

SAFLII Note: Certain personal/private details of parties or witnesses have been redacted from this document in compliance with the law and [SAFLII Policy](#)



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

OF INTEREST

Case no: CC70/2024

In the matter between:

THE STATE

and

MTHUTUZELI MANYATHI

Accused

JUDGMENT

Govindjee J

[1] Gender-based violence manifests in various forms, including physical harm. It is mostly perpetrated by the current or former intimate partner and may end in the murder of a female partner.¹ Depending on various factors, such as location, between 25-65% of women in South Africa reported ever experiencing physical /

¹ A van der Merwe 'Sentencing' (2023) 36 SACJ 341 at 349.

sexual and emotional abuse by a current or ex-partner.² The killing of women by intimate partners (also known as intimate female homicide or intimate femicide) is the most extreme form and consequence of violence against women.³ In *S v Kasongo (Kasongo)*, expert testimony revealed that intimate femicide was much more common in South Africa compared to other countries, with an average of almost 3 women killed by their intimate partners per day.⁴

[2] Some experts have indicated that it is only by addressing the underlying reasons for intimate partner violence that any change in behaviour will occur.⁵ The state has certainly attempted to stem the tide. To quote Thulare J:⁶

‘The actions of the State to confront gender-based violence and femicide have included public communication which included advocacy initiatives and public awareness campaigns as well as the creation and implementation of legislative packages as part of the strategy to combat the two evils. The legislative packages included the amendments of laws ... through the introduction of provisions like minimum sentences as well as the introduction of new thoughts [in legislation] ... in an effort to upgrade the legal framework which provided new tools and innovative means to deal with the problem. These new tools and innovative means represent a deliberate effort and paradigm shift intended to claw back the safety and security of women from the deep throat of toxic machismo.’

[3] The judiciary is equally obliged to play its part in ensuring that prescribed minimum sentences, designed to reflect society’s opprobrium towards murder and attempted murder linked to domestic violence, are not departed from without good reason. Prescribed minimum sentences are intended to contribute towards the deterrence of violent crime and, thereby, the protection of women, communicating to society that perpetrators must expect to face the full force of the law. Through its

² *S v Kasongo* [2022] ZAWCHC 224; 2023 (1) SACR 321 (WCC) (*Kasongo*) para 14.

³ S Mathews *et al* ‘Every six hours a woman is killed by her intimate partner: A national study of female homicide in South Africa’ *MRC Policy Brief* (No. 5) (June 2004).

⁴ *Kasongo* above n 2 para 15.

⁵ C Isike ‘Change what South African men think of women to combat their violent behaviour’ *The Conversation* (4 October 2021) as cited in Van Der Merwe above n 1 at 352.

⁶ *Kasongo* above n 2 para 34.

judgments, the message must be conveyed that the proverbial foot has been put down, that enough is enough.

[4] The accused has been convicted of attempted murder and murder as contemplated in s 51(1) of the Criminal Law Amendment Act, 1997.⁷ The consequence is that the discretionary minimum sentence prescribed for both crimes is imprisonment for life.⁸ The question to be addressed is whether there are substantial and compelling circumstances to deviate from this and whether life imprisonment is proportionate to each of the crimes.

Nature of the crimes and surrounding circumstances

[5] The accused and deceased were engaged in a domestic relationship for a period of at least three years. On 3 December 2023 the accused and deceased were both under the influence of alcohol. They started quarrelling when the deceased received two telephone calls, at least one being from an unidentified male person who had been waiting for the deceased. The accused was angered by his suspicions of infidelity. He poured the contents of a bottle of brandy that he had with him over the deceased. She retaliated by throwing a can of cider at him. The altercation became physical. At some point the accused took a glass, broke it and used it to stab the deceased several times, causing lacerations on her head, face, neck and hands. He admitted having foreseen the possibility that she might die from the attack given the nature of the weapon and injuries, and reconciled himself with that possibility. Although angry and under the influence of alcohol, he admitted that he knew what he was doing at the time.

⁷ Act 105 of 1997.

⁸ S 51(1): 'Notwithstanding any other law, but subject to subsections (3) and (6) ... a High Court shall sentence a person it has convicted of an offence referred to in Part I of Schedule 2 to imprisonment for life.' S 51(3)(a): '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 those subsections, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence...'. Part I of Schedule 2 includes murder, when 'the death of the victim resulted from physical abuse or sexual abuse, as contemplated in paragraphs (a) and (b) of the definition of "domestic violence" in section 1 of the Domestic Violence Act, 1998 (Act 116 of 1998), by the accused who is or was in a domestic relationship, as defined in section 1 of that Act, with the victim'. Part I of Schedule 2 also includes attempted murder in these circumstances.

