

Reportable: Yes / No Circulate to Judges: Yes / No
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Circulate to Magistrates: Yes / No

IN THE HIGH COURT OF SOUTH AFRICA

(Northern Cape Division)

Case No: K/S 27/06
Heard: 28/08/2006
Delivered: 06/09/2006

THE STATE

versus

FLIP SOLDAAT

JUDGMENT

MOKGOHLOAJ:

1. INTRODUCTION

The accused is charged with two counts of murder in that on the 25 December 2005 and at Saaiplaas he killed Godfrey Moos and Alfred Lewis Moos by stabbing them with a knife. On 26 June 2006 he pleaded guilty on both counts and was convicted as charged. The accused is legally represented.

2. In considering sentence the Court must take into account the personal factors of the accused, the seriousness of the crime and

the interest of the society. In this regard see **S v Zinn 1969(2) SA 537 A** at 540G.

3. A Court should strike 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 other elements.

4. PERSONAL CIRCUMSTANCES

Your legal representative has put the following before me:

- You are 21 years old, unmarried. You have a child. You were employed at the time of the commission of the offence. You were earning R950.00 per month. Although it is not the first time you come against the law but you should be treated as a first offender as your previous conviction did not involve violence.

5. THE OFFENCE

In your statement handed in during the proceedings by your legal representative Adv Cloete, you pleaded guilty. You admitted that on the 25 December 2005 you stabbed both the deceaseds once with a knife and that they both died as a result of your action. You stated that you were under the influence of alcohol but could appreciate what you were doing. You were not attacked before and not provoked in any way and therefore did not act in self defence. You admitted also that you knew what you were doing was wrong.

6. Section 51(2) of the Criminal Law Amendment Act 105 of 1997 provides that where an accused is convicted of murder which falls under Part II of Schedule 2 the Court is obliged to impose a sentence of imprisonment of a period of not less than 15 years if the accused is a first offender unless compelling and substantial circumstances are found to exist. Such circumstances must be entered on the record of the proceedings and the Court thereupon imposes a lesser sentence. See **S v Malgas** 2001(1) SACR 469 (SCA).
7. The deceaseds were brothers aged 26 and 24 years respectively. They were staying with their mother and siblings and were assisting their mother financially. One of the deceased had a child who was five months old at the time of the incident.
8. COMPELLING AND SUBSTANTIAL CIRCUMSTANCES

Advocate Cloete has argued that the following factors should rank as compelling and substantial factors that:

- You are 21 years old and are a first offender.
- You had consumed liquor, though it did not affect your ability to distinguish between right and wrong and act in accordance with such appreciation. However, the liquor affected your judgment.
- You pleaded guilty which shows remorse on your part. You have indicated that you are sorry about what happened and regret the incident.

- You did not plan these murders and that you acted with **dolus eventualis**
 - You are not a sophisticated person as you attended school up to standard 4 and therefore your moral blameworthiness should not be judged as that of a reasonable sophisticated man.
9. He further argued that both murders were committed at the same place and same time and that the Court should consider sentences to run concurrently.
 10. The offence itself is a very serious one that is why there is a special legislation which prescribes minimum sentences. Lives of two people have been lost. No amount of sentence will bring back those lives. Innocent people are killed daily for no apparent reason. The community is also tired of such offences and are looking at the Courts to deal severely with such offenders.
 11. I have taken into account the submissions made on your behalf of which the State accept. I am of the view that there exist substantial and compelling circumstances which justify me to deviate from the prescribed sentence. These are: your relative youth, your clean record, you pleaded guilty and therefore showed remorse and further that when the offence was committed you had consumed liquor. It must be accepted that liquor has an effect of impairing one's judgment.
 12. After careful consideration I have come to the conclusion that a

proper sentence in this matter would be a lengthy term of imprisonment and that part of sentence in Count 2 run concurrently with sentence in Count 1. In the exercise of my discretion I will also take into account the bench mark laid down by the legislature for this type of offence. In my view this sentence will be commensurate with the seriousness of the offences. I will also to your advantage take into account that you have already spent over 8 months in custody awaiting the finalization of your trial.

SENTENCE

Accordingly you are sentenced to:

1. In respect of Count 1 _____ years imprisonment.
2. In respect of Count 2 _____ years imprisonment.
3. _____ years imprisonment in Count 2 is ordered to run concurrently with the sentence in Count 1.
4. In effect you will

**FE MOKGOHLOA
ACTING JUDGE
NORTHERN CAPE DIVISION**

<i>On behalf of the State</i>	:	<i>Advocate P Olivier</i>
<i>Instructed by</i>	:	<i>Director of Public Prosecution Kimberley</i>
<i>On behalf of the Accused</i>	:	<i>Advocate J Cloete</i>
<i>Instructed by</i>	:	<i>Justice Centre Kimberley</i>