years of age born on 05 March 1983.
2. He is not married but has two children aged three (3) and sixteen (16) years of age. The court was informed that the mother of the three-year-old child works at a salon in Kollonade.
3. He was raised by a single mother who is employed as a general worker at a local school cooking for students.
4. He started working as a patroller in Ga-Rankuwa in 2018 and was earning an amount of R3 500 to R4000 per month.
5. He passed Grade 12 in 2003 at Mabopane High school and could not proceed further with his studies due to financial constraints.

6. He is not a first offender and has managed to improve his studies from 2010-2012 while in prison, wherein he obtained the N1-N4 certificates. He also enrolled for a law degree with UNISA whilst in prison.

[24] With specific reference to his previous convictions, his SAP69 record reflects the following:

- On 26 September 2002, he was convicted of two counts of robbery committed on 04 April 2002 and was sentenced to 12 months imprisonment on each count.
- On 31 May 2005, he was convicted of rape and robbery which were committed on 10 April 2004 and was sentenced to 18 years imprisonment on the count of rape, and 2 years imprisonment for robbery, and both sentences were ordered to run concurrently.
- He served 12 years of his sentence and on 01 September 2017 he was released on parole which would have ended on 16 March 2026. The important aspect as it relates to this specific previous conviction is that one (1) year and 10 months after being released on parole, he committed the current offences on 18 June 2019 and kills the deceased.

[25] It is on record that accused 2 has pleaded guilty to count 4 of robbery and his counsel submitted that that is a sign of taking responsibility for his actions, and as such, the court should deviate from imposing the prescribed sentence of life imprisonment on the count of murder because his personal circumstances taken cumulatively constitutes substantial and compelling circumstances. Along with this submission is the submission that accused 2 grew up in difficult circumstances without a father figure and had found himself on the wrong side of the law many times. It was further submitted that the sentence to be imposed on accused 2 should be blended with an element of mercy because the accused wants to improve himself in life.

[26] In aggravation of sentence against accused 2, Mr Sibanda submitted that the accused is not a first offender and what makes things worse for him is that he committed these offences while being on parole, and that the degree of violence used in the killing of the

deceased cannot be equally balanced with the interests of the community as supported by different authorities.

[27] On behalf of accused 3, the following personal circumstance were placed before court:

1. He is 62 years of age born on 15 June 1961, and was 55 years old at the time of the commission of the offence.
2. He has six siblings and is the second born in the family. His mother is still alive, and his father passed away in 1990.
3. He did not attend school, and thus have no formal educational background.
4. He was employed at a company called PKP Electric as an electrician, and did odd jobs from the community, and was earning an amount of R 6000 per month.
5. He has four children and was responsible for the maintenance of his twenty-year-old son, who is who is attending a tertiary institution, and the court was also informed that accused 3 was also responsible for paying the school fees for this child.
6. Accused 3 is currently not married but was previously customarily married, and his wife passed away in 2007.
7. He is a first offender and has been in custody for one year and one month.

[28] Mrs Ndalane submitted that there is no direct evidence linking accused 3 to the offence of murder, and that his involvement and degree of participation in the offence is minimal, and the court should as such be persuaded to deviate from imposing the prescribed sentence. It was further submitted that his cumulative personal circumstances, considering his age, should work in his favour and be considered as substantial and compelling circumstances. Furthermore, it was submitted that the accused should not be sacrificed at the alter of deterrence and that the sentence to be imposed should be such that the accused would be reintegrated back into the community.

[29] The State submitted that accused 3 played a major role in the offence because he was the master mind who planned the offences. The following were submitted as important

aspects to be considered in support of the state's submission for the court not to impose a lesser sentence than the prescribed sentence on count 1:

1. He introduced accused 1 and 2 to each other.
2. He transported accused 2 and Koketso to extension 2 and went to fetch them again after the deceased was killed.
3. He repeatedly called accused 2 to pay him after the deceased was killed.
4. He tried to cover up the firearm when he told Koketso to get rid of it.