[6] Less than six months later, on 18 May 2024, the accused and deceased attended a traditional ceremony. They returned to their place of residence having consumed a lot of alcohol. The accused still had half a bottle of brandy with him, and the deceased three cans of cider. She prepared food for herself while the accused went to bed. He awoke and noticed that the deceased was absent. He called her and sent her messages telephonically but she did not answer. He then resumed drinking alcohol.

[7] When the deceased returned, an altercation ensued, which soon turned violent. The accused believed that the deceased was seeing another man and was upset and angered by the perceived infidelity. He pushed her over the bed, after she threw his phone behind a wardrobe and pushed him from behind, and then proceeded to strangle her and apply various severe blunt force blows to her face and head. This included pushing her against the wardrobe and repeatedly kicking her and hitting her with a closed fist, causing two swollen black eyes, a large wound on the front of the head, bleeding around the brain and lacerated lips. The strangulation included grabbing the deceased by the throat with both hands as well as the use of an object such as a belt, which was placed around the deceased's neck and pulled tightly, leaving an impression. The photographs of the body accepted into evidence reflect the horrific effect of the accused's actions on the deceased's head, face and neck. In addition to the severe physical pain that the deceased would have suffered, the inability to breathe would have caused the deceased anguish of the mind.

[8] Having strangled and assaulted the deceased in this manner, the accused proceeded to the lounge and continued to speak to her before realising that she was unresponsive and had died. He then covered the body with a blanket and left the house. On a conspectus of the facts, including inferences drawn from the circumstances, and based on various authorities, this court concluded that the state had proved its case on the basis of *dolus eventualis*. Despite the alcohol consumption, the accused again appreciated what he was doing at the time and that his conduct was wrong.

[9] The accused felt bad about what he had done and confessed to his mother and sister some three days later, breaking down and crying and planning to kill

himself rather than go to prison. Constable Dlakwe, the investigating officer, testified in aggravation that the accused attempted to evade arrest when accosted later that day. He hid in bushes for approximately two hours until he was found. The accused had told Constable Dlakwe that he had run away because he did not want to be arrested.

The accused

[10] The accused is 38 years of age, unmarried and unemployed. His three children are born of different mothers and reside with their maternal families. He unsuccessfully attempted grade 12 studies and previously had employment, also as a windscreen fitter until November 2023. He has no previous convictions and is treated as a first offender for purposes of sentencing. He has been in custody for eight months.

[11] The conduct of the accused immediately after committing the murder, described above, reflects some regret and accountability on his part, even if this would largely have been the result of concern over his own future and his desire to avoid imprisonment. After arrest he cooperated with the police, admitting to the investigating officer that he assaulted the deceased, which caused her death, while stopping short of confessing to the crime. He pleaded guilty to both counts. His account of events was relatively detailed but omitted any admission or description in respect of the object that he used to strangle the deceased. Although he had not offered any apology or requested forgiveness from the deceased's family since his arrest, he instructed his counsel to apologise to the family on his behalf.

[12] It may be accepted that the accused's state of mind was affected by his consumption of alcohol and his perceptions that his partner was being unfaithful to him. Rather than being a premeditated act, the mix of the two served as the catalyst for the brutality that followed on both occasions.⁹

⁹ Cf *S v Peloele* 2022 (2) SACR 349 (SCA) para 24, 26. This decision may also be distinguished based on the SCA's rejection that the appellant was intoxicated.

The interests of society

[13] Society demands that stern sentences be meted out in cases where a person's life is extinguished through the conduct of another. As Mr *Mtsila* argued, for the State, murder is the ultimate crime, constituting an irreversible violation of the constitutional right to life. As indicated at the outset of this judgment, the relentless plague of gender-based violence, including so-called intimate femicide, is a cause for deep societal concern and anger, to the point of communities resorting to self-help in frustration at the seemingly never-ending spate of domestic violence.¹⁰ As the court held in *S v Robertson*:¹¹

‘It is so easy to glibly use the phrases and terminology of femicide and gender-based violence, in part because of the relentless frequency of its occurrence in our society, communities and homes, that it hardly causes anyone to bat an eyelid or to raise an eyebrow ... this disease of gender-based violence and femicide ... permeates the psyche of our country.’

