IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA

CASE NO: A45/2024

(1) REPORTABLE: YES / ~~NO~~
(2) OF INTEREST TO OTHER JUDGES: YES/~~NO~~
(3) REVISED.

25 November 2024
DATE SIGNATURE

In the matter between:

RACHAEL MADODI MANZINI **APPELLANT**

and

THE STATE **RESPONDENT**

JUDGMENT

Coram: Msibi AJ et Mashile J

Msibi AJ

Introduction

[1] The appellant, Rachael Madodi Manzini, was convicted in the Mhala Regional Court with assault with intent to do grievous bodily harm, read with the provisions of section 51(2) of the Criminal Law Amendment 105 of 1997 (the Act); and contravening section 17(A) of the Domestic Violence Act 116 of 1998 – breach of a protection order.

[2] The state alleged that the complainant, Ms N[…], had obtained a protection order against the appellant on 24 August 2020. On 4 March 2023, the appellant went to her home, assaulted and stabbed her with a beer bottle. The appellant was subsequently convicted on both counts and sentenced to an effective term of 10 years imprisonment.

[3] Aggrieved by the sentence, the appellant brought an application for leave to appeal on sentence, which was granted on petition to this court. The appeal is opposed by the state.

Background

[4] The appellant and the complainant were in a love relationship. Due to the appellant's alleged abuse on the complainant, she lost all love for the appellant. She obtained a protection order against him after he had damaged her door, threatened to get even with her or kill her. He told her that he was not afraid of the police or jail, in fact, he once killed a police officer. On 4 March 2023 the appellant arrived at her home just after midnight, he assaulted her with bare hands, stabbed her with a beer bottle, while threatening to cut her throat. The complainant's grandchild was woken up by her screams. When she walked into living room, she saw the accused assaulting complainant. Thereafter, she ran to their neighbours to seek assistance.

[5] The appellant left their home when he noticed that she was going to alert neighbours. The neighbours stood outside the complainant's yard afraid of the appellant. When she came out of her house she was rushed to hospital

Grounds of appeal on conviction

[6] The grounds of appeal that the appellant relies on are as follows:

(a) That the trial court erred in finding that the sentence of 10 years imprisonment was appropriate and failed to consider an alternative sentence of correctional supervision, a fine, or a suspended sentence.

(b) That the trial court erred in not following the recommendations of the probation officer.

(c) That the sentence imposed induces a sense of shock.

[7] It was submitted on behalf of the appellant that the trial court attached insufficient weight to his personal circumstances. That the trial court failed to consider alternative means of punishment other than direct imprisonment, thus failing to address the need for rehabilitation for the appellant. A sentence coupled with correctional supervision or a suspended sentence would have rehabilitated the appellant. The court failed to consider the element of mercy when imposing sentence. The trial court therefore misdirected itself when imposing the sentence of 10 years imprisonment.

[8] Counsel for the state submitted that the appellant was convicted on serious offences. The need to curb gender-based violence has been emphasised repeatedly in our courts. What is aggravating is the fact that there was already a protection order against the appellant. The appellant, who is 41 years of age, did not respect the complainant who is 51 years old and 10 years older than him. He did not show any remorse during the trial. The court had a duty to impose a sentence that struck a balance between the interests of society and the offender and that would also operate as a deterrent for potential offenders. The fact that the trial court ordered the sentence on count 2 to run concurrently with the sentence on count 1, illustrates that the court applied its mind to the objectives of punishment and mitigated the cumulative effect of the sentence.

[9] Counsel further submitted that the aggravating factors listed by the trial court in its judgment are overwhelming. The appellant is the type of offender who ought to be removed from society for a lengthy period of time, given the nature of this matter. There is nothing that suggests that the sentence is shockingly inappropriate.

The applicable law

[10] As laid down in *S v Saddler*,[1] the imposition of sentence is primarily within the discretion of the trial court and the court of appeal's right to interfere with sentence is limited to instances where the trial court materially misdirected itself or committed a serious misdirection.

[11] Marais JA provided guidance in *S v Malgas*[2] as to when an appellate court can interfere with sentence; stating as follows:

> "A court exercising appellate jurisdiction cannot, in the absence of material misdirection by the trial court, approach the question of sentence as if it were the trial court and then substitute the sentence arrived at by it simply because it prefers it. To do so would be to usurp the sentencing discretion of the trial court. Where material misdirection by the trial court vitiates its exercise of that discretion, an appellate court is of course entitled to consider the question of sentence afresh. In doing so, it assesses sentence as if it were a court of first instance and the sentence imposed by the trial court has no relevance. As it is said, an appellate court is at large. However, even in the absence of material misdirection, an appellate court may yet be justified in interfering with the sentence imposed by the trial court. It may do so when the disparity between the sentence of the trial court and the sentence which the appellate court would have imposed had it been the trial court is so marked that it can properly be described as 'shocking', 'startling' or 'disturbingly inappropriate'."

