



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case Number: 62/2021

In the matter between:

LEBOHANG LUCAS MORAKE

Applicant

And

THE STATE

Respondent

HEARD ON:

This matter was determined on the basis of written arguments instead of an oral hearing as provided for in Rule 16.5 of this court's practice directives.

JUDGMENT BY:

DANISO, J

DELIVERED ON:

This judgment was handed down electronically by circulation to the parties' representatives by email and by release to SAFLII. The date and time for hand-down is deemed to be 09H00 on 08 March 2022.

[1] On 21 January 2022 the applicant was convicted for the murder of his pregnant partner. He was subsequently sentenced to 20 years' imprisonment.

- [2] In this opposed application he seeks leave to appeal both the conviction and the sentence. The grounds for leave to appeal are embodied in the notice of application for leave to appeal. I don't deem it necessary to rehash them verbatim including the submissions made by both the defence and the State except to refer to the relevant parts therefore for the purpose of this judgment.

AD CONVICTION

- [3] The applicant is aggrieved by the finding that the State had proven its case against beyond a reasonable doubt. The applicant has merely repeated the submissions presented at the trial, namely that, none of the State's witnesses saw how the deceased sustained the injuries, the State's case was based on circumstantial evidence which does not prove that he had the intention to kill the deceased. He contends that the fact that when the State's first witness, Mr Jodo alerted him to the fact that the deceased was unresponsive and in need of medical assistance he panicked then later tried to get her the medical help and also apologized to the deceased's aunt militates against an intention to kill. Furthermore, his version that he had only pushed the deceased was not totally dismissed by the medical practitioner who gave evidence for the State therefore it cannot be said that when the applicant pushed the deceased he foresaw that she would sustain fatal injuries.
- [4] Without regurgitating my reasons for my findings, in my main judgment I alluded to the fact that the applicant's evidence that he had only pushed the deceased was gainsaid by the uncontested medical evidence. According to Dr Erasmus it was highly unlikely that the deceased would have sustained a head injury with brain swelling, ribs and scapula fractures and a collapsed lung just from a mere push and what transpired before, during and after the deceased was injured were also factors that I found to be relevant in the determination of whether the applicant had the intention of killing the deceased viz. that immediately before the accused assaulted the deceased he went looking for her seething with anger brought about by a suspicion that she was cheating on him. He even insulted the deceased's aunt when he could not find her at home. After he had assaulted and rendered the deceased

unconscious he refused to heed Mr Jodo's advice to seek medical attention for the deceased. Contrary to his allegation that he had ultimately sought or tried to get medical help for the deceased, on the established evidence the deceased was only taken to the hospital by her family approximately 6 hours after Mr Jodo had advised the applicant to get her the medical attention. It is on that basis that I held that the applicant's version when evaluated against the State's accepted version was not reasonably possibly true, it was accordingly rejected as false.

AD SENTENCE

- [5] It was common cause in terms of section 51 (2) of the Criminal Law Amendment Act 105 of 1997 ("The CLAA) the conviction of the applicant will attract a minimum sentence of 15 years unless there are compelling and substantial circumstances justifying a departure from the prescribed minimum sentence.
- [6] The applicant also challenges the finding that there were no substantial and compelling circumstances warranting a lesser sentence than the prescribed one and that the sentence imposed is shockingly disproportionate. He contends that his personal circumstances were ignored, at the age of 25 he is still fairly young therefore there are good prospects of rehabilitation, the court should have also taken into account that he was a first offender, he was provoked, liquor played a role in the commission of the offence and that it occurred during the spur of the moment.
- [7] Except to reiterate that applicant has neither accepted nor disclosed to this court whether he has a true appreciation of the consequences of his actions and without any demonstration of true remorse it cannot be said that he is a good candidate for rehabilitation. It is for the applicant to place before court any facts why time spent in custody awaiting trial should count as a mitigating factor in his favour. The applicant failed to adduce any explanation for the prolonged detention despite his right to apply for bail. I'm of the view that I

have adequately dealt with all the aspects raised in these grounds of appeal in my main judgment. All these factors alluded to by the applicant viewed cumulatively, do not establish substantial and compelling circumstances which justify a deviation from the prescribed minimum sentence.

[8] Having regard to my reasons for my judgment in respect of both the conviction and sentence I'm not persuaded that the issues raised by the applicant in his grounds of appeal would have reasonable prospects of success.

[9] In the result the following order is made:

1. The application for leave to appeal to the full bench of this division is dismissed.

NS DANISO, J

For the applicant:

Mr. P. Mokoena
LEGAL AID SOUTH AFRICA
Bloemfontein.

For the State

Ms. T.H. Sekhonyana
**OFFICE OF THE DIRECTOR OF
PUBLIC PROSECUTIONS**
Bloemfontein