[30] As far as accused 1 is concerned, the submission that the accused has exhibited remorse for her unlawful action is without merit. The accused has not even for once displayed or expressed any remorse for the killing of her husband. It is surprising to say the least, that the court is informed that there is a dramatic change in the attitude of the accused as she *"lays her chest bear to the court"* because the accused has never apologized to the deceased's family, or her children for killing the deceased. All that has put forward in mitigation on her behalf is a message that displays self-pity.

[31] It was submitted on behalf of accused 1 that the accused would have loved to call her children in mitigation but does not want them to be more traumatized and see her in the state she is currently in. Further that the State failed to submit a victim impact report in aggravation of sentence by calling the family member of the deceased.

[32] It is inconceivable that such a submission could be made and for the defence to submit that no victim impact report has been placed before court in aggravation. The State correctly submitted that the only person or family member who was supposed to express sympathy and speak on behalf of the deceased's family and the deceased's children, so as to enable them to have closure - is the accused, but she chose not to do so.

[33] I take note of the evidence of the investigating officer, sergeant Mudau, who testified that, had it not been for the child of the accused who gave him certain information, no one would have known who killed the deceased, especially because accused 1 gave the police information which put them off the track of the real killers of her husband by

telling them that unknown men wearing ZCC badges entered her house and shot her husband while she locked herself in the bathroom.

[34] With regards to the question whether it can be said that accused 1 is remorseful for her actions, our courts have over the years emphasized that remorse remains an important factor and lack thereof, will be considered in the determination of an appropriate sentence<sup>12</sup>. It is trite that if the accused shows genuine remorse, punishment will be accommodating, especially when the accused has taken steps to translate his/her remorse into action<sup>13</sup>. It is an indication that the accused has realised that a wrong was done and has to that extent, been rehabilitated. It is therefore important when the court must decide - as to the degree of mercy to be applied when sentencing.

[35] Genuine remorse was correctly described by Ponnann JA in **S v Matyityi**<sup>14</sup> *supra* when he stated that: *"...In order for the remorse to be a valid consideration, the penitence must be sincere, and the accused must take the court fully into his or her confidence. Until and unless that happens, the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of, inter alia: what motivated the accused to commit the deed; what has since provoked his or her change of heart; whether he or she does indeed have a true appreciation of the consequences of those actions."* (Underlining added for emphasis)

[36] I am alive to the submission made that "accused 1 accepts the consequences of her actions only because the court has found her guilty". This clearly shows that she does not truly appreciate the impact and effect of her actions, and neither does she feel any sense of responsibility towards her family and her children for the tragedy she has caused. She does not apologize for the innocent life that has been cut short, and neither does she express at the very least, a wish to one day apologize to her own children.

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<sup>12</sup> S v Mabuza 2009 (2) SACR 435 (SCA)

<sup>13</sup> S v Brand 1998 (1) SACR 296 (C) at 299i-j.

<sup>14</sup> At para 13.

- [37] If one considers the context in which these crimes were committed and the lack of apology and appreciation for her actions, I am of the view that accused 1 have not shown any remorse. Consequently, I am inclined to agree with the state that accused 1 is not remorseful. I therefore align myself with the authorities which find that the expression of remorse, is an indication that an accused person has realised that the wrong has been done, and that it will only be validly taken into consideration if he takes the court into his confidence.
- [38] As far as accused 2 is concerned, his counsel submitted that the fact that accused 2 has pleaded guilty to count 4, shows that he has taken responsibility for his actions. It may be so that the accused did not want to waste time when it comes to the count of robbery, but this responsibility is limited as it does not relate to the count of murder. Although accused 2 appreciates the concept of common purpose, he tried to shift the blame to Koketso and stated that he did not shoot the deceased and did not see him being shot at because he was in the bedroom collecting (ie. robbing) the phones belonging to the deceased, which are the basis of the offence of robbery to which he has pleaded guilty to. As with accused 1, I am of the view that accused 2 does not feel any sense of remorse for his actions.
- [39] With regards to accused 3, the State argued that it was disturbing to listen to the address on behalf of accused 3 that there was no direct evidence against him while there is overwhelming evidence against him. It was submitted that accused 3 was the master mind who planned the offence and has played a very significant role as indicated *supra*.
- [40] This court found accused 3 guilty on the basis of common purpose which commenced with the introduction of accused 1 and 2 when accused 3 indicated that accused 2 might be able to assist in procuring a firearm, up to the time when money was paid by accused 3 to accused 2 after the deceased was killed in the presence of Koketso. It is not in dispute that accused 3 transported both accused 2 and Koketso when they went to the deceased's house to kill him and thereafter went to fetch them from where they were waiting for him.