[14] The Domestic Violence Act, 1998, recognises that domestic violence is a serious social evil, that there is a high incidence of domestic violence within South African society and that victims of domestic violence are among the most vulnerable members of society.¹² In *S v Rohde*,¹³ the court expressed itself as follows:

‘Crime based on gender is an affliction in our society. Crimes against women are a social ill and efforts by government and society are increasing in light of a steady increase in these types of offence. The rate of murder of women in South Africa is alarmingly high, compared to the global average. Attitudes to women determine how women are treated in society. It is the lowered perception of women as human beings, all of whom are entitled to human dignity and equality, which results in the unhealthy social paradigm that they can be victims, and in fact end up as victims of crime because they are

¹⁰ Cf *S v Ndebele* [2023] ZAGPJHC 936 para 15.

¹¹ *S v Robertson* [2022] ZAWCHC 104; 2023 (2) SACR 156 (WCC) para 2.

¹² Preamble to the Domestic Violence Act, 1998.

¹³ *S v Rohde* 2019 (2) SACR 422 (WCC) para 54.

women. The judiciary must guard against such perceptions and creating the impression that the lives of women are less worthy of protection.'

[15] Although the phrase 'the interests of society' conveys a somewhat abstract, amorphous notion, the impact of crime is arguably most readily apparent when listening to the testimony of victims, where possible, and their family members. In this instance, the court had the benefit of the testimony of Mr M[...], the deceased's brother. The accused resided in Mr M[...]'s house after commencing his relationship with the deceased. The deceased was the sole bread winner for the family and worked for Rhodes University. She had no children. The deceased supplemented Mr M[...]'s social grant and assisted him financially. He found it difficult to express the magnitude of his loss. It was readily apparent that the accused's conduct has had a devastating impact upon him and continues to cause him immeasurable angst. As Makaula J has remarked:¹⁴

'Death of a human being through killing has devastating and dire consequences for the family of the deceased person. It results in financial, emotional, traumatic and psychological problems on those close and around the deceased. Its adverse effects can never be adequately described and the pain it causes cannot be measured in any way. The pain and helplessness that one feels cannot be verbalised.'

Analysis

[16] The challenges associated with imposing an appropriate sentence on a convicted criminal are well-documented. To determine an appropriate sentence, the court must weigh and balance the nature and seriousness of the crime, the interests of society and the personal circumstances of the accused carefully, without unduly emphasising any of these factors.¹⁵ The court must not approach its task in a spirit of anger or a deliberate attempt to demonstrate severity or set an example to satisfy

¹⁴ *S v Ximiya* [2015] ZAECHC 9 para 2.

¹⁵ *S v Zinn* 1969 (2) SA 537 (A) (*Zinn*) at 540G–H.

public opinion. The object of sentencing is to serve the public interest.¹⁶ Where possible, and if the circumstances justify this, the sentence must be blended with a measure of mercy.¹⁷

[17] The court must also be alive to the purposes of sentence, which, in general terms, are retribution, prevention, deterrence and rehabilitation.¹⁸ That being the case, more serious cases clearly require severity with a certain moderation of generosity where appropriate, for the appropriate balance to be struck. As alluded to above, where minimum sentences have been prescribed by the legislature, these should be viewed as generally appropriate for the offences concerned and are not to be departed from lightly or for flimsy reasons, or based on misplaced pity.¹⁹

[18] None of the factors highlighted by Mr *Geldenhuys*, for the accused, on their own constitute a substantial and compelling circumstance justifying deviation from the prescribed minimum sentences. In respect of the submission that the accused showed remorse, the remarks in *S v Matyityi* are definitive:²⁰

‘There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse ... genuine contrition can only come from an

¹⁶ *S v Mhlakhaza and Another* [1997] 2 All SA 185 (A) at 189. Also see *S v M* (Centre for Child Law as *amicus curiae*) 2007 (2) SACR 539 (CC).

¹⁷ *Zinn* above n 15.

¹⁸ *S v Rabie* 1975 (4) SA 855 (A).

