



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

JUDGMENT

**Not Reportable
Case No: A165/2024**

In the matter between:

KHANYILE RAMBA

Appellant

and

THE STATE

Respondent

Coram: RALARALA, J (FRANCIS, J concurring)

Heard on: 13 June 2025

Delivered on: 20 August 2025

Summary: Criminal Appeal – premeditated murder- section 51(1) of the Criminal Law Amendment Act 105 of 1997– plea of guilty -section 112(2) of the Criminal Procedure Act 51 of 1977 (the CPA) - formal admissions in terms of section 220 of the CPA - conviction and sentence of life imprisonment confirmed.

ORDER

The appeal in respect of conviction and sentence is dismissed.

JUDGMENT

RALARALA, J

[1] The Appellant was charged in Hermanus Regional Court on the charges of murder, rape and malicious damage to property. He pleaded guilty to the murder charge and not guilty to the rape and malicious damage to property charges. The State did not accept the plea proffered on the count of murder and same was instead recorded as formal admissions in terms of section 220 of the Criminal Procedure Act 51 of 1977 ("the CPA"). The State alleged that the commission of murder was premeditated, as a result relied on section 51(1) of the Criminal Law Amendment Act 105 of 1997 ("the CLAA").

[2] The allegation was that on or about 10 September 2021, the Appellant unlawfully and intentionally killed S[...] M[...] by hitting her with a blunt object or a hammer and committed acts of sexual penetration by inserting a blunt object or hammer into her vagina and/or anus without her consent. The third count is that on the same date, the Appellant unlawfully and intentionally damaged a television set and the property of Asonele Gqira with the intent to damage the property.

[3] The State adduced the evidence of two witnesses in an endeavour to prove that the murder was premeditated and the remainder of the charges. As already alluded to, the Appellant pleaded guilty to the charge of murder read with the provisions of section 51(2) of the CLAA as opposed to the provisions of section 51(1)

of the CLAA as formulated by the State. The Appellant in his plea stated that he unlawfully and intentionally caused the death of S[...] M[...], who was his girlfriend at the time. The Appellant admitted to hitting the deceased with a hammer.

[4] The Appellant admitted that on the evening of 10 September 2021, he confronted the deceased because earlier that day, the deceased's friend took his 4 cell phones and a wallet. The deceased and her friends assaulted him when he tried to recover his possessions. He admitted that he and the deceased fought while in his house, resulting in the door being damaged. He took a hammer and fixed the door. While fixing the door, the deceased was shouting at the Appellant. The deceased hit or slapped him on the back of his head. The deceased turned around and hit her several times on her head and body, until she fell to the ground and left her lying there until the next morning.

[5] He admitted to causing the death of the deceased in the form of *dolus eventualis* and admitted to the contents and correctness of the postmortem report. The Appellant further admitted that the wounds as indicated on the postmortem report, except for the wounds on the genitals, were inflicted by the Appellant and such wounds caused the death of the deceased. Further, that the body of the deceased sustained no further injuries during the transportation thereof until the finalisation of the postmortem examination on 15 September 2021.

[6] The State in an endeavour to adduce evidence pointing towards premeditated murder, led the evidence of two state witnesses: Dr. Louise Marie Kruger and Zine Mankankela. Dr. Kruger is the pathologist who conducted the postmortem examination on the deceased and compiled a report recording her observations and findings. Dr. Kruger testified that while performing the autopsy on the body of the deceased, she found that the body had widespread non-patterned, non-specific blunt trauma to the head, body and extremities. She found a traumatic brain injury with slowly progressing brain haemorrhage, and significant trauma to the vulva and the vaginal canal.

[7] Dr. Kruger's findings were that the cause of death was consistent with traumatic brain injury. No injury with patterned appearance of a hammer could be

found on the deceased, but only blunt force injuries. According to the doctor, she took photographs of these injuries: on the left arm was a 60 by 70-millimeter area of diffuse contusion or bruising with soft tissue swelling and scattered abrasions or grazes to the top of the hand. The right arm presented with 210 by 20-millimeter area of abrasion or graze or scratch marks to the inner surface of the right upper arm. The inside of the elbow area had an 80 by 90-millimeter area of parallel running linear abrasions. She also noted a 60 by 60-millimeter area of defused soft tissue swelling contusion or bruising and scattered abrasions or grazes to the top surface of the right hand and there was also a 10 by 10-millimeter-deep abrasion or graze to the palm of the right hand.

[8] Dr. Kruger dispelled the notion that the type of injuries that were found or observed in the deceased's genitalia would be compatible with consensual sexual penetration. She stressed that the nature of the injuries was indicative of resistance from the victim. She tilted towards a hammer as to what object would have been the cause of such injuries based on the severity of the injuries sustained. Her opinion was that all the injuries would have been inflicted in less than 24 hours and at the same time.