- [41] The doctrine of common purpose was extensively dealt with in my judgment. As much as counsel on behalf of accused 3 has argued that there is no evidence linking accused 3 to the offence of murder for which he has been convicted for, a conspectus of all the evidence before this court is unavoidable to come to a conclusion that accused 3 actively participated and made common cause with the actions of accused 1 and 2 by driving what the State referred to as the getaway vehicle.
- [42] A collective approach to determining the actual conduct or active association of an individual accused, the trial court must seek to determine in respect of each accused person, the location, timing and duration, and the nature of the conduct alleged to constitute sufficient participation or active association and its relationship, if any to the criminal result and to all other prerequisites of guilt.
- [43] As indicated in my judgment, when common purpose is founded on an agreement, the agreement may take one of the two forms. In the first category, there may be a prior agreement, express or implied to commit a common offence. In the second category, no such prior agreement exists or is proved. The court in *Tilayi v S*<sup>15</sup> referring to the case of *Thebus and Another v S*<sup>16</sup>, stated that “common purpose may be implied in that it is inferred from all the surrounding circumstances of the case. In such a case, the inference is deduced from certain acts of the individual accused persons done in pursuance of a criminal purpose common between them. A common purpose may consequently be found to have arisen extemporaneously. Its existence is inferred from the fact that a number of persons act together in circumstances which are indicative of an intention to achieve a single common objective”.
- [44] With regards to the question whether accused 3 is remorseful, no submissions have been made in that regard, and this is so because, even with a conviction hanging over

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<sup>15</sup> [2021] 3 All SA 261 (ECM); 2021 (2) SACR 350 (ECM) (9 March 2021).

<sup>16</sup> (CCT3602) [2003] ZACC 12; 2003 (6) SA 505 (CC). See also: *Tshabalala v S*; *Ntuli v S* (CCT323/18; CCT69/19) [2019] ZACC 48; 2020 (3) BCLR 307 (CC); 2020 (2) SACR 38 (CC); 2020 (5) SA 1 (CC) (11 December 2019)

his head, his counsel remains steadfast with the submission that there is no evidence linking the accused with the offence of murder.

[45] I have taken due consideration to the personal circumstances of the accused persons, and the only factor in favour of accused 1 and 3 is that they are first offenders. I am also mindful of the purposes of punishment and the seriousness of the offences committed by the accused persons, particularly the offence of murder. There is no doubt in my mind that the only appropriate punishment for the accused is a sentence of long-term imprisonment.

[46] Having regard to the cumulative personal circumstances of all the accused, it remains the paramount function of this court to exercise its sentencing discretion properly and reasonably in considering what an appropriate sentence should be, in the light of the circumstances of this case. Consequently, the question is whether the circumstances of the accused persons constitute substantial and compelling circumstances justifying a lesser sentence than the prescribed sentences on counts 1; 2 and 4. Furthermore, the court must also determine in light of the circumstances of this case, whether the interests of society will best be served if a lesser sentence than the prescribed minimum sentence is imposed. This requires a balancing effect between the interests of the accused and that of society.