¹⁹ *S v Matyityi* 2011 (1) SACR 40 (SCA) para 23: ‘Despite certain limited successes there has been no real let-up in the crime pandemic that engulfs our country. The situation continues to be alarming. It follows that, to borrow from *Malgas*, it still is “no longer business as usual”. And yet one notices all too frequently a willingness on the part of sentencing courts to deviate from the minimum sentences prescribed by the legislature for the flimsiest of reasons – reasons, as here, that do not survive scrutiny. As *Malgas* makes plain, courts have a duty, despite any personal doubts about the efficacy of the policy or personal aversion to it, to implement those sentences. Our courts derive their power from the Constitution and, like other arms of State, owe there fealty to it. Our constitutional order can hardly survive if courts fail to properly patrol the boundaries of their own power by showing due deference to the legitimate domains of power of the other arms of State. Here Parliament has spoken. It has ordained the minimum sentences for certain specified offences. Courts are obliged to impose those sentences unless there are truly convincing reasons for departing from them. Courts are not free to subvert the will of the legislature by resort to vague, ill-defined concepts such as “relative youthfulness” or other equally vague and ill-founded hypotheses that appear to fit the particular sentencing officer’s personal notion of fairness. Predictable outcomes, not outcomes based on the whim of an individual judicial officer, [are] foundational to the rule of law which lies at the heart of our constitutional order.’

²⁰ *S v Matyityi* above n 19 para 13.

appreciation and acknowledgement of the extent of one's error ... It is the surrounding actions of the accused, rather than what he says in court, that one should rather look at. 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.'

[19] This the accused has failed to do. Similarly, the role of alcohol and the fact that the accused is a first offender are not, on their own, substantial and compelling circumstances in this instance. It remains incumbent upon this court, before it imposes the prescribed sentences, to assess, upon a consideration of all the circumstances of the case, whether these sentences are indeed proportionate to the offences.²¹ If a court is satisfied that a lesser sentence is called for in the circumstances, thus justifying a departure from the prescribed sentence, the court is bound to impose that lesser sentence.²²

[20] In respect of both offences, the deceased was vulnerable to the accused's controlling behaviour, which is associated with violence in intimate partner relations.²³ She was viciously attacked not once but twice in the home of her brother, a place she would have considered to be safe. The second incident proved fatal, after which the deceased's body was left unattended for some three days. The main factors in favour of a lesser sentence are the accused's clean record and the influence of alcohol on his state of mind. In *Sigwahla*, Holmes JA noted that in considering the relevance of intoxicating liquor to extenuating circumstances the approach of a trial court should be 'one of perceptive understanding of the accused's human frailties, balancing them against the evil of his deed'.²⁴ That court also considered as mitigating the fact that the murder was not committed with *dolus directus*.²⁵ To that may be added the accused's belated regret regarding his actions, as reflected above. It is appropriate to consider the accused's behaviour in light of

²¹ *S v Vilakazi* 2009 (1) SACR 552 (SCA) paras 14–15.

²² See *S v Tafeni* 2016 (2) SACR 720 (WCC) para 9 and the authorities cited there.

²³ *Kasongo* above n 2 para 13.

²⁴ *S v Sigwahla* 1967 (4) SA 566 (A) (*Sigwahla*) at 571D–E; *S v Ndhlovu* (2), 1965 (4) SA 692 (A) at 695–696.

²⁵ *Sigwahla* above n 24 at 571H: trial courts, in their conspectus of possible extenuating circumstances, should not overlook the fact (if it be such) that it is a case of *dolus eventualis*; while it cannot be said that this factor must necessarily be an extenuating circumstance, in many cases it may well be so, either alone or together with other features, depending on the particular facts of the case.

these considerations, bearing in mind that any factors that are not too remote or too faint or too indirectly related to the commission of a crime, which bear upon the accused's moral blameworthiness in committing it, should not be ruled out from consideration.²⁶

[21] In the final assessment, these considerations cumulatively suffice to convince me that it would be disproportionate to impose life sentences for the two crimes. The reasons for doing so have been carefully considered and, in my view, cannot be said to be flimsy. Although it is true that murder in the context of domestic violence might justifiably warrant life imprisonment in most cases, each case must be carefully analysed and treated on its own merits.²⁷ These remarks do not detract from the gruesome nature of the crimes, the impact on the deceased's family and society. Punishment that reflects the deterrent and retributive dimensions of sentencing must be imposed. As explained in *Kasongo*:²⁸

'The Judiciary should speak such that we demonstrate that we are not cold, aloof and far removed from the contemporary challenges. Where circumstances permit, we should show that we heed the public's constitutional call to make the punishment of crimes against women, especially their brutal, cruel and unnecessary killing more severe as part of the overall responsibility of the Republic of South Africa to provide a conducive environment for women to live and love without fear of physical, psychological, economic and sexual abuse and violence. The increase in the involvement of ex-partners, spouses, partners and boyfriends in the woman's experience of violence needs effective initiatives beyond policy-making and [calls] for the judiciary to be the leading force and voice.'