[9] Zine Mankankela testified that on the night in question, she was present and when the Appellant came to Asonle's house to fetch his possessions, he slapped the deceased with an open hand causing her to fall and hit the back of her head against the TV stand, resulting in her fainting. While in that state, the Appellant thereafter dragged the deceased out of the dwelling by her feet. The Appellant was asked by the witness to desist from this, and he did not heed that request, resulting in the witness pulling the deceased by her arm towards her. The deceased regained consciousness at that stage.

[10] The Appellant left Asonle's house and returned on two separate occasions, the first time he snatched Zine's cell phone and left and the second time he kicked the door and had a hammer in his hand. He invited the witness to follow him in order to recover her cell phone which she refused. When the witness declined his invitation informing him that she did not know what his intentions were, the Appellant started

crying after placing the hammer on the ground. The Appellant was chased away by Sinovuyo.

[11] She learnt the next morning about the passing of the deceased. During cross examination, it surfaced that there were discrepancies between Zine's *viva voce* evidence and the statement she made to the police after the incident occurred. The statement omitted the incident of the Appellant assaulting the deceased with an open hand and the TV being damaged as a result of him assaulting the witness. Zine attributed the omission to the state of shock she was in when she gave the statement to the investigating officer.

[12] The Appellant testified in his defence, to the effect that he went to Asonale's house and found the deceased, Zine Mankankela, and Asonale with two male persons. Zine took his 4 cell phones from his pockets, including his wallet. She informed him he was drunk, and she was going to hand them over to the deceased for safekeeping. He grabbed the items as Zine was handing them to the deceased, the items fell all over the floor. The Appellant became angry, and they shouted at him. The Appellant stepped outside, and he hoped that the deceased would come outside and hand over his property to him. The Appellant cried at this stage and asked a neighbour to go fetch his property from Zine and this effort proved to be unsuccessful.

[13] He returned to Asonale's house despite the verbal abuse directed at him. The owner of the house attempted to burn him using an electrical two plate stove. He apologised. The Appellant was unable to recover his property and the fact that the deceased was not making an effort to recover his property angered him. He slapped her with an open hand once on her face. The deceased decided that they rather leave as the Appellant was angry. They continued to argue on their way to his house as he wanted to go back to Asonale's house to recover his property.

[14] The hinges on the door to the Appellant's house broke, as a result of how aggressively he opened it. He was angry. He fetched the hammer, intending to fix the door. However, he did not do so as he was still angry. Instead, he left the house, carrying the hammer, and went to Asonale's house to try and recover his belongings,

leaving the deceased sitting in the house. At Asonale's house he only recovered his Capitec bank card and Zine cried, acknowledging that she started the whole thing when she took the Appellant's property. The Appellant took Zine's cell phone and left.

[15] When he arrived at home, he sat next to the deceased and had a conversation with her. While talking, he decided to fix the door. The Appellant stood up to fix the door, then the deceased slapped him from behind with an open hand. This angered the Appellant, and he turned and hit the deceased with the hammer three times on the head. The deceased did not bleed. She fell and he threw the hammer on the ground.

[16] He tried to lift her, and she refused and told him to leave her lying on the floor. He continued to convince her to come to bed but the deceased refused his invitation. They, however, continued engaging in conversation about their drinking arrangement over the weekends. The Appellant then fell asleep.

[17] The Appellant woke up when someone knocked at the door in the morning. According to him, the deceased was still lying there on the floor, but he did not check if there was anything wrong with her. After attending to the person who was at the door, he then closed the door and went back to bed.

[18] Later, he was once again woken up by a knock at the door. The Appellant realized that the deceased was still lying on the floor, and he tried to wake her up, without success. He left the house in shock to find out what he should do in the circumstances. He returned to his house in the company certain men with whom he was drinking the previous night. He learnt that the deceased had died. He was later advised to inform the police.

GROUND FOR APPEAL

[19] The grounds of appeal as set out in the notice of appeal as regards conviction may be summarised as follows:

- 19.1 The trial court erred and misdirected itself in finding that the murder was premeditated, having reached this finding based on the Appellant's actions.
- 19.2 Thus, the trial court erred in finding that section 51(1) of the CLAA finds application instead of section 51(2) thereof.
- 19.3 The trial court erred in finding that the state proved its case beyond reasonable doubt on the offence of murder read with section 51(1) of the CLAA.