[12] The appellant has been convicted of contravening section 51(2) of the Act, Part III of Schedule 2:

> "51(2) Notwithstanding any other law but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person who has been convicted of an offence referred to in–
>
> *(a)* Part II of Schedule 2, in the case of–

[1] *S v Saddler* 2000 (1) SACR 331 (SCA) at 334.
[2] *S v Malgas* [2001] ZASCA 30; 2001 (1) SACR 469 (SCA) para 12.

(i) a first offender, to imprisonment for a period not less than 15 years imprisonment;

(ii) a second offender of any such offence, to imprisonment for a period not less than 20 years; and

(iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than 25 years;

(b) Part III of Schedule 2, in the case of–

(i) *a first offender, to imprisoned for a period not less than 10 years;*

(ii) a second offender of any such offence, to imprisonment for a period not less than 15 years imprisonment;

(iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than 20 years;"

…

(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." (My emphasis.)

Evaluation

[13] During mitigation of sentence, the appellant's attorney placed it on record that the appellant is married. He is a father to four children aged 19, 18, 12 and 9 years respectively; of whom three live with their mothers. His highest standard of education is grade 1. He is unemployed. His attorney conceded that the appellant had been convicted on a serious offence and prayed for a sentence that is blended with mercy, considering the fact that he is a father of 4 children.

[14] In aggravation of the sentence, the Prosecutor stated that the accused is one of those men who believe that when they are in a relationship with a woman, they own her. She no longer says yes or no. He threatened the complainant that he would return for her should he go to prison. When the appellant left his home, with the beer bottle in hand, he knew that he had a wife and four children. He failed to respect a woman who was 10 years older than him. He did not even respect her grandchildren.

The prosecutor lastly applied for a direct imprisonment of 10 years as that would give the complainant room to breathe and live free from fear for some time.

[15] In its judgment on sentence, at page 31 of the of the trial court record, the court stated as follows:

> "We just finished women's month where everybody was made aware of violence against women and children. As the Prosecutor correctly placed on record during his address, people in this country are being made aware of violence against women and children throughout the media.
> And it is people like you who give men in this country a bad name. You were married, you are having your own children, but you were in a relationship with the complainant and you treated her as an object, not as a human being
> The only appropriate sentence will be one of direct imprisonment. Section 51- in terms of section 51(2)(b)(i) this court must impose a sentence of direct imprisonment of 10 years imprisonment for a first offender."

[16] In examining the appropriateness of the sentence imposed by the trial court, it is prudent to assess the facts of the matter, the appellant's personal circumstances and contrast them with the aggravating circumstances in order to determine whether or not any argument can be made for justifying a lesser sentence than the one imposed. I am also cognisant of the fact that prescribed minimum sentences are not to be deviated from for light and flimsy reasons. Therefore, the appeal will only succeed once it is demonstrated that the trial court misdirected itself in assessing the facts and circumstances placed before it.

[17] Section 51(3) empowers the trial court to deviate from the prescribed minimum sentence if it is satisfied that compelling and substantial circumstances exist that justify a departure from the prescribed minimum sentence. Such factors can only be established after all relevant circumstances had been considered in totality. In *S v Malgas* (*supra*) the courts are warned not to deviate from the prescribed minimum sentences for light and flimsy reasons.

[18] The evidence in the trial court record shows that the appellant carefully planned his attack on the unsuspecting complainant. He preyed on her at an

opportune time when the complainant, her family members and possibly the entire neighbourhood would be fast asleep. He did not consider the emotional wellbeing of the minor children that were in the house. He subjected them to the trauma of seeing their grandmother being assaulted while lying in her own blood. The gruesome attack was executed in the sanctity of her own home.

[19] Prior to the attack, the appellant had threatened to kill the complainant, reminding her that he once killed a police officer. Despite having been served with a protection order, the appellant carried out his threats. Clearly, the appellant did not only disrespect the complainant and her family but also the law itself. He was given a chance to mend his ways and was not arrested for his previous threats. He demonstrated to the criminal justice system that he is not a suitable candidate for rehabilitation. The appellant kept saying that he wanted to cut her throat while stabbing her. This court will also keep in mind the fact that the appellant stopped assaulting her because her grandchild ran out of the house to seek help from neighbours. More harm would have been done to the complainant if the child did not intervene.

[20] It is a well-established principle in our law that the mitigating and personal circumstances of an accused may be outweighed by other objectives of sentence, namely, the nature and seriousness of the offence and the interests of society, in the face of aggravating factors that carry greater weight.

[21] The trial court could not find compelling and substantial circumstances that justify the imposition of a lesser sentence, instead the aggravating circumstances call for the accused’s personal circumstances to recede to the background.

[22] In my view, the sentence imposed by the trial court is not shocking but proportionate under the brutal circumstances in which the offence was committed. It is also my considered view that the trial court has not misdirected itself in imposing the minimum sentence of 10 years imprisonment.

[23] In the result, I propose the following order:

The appeal against sentence is dismissed.

S MSIBI
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

I agree

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MASHILE J
JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

Appearances

For the appellant:	Adv M.S. Ngomane
Instructed by:	Mashele Attorneys
	C/O Meintjies and Khoza Attorneys
	Mbombela
For the respondent:	Adv S. H. Zindela.
Instructed by:	Director of Public Prosecutions
	Mbombela, Mpumalanga Province