[47] While the court in **S v Lister**<sup>17</sup> held that: *“To focus on the well-being of the accused at the expense of all other aims of sentencing such as the interest of society is to distort the process and to produce in all likelihood a warped sentence”*, the majority of the Supreme Court of Appeal in **S v Ro and Another**<sup>18</sup> held that: *“To elevate the personal circumstances of the accused above that of society in general and the victims in particular, would not serve the well-established aims of sentencing, including deterrence and retribution”*.

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<sup>17</sup> 1993 SACR 228 (A)

<sup>18</sup> 2010 (2) SACR 248 (SCA)

[48] In the exercise of my sentencing discretion, I took into account the personal circumstances of the accused persons and came to a conclusion that none of them have shown any remorse. I have similarly considered the aggravating features of the offence; the purposes of punishment, and all the other factors to be considered when imposing sentence. Consequently, I am of the view that the personal circumstances of the accused persons are just ordinary circumstances. It is also my considered view that the aggravating factors in this case far outweigh the mitigating factors, and there are **no** substantial and compelling circumstances which warrant a deviation from the imposition of the prescribed minimum sentences. Accordingly, I can find no other suitable sentence other than the one of life imprisonment on the counts of murder, and 15 years imprisonment on the count of robbery in respect of accused 1. I can also not find any justification why this court should deviate from imposing the prescribed minimum sentences in counts 1, 2, and 4.

[49] Having considered the cumulative circumstances of this case, the submissions made by all counsels, and applying the above principles as they relate to sentence, I concur with all the authorities cited above. This court is bound by the doctrine of *stare decisis* and by statute, and it follows that the accused persons **must** be sentenced as prescribed by legislature.

[50] In the circumstance, the following sentence is imposed:

**1. Accused 1** is sentenced as follows:

Count 1: (Murder, read with the provisions of sections 51(1) and Part I of Schedule 2 of the Act): - the accused is sentenced to life imprisonment.

Count 2: (Unlawful Possession of Firearm, read with the provisions of section 121 and Schedule 4 of The Firearms Control Act 60 of 2000): - the accused is sentenced to 15 years imprisonment.

Count 3: (Unlawful Possession of ammunition): the accused is sentenced to five (5) years imprisonment.

Count 4: (Robbery with aggravating circumstances, read with the provisions of section 51(2) of CLAA): - the accused is sentenced to 15 years imprisonment.

Count 5: (Defeating the ends of justice) the accused is sentenced to three (3) years imprisonment.

**2.** The sentence to be served by accused 1 is life sentence and 38 years imprisonment.

**3. Accused 2** is sentenced as follows:

Count 1: (Murder, read with the provisions of sections 51(1) and Part I of Schedule 2 of the Act): - the accused is sentenced to life imprisonment.

Count 2: (Unlawful Possession of Firearm, read with the provisions of section 121 and Schedule 4 of The Firearms Control Act 60 of 2000): - the accused is sentenced to 15 years imprisonment.

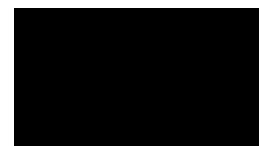
Count 3: (Unlawful Possession of ammunition): the accused is sentenced to five (5) years imprisonment.

Count 4: (Robbery with aggravating circumstances, read with the provisions of section 51(2) of CLAA): - the accused is sentenced to 25 years imprisonment.

**4.** The sentence to be served by accused 2 is life sentence and 45 years imprisonment.

**5. Accused 3** is sentenced as follows: On the count of Murder read with the provisions of sections 51(1) and Part I of Schedule 2 of the Act: - the accused is sentenced to life imprisonment.

**6.** No Order is made in terms of section 103(1) of Act 60 of 2000.



PD. PHAHLANE  
JUDGE OF THE HIGH COURT  
GAUTENG DIVISION, PRETORIA

#### APPEARANCES

For the State : Adv. Sibanda  
Instructed by : Director of Public Prosecutions, Pretoria  
For Accused 1 : Adv. K. Mogale  
For Accused 2 : Adv. Qwabe  
For Accused 3 : Adv. C.N. Ndalane  
Instructed by : Legal Aid South Africa  
Sentence Delivered : 31 January 2024