[20] Regarding the sentence imposed, the grounds of appeal are as follows:

- 20.1 The trial court paid insufficient regard to the Appellant's personal circumstances, particularly his age.
- 20.2 The trial court erred in not attaching adequate weight to the time the Appellant has been incarcerated while awaiting trial, which was a period of two (2) years and three (3) months.
- 20.3 The trial court erred in not sufficiently paying consideration to the fact that the Appellant is a first offender, pleaded guilty, demonstrated remorse, and took full responsibility for his actions.
- 20.4 The role played by the use of alcohol was not given adequate consideration by the trial court.
- 20.5 The sentence imposed by the trial court was excessively harsh and shockingly inappropriate and over-emphasised the interests of society and retribution.
- 20.6 The trial court erred in not finding substantial and compelling circumstances justifying the imposition of a lesser sentence than the prescribed minimum sentence of life imprisonment.

[21] The evidence of Zine Mankankela and that of the Appellant, particularly the contents of the statement in terms of section 112(2) of the CPA, which contents were subsequently recorded as formal admissions in terms of section 220 of the CPA, demonstrates that the Appellant had prior to killing the deceased, assaulted and fought with her. It was further the Appellant's evidence that he was angry, or angered, by the fact that the deceased made no effort to recover his property from

her friends, which was an expectation he had. This is prior to the fight the two of them had on their way to his house which culminated in the breaking of the door to his house.

[22] As stated by the court in *S v Kekana* [2014] ZA SCA 158 para 13, premeditation does not necessarily entail that the appellant should have thought or planned his actions long before carrying out his plan. Even a few minutes may be sufficient.

[23] Clearly there was a thought process involved in the Appellant's actions leading to the killing of his girlfriend. This is fortified by his version of how he dealt the blows on the deceased. The Appellant's own version indicates that he considered which part of the weapon he should use to inflict the injuries on the deceased, initially focused the impact on the head, injuring the brain, and then the body of the deceased. His assault, which must have been over a period of time given the nature of the deceased's injuries, was calculated to cause maximum harm. It was not an instantaneous act of retaliation. Dr. Coetzee's description of the injuries and of the object possibly used in the assault are consistent with some of the events described by the Appellant. Dr. Coetzee noted, and recorded, brain injuries, bodily injuries and significant trauma in the genitals in the form of multiple deep mucosal lacerations which extended into the lower third of the vaginal canal including the anus and the rectal canal.

[24] Significantly, regarding the latter mentioned injuries, Dr Coetzee expressed the opinion that they were indicative of resistance on the part of the deceased. Crucially, the evidence of Dr. Coetzee is that all the injuries recorded in the postmortem report were inflicted in the same period before the deceased died, inclusive of those inflicted to her genitals. Dr. Coetzee includes a hammer, the murder weapon, as the object used to inflict the injuries observed in the genitals of the deceased.

[25] In my view, the conspectus of the evidence considered by the trial court indicates that it took all relevant factors into account, carefully weighing up of the Appellant's actions against the admitted and/or proved facts, when concluding that

the murder was not committed on impulse or under unexpected circumstances. There was a thought process involved in the Appellant's actions leading to the ultimate killing of the deceased.

[26] While Zine Mankankela is a single witness in respect of the incident at Asonle's house, her evidence in respect of the Appellant's conduct was evaluated by the trial court against the totality of all the evidence. In *S v Teixeira* 1980 (3) SA 755 (A) at 761, the court remarked:

“ . . . in evaluating the evidence of a single witness, a final evaluation can rarely, if ever, be made without considering whether such evidence is consistent with the probabilities.”

While in *R v Sauls and others* 1981 (3) SA 172 (A) at 180 F-H the SCA remarked:

“There is no rule of thumb, test or formula to apply when it comes to a consideration of the credibility of a single witness. The trial judge will weigh his evidence, will consider its merits and demerits and having done so, will decide whether it is trustworthy and whether despite the fact that there are shortcomings or defects of contradictions in the testimony, he is satisfied that the truth has been told. . . It has been said more than once that the exercise of caution must not be allowed to displace the exercise of common sense.”

The evidence of Ms Mankankela was supported by other facts placed before the trial court; there is certainly nothing before this court to suggest that Ms Mankankela's evidence was unreliable or inconsistent with the proved facts.

[27] This brings me to the sentence imposed by the trial court. The approach to minimum sentences ordained by the legislature as set out in *S v Malgas* 2001 (1) SACR 469 SCA is that specified sentences are not to be departed from lightly or for “flimsy reasons”; and that matters such as undue sympathy or aversion to imprisonment of offenders are to be excluded. The trial court found that there were no substantial and compelling circumstances justifying the imposition of a lesser sentence than life imprisonment.