[22] Although treated as a first offender, it must be noted that the accused's behaviour in May 2024 was, in a sense, a repeat of what occurred in December 2023, as Mr *Mtsila* argued. Despite being involved in a domestic relationship with the

²⁶ *R v Fundakubi and Others* 1948 (3) SA 810 (A) at 818 cited with approval in *Sigwahla* above n 24 at 571H–572A. Also see *Tafeni* above n 22 para 11.

²⁷ Cf *Kasongo* above n 2 para 37.

²⁸ *Kasongo* above n 2 para 36.

deceased, he attempted to murder her and then murdered her by blunt force and strangulation. I am satisfied that harsh punishments are warranted in each instance, for reasons that are readily apparent when considering the circumstances of the offences and the interests of society. In arriving at the sentences to be imposed, I have also considered the time already spent in custody and the cumulative effect of the sentences. By operation of law, the accused is prohibited from possessing a firearm.

[23] A final observation is warranted. Study findings have repeatedly confirmed the role of alcohol in intimate partner violence, pointing to the need for dedicated prevention interventions.²⁹ Cases such as the present, as well as sexual offence-related cases, including child rape, frequently have alcohol flowing through the narrative as a common theme. In terms of the Foodstuffs, Cosmetic and Disinfectants Act, 1972,³⁰ the Minister of Health is empowered to make regulations prescribing the way in which any foodstuff, including alcohol, shall be labelled. This includes the nature of the information to be reflected on any label, the manner or form in which such information is to be reflected or arranged on the label and the nature of information which may not be reflected on any label.³¹ The Minister has made regulations (the regulations) relating to health messages on container labels of alcoholic beverages, including beer and traditional beer as defined in s 1 and schedule 1 respectively, of the Liquor Act, 2003.³² Of the seven 'health messages' contained in Annexure A of the regulations, only one deals with violence and crime, in the following terms: 'Alcohol is a major cause of violence and crime'. There is no specific reference to the established link between alcohol and gender-based violence, including rape and murder, also in the context of domestic relationships. Furthermore, container labels for alcoholic beverages need only contain one of the seven health messages set out in the annexure to the regulations, in a space one eighth the total size of the container label.³³ This would appear to me to be wholly

²⁹ See, for example, Mathews *et al* above n 3; A Gibbs *et al* 'Couples, alcohol use and experience of intimate partner violence among young women in urban informal settlements in Durban, South Africa: A mixed methods study' *Social Science & Medicine* 356 (2024) 117144.

³⁰ Act 54 of 1972.

³¹ S 15(1)(k) of the Foodstuffs, Cosmetic and Disinfectants Act, 1972.

³² GNR. 764 of 24 August 2007, as amended; Act 59 of 2003.

³³ Regulation 2. Regulation 3 provides that a health message shall be in any of the South African official languages but must be in the same language as that of the container label.

inadequate when considering the torrent of cases, including the present, in which alcohol is linked to violence. Leaving aside the question whether the chosen form of regulation is adequate for purposes of warning alcohol consumers of the correlation between alcohol, violence and crime, the failure to highlight the link between alcohol and gender-based violence appears to be an omission. In the context of the country's efforts to address gender-based violence, including intimate femicide, this at least requires proper consideration. In the circumstances, the registrar is directed to ensure that a copy of this judgment is made available to the office of the Minister of Health, drawing attention to this paragraph of the judgment.

Order

[24] For these reasons, the accused is sentenced as follows:

1. Count 1: Attempted murder: The accused is sentenced to 23 years imprisonment.
2. Count 2: Murder: The accused is sentenced to 28 years imprisonment.

The sentence imposed in respect of count 1 is ordered to run concurrently with the sentence imposed in count 2, so that the accused is effectively sentenced to 28 years imprisonment.

The Registrar is directed to make a copy of this judgment available to the office of the Minister of Health of the Republic of South Africa.

A GOVINDJEE
JUDGE OF THE HIGH COURT

Heard: 21 January 2025
Delivered: 24 January 2025

Appearances:

For the state:

Mr S Mtsila

Instructed by:

The Deputy Director of Public Prosecutions,
Makhanda

For the accused:

Mr D Geldenhuys

Instructed by:

Legal-Aid of South Africa, Makhanda