[28] That said, the Supreme Court of Appeal in *S v Swart* 2004 (2) SACR 370 (SCA) at para 17 – stated that it did not intend to suggest that the quality of mercy, an intrinsic element of civilized justice should be altogether overlooked, but rather to emphasise that retribution and deterrence will come to the fore in relation to certain crimes. The trial court had regard to, and cumulatively assessed, the Appellant's personal circumstances and found no facts which were either substantial or compelling to the benefit of the Appellant, when objectively evaluated against the manner in which the crime was committed.

[29] It is trite that sentencing is a matter pre-eminently in the discretion of the trial court and the appeal court cannot, in the absence of material misdirection by the former court, approach the question of sentence as if it was the trial court and substitute the sentence imposed simply because it prefers some other sentence. If it acted in this manner, the appeal court would be usurping the trial court's sentencing discretion. A misdirection is material if the trial court has not taken cognizance of factors that it should have or under emphasized the personal circumstances of a convicted person in relation to other factors to be considered (see, *S v Brand* 1998 (1) SACR 296 (C) at 202 e-j).

[30] In making the assessment of whether compelling and substantial factors existed to permit the deviation from the minimum sentence of life imprisonment, the trial court had regard to the age of the Appellant; the fact that he was 26 years old at the time; the fact that he stood as a first offender before the trial court; the fact that alcohol played a role during the commission of the crime; and, that he pleaded guilty to the charge. Regarding his plea of guilty and assumption of responsibility for his actions and expression of remorse, the court was not convinced that this was genuine contrition. The court reasoned that it is not convinced that the Appellant took full responsibility for his actions. The evidence reveals that the Appellant was rather selective in what he took responsibility for regarding his actions. Firstly, his plea explanation is devoid of the harrowing detail presented by Dr. Coetzee in her evidence on the injuries to the deceased and the state of the deceased's clothing. Secondly, his *viva voce* evidence proved to be contrary in material respects to his plea explanation. In his plea explanation, the Appellant states that he and the

deceased were arguing and fighting on the way to his house and the door to his house was broken as a result. His *viva voce* evidence in this regard differs and he testified that the door broke as a result of the aggressive manner he opened it. Essentially, in his plea explanation, the Appellant trivialized his conduct and the developments leading up to him killing his girlfriend.

[31] The evidence indicates that the offence which the Appellant committed, and was convicted of, was a heinous crime both in its nature and by reason of the policy indications which are set out in the Criminal Law of Amendment Act 105 of 1997 which the court must consider. The Appellant brutally murdered his girlfriend, and the gravity and callousness of this offence cannot be understated.

[32] Counsel for the Appellant strenuously contended that the trial court misdirected itself in not finding that the Appellant demonstrated remorse while he pleaded guilty. However, in my view, no genuine remorse or contrition was displayed by the Appellant. In *S v Matyityi* 2011 (3) SACR 40 (SCA) at 47 a-b Ponnann JA observed as follows:

“There is a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse. Remorse is gnawing pain of conscience for the plight of another, thus genuine contrition can only come from the appreciation and acknowledgement of the extent of one’s error. In order for 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 contrition alleged to exist, cannot be determined.”

[33] It is so that the Appellant was not forthcoming in his plea when it came to the true facts. He furnished the court with a watered-down version that he later during his testimony could not sustain. In his plea, he stated that the deceased and her friends had assaulted him at Asonle’s house, but curiously this aspect does not form part of his *viva voce* evidence. He further introduced new evidence that was not canvassed with the state witnesses nor included in his plea explanation.

[34] The Appellant further attempted to impugn the sentence imposed by the trial court on the basis that it failed to consider the period of incarceration while awaiting trial. The record reflects that the Appellant had been incarcerated upon arrest on 11 September 2021 to the date of finalisation of the case on 8 December 2023. Effectively, he has spent 2 years, 2 months and 3 weeks incarcerated. The period spent incarcerated is a factor to be taken into account in the assessment of whether there exist substantial and compelling factors justifying deviation from the prescribed minimum sentence. There is no rule as to how the determination regarding the weight to be attached to the said period. Each case must be decided having regard to all circumstances (see, *DPP v Gcwala* (295/13) [2014] ZASCA 44 (31 March 2014)). In any event, in my view, the omission by the trial court to expressly refer to this issue does not, against the totality of the evidence considered in determining the sentence imposed, amount to a material misdirection that would vitiate the sentence imposed.

ORDER

[35] In the circumstances, I would propose that the appeal in respect of conviction and sentence be dismissed.

RALARALA J

JUDGE OF THE HIGH COURT, WESTERN CAPE DIVISION

I concur
and it is so ordered

FRANCIS J

JUDGE OF THE HIGH COURT, WESTERN CAPE DIVISION

Appearances

For Appellant: A De Jongh
Instructed by: Legal Aid SA

For the State: J Seethal
Instructed by: Office of the Director of Public Prosecutions: Western Cape