



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

CA&R 101/2024

In the matter between:

SENZO DLANGAMANDLA

1st Appellant

PHILA NONGAYIYANA

2nd Appellant

BALEKANI GANYAZA

3rd Appellant

and

THE STATE

Respondent

JUDGMENT

RUSI J

[1] This appeal is only against the sentence of life imprisonment imposed by the Bizana Regional Court on the three appellants (the appellants) upon their conviction on 31 May 2023 on a charge of murder. It raises one crisp issue, and that is, whether the

trial court failed to exercise its discretion properly in imposing the term of life imprisonment on the appellants that its decision must be interfered with by this Court.

[2] The appellants were sentenced to life imprisonment in terms of section 51(1) of the Criminal Law Amendment Act 105 of 1997 (CLAA). Section 51 of CLAA provides for minimum sentences for various types of offences. Among the grounds that would bring the charge of murder within the purview of section 51(1) is the fact that it was premeditated or the accused acted in the furtherance of common purposes in committing it. In terms of section 51(3) of CLAA, the prescribed minimum sentence would be deviated from only if the court was satisfied that there was in existence substantial and compelling circumstances which justified that deviation.

[3] The appeal is brought before this Court in terms of the proviso to section 309(1)(a) of the Criminal Procedure Act 51 of 1977 (the CPA)¹. In terms of that proviso, no leave of the trial court was required in noting it. In this Court, Mr *Madywede* represented the appellants, and Mr *Methuso* represented the respondent (the prosecution).

[4] The appellants' conviction and sentence followed their pleas of guilty to the charge of murder. The prosecution had alleged that on 25 February 2023, at or near Nomakubane Location, the appellants, acting in the furtherance of common purpose, unlawfully and intentionally killed Ms Thandiwe Mbane (the deceased) by hitting her with a blunt object.

[5] In the postmortem report compiled on 28 February 2013 and handed to court by agreement between the prosecution and the defence as an exhibit, Dr Mrenqwa-Mazwi

¹ Section 309(1) (a) provides: 'Subject to section 84 of the Child Justice Act, 2008 (Act No. 75 of 2008), any person convicted of any offence by any lower court (including a person discharged after conviction) may, subject to leave to appeal being granted in terms of section 309B or 309C, appeal against such conviction and against any resultant sentence or order to the High Court having jurisdiction: Provided that if that person was sentenced to imprisonment for life by a regional court under section 51 (1) of the Criminal Law Amendment Act, 1997 (Act No. 105 of 1997), he or she may note such an appeal without having to apply for leave in terms of section 309B. . . '

concluded that the cause of the deceased's death was 'multiple organ failure' caused by excessive bleeding which was caused by a head injury and multiple blood vessel injuries. Dr Mrenqwa-Mazwi's chief findings on the deceased's body were as follows: a huge stab wound cutting through the skull from top to bottom, the skull was in two halves with extensive brain injury; a fracture dislocation of the right shoulder; a gunshot entry wound in the lateral aspect of the left leg with no exit wound; and a compound tibia/fibula fracture. A photo album depicting the body of the deceased was also admitted in evidence as an exhibit.

The factual background

[6] These are the material facts that the appellants admitted, respectively, in their statements containing their pleas of guilty as envisaged in section 112 of the CPA. The third appellant, a 68-year-old lady, admitted that sometime in January 2023 she hired the first appellant for an award of R2 500.00 (two thousand five hundred rands) to kill the deceased. Her reasons for wanting the deceased killed were allegedly that she had shown jealousy to her concerning her scrap metal business, and also made certain verbal threats to her. The amount offered to the first appellant as a reward for killing the deceased would be paid by the third appellant in instalments. It was in February 2023 that she received a report from the first appellant that the killing of the deceased had come to pass.

[7] The first appellant admitted, in turn, that having agreed to kill the deceased on the terms proposed by the third appellant, he, on 25 February 2023, met the second appellant at a ceremony that was held at a local homestead. He invited the second appellant to accompany him to the home of the deceased, and he agreed. On arrival at the home of the deceased, they entered the house, grabbed the deceased and toppled her from her bed. According to the first appellant, it is he who assaulted the deceased with a hammer several times on her head. While he did so, the second appellant was holding the deceased. They left the deceased lying down and her body was discovered a few days later. These facts were confirmed by the second appellant who also stated in

his statement outlining his plea of guilty that when they proceeded to the deceased's home, the first appellant was armed with a hammer that he put in a backpack. Apart from these admissions, each of the appellants admitted that the death of the deceased was caused by their conduct for which they had no justification in law.

[8] The trial court was satisfied that the appellants each pleaded guilty correctly and convicted them of 'premeditated murder'. At an opportune moment in this judgment, I will return to this pronouncement that the learned Regional Magistrate made when convicting the appellants.

[9] When the postmortem report was handed to the court for admission in evidence as an exhibit, the learned Regional Magistrate raised the omission, from the appellants' plea, of relevant facts regarding the gunshot wound that Dr Mrenqwa-Mazwi observed on the body of the deceased. It was submitted on their behalf by their legal representative that when he confronted them with the findings of Dr Mrenqwa-Mazwi, they denied knowledge of how the deceased sustained a gunshot wound and maintained that they only used a hammer in killing her.

[10] The appellants contented themselves with submissions that their legal representative made from the bar in mitigation of sentence. On behalf of the first appellant, it was submitted that he was 36 years old with 3 children aged between 10 and 3 years of age. He was not their primary care giver but financially supported them with the earnings he made from doing odd jobs. Apart from his contribution towards their maintenance, they were also beneficiary of the child support social grant. In respect of the second appellant, his personal circumstances were that he was 45 years old, and also lived on odd jobs. He had no children. The third appellant was said to be 68 years old and a widow with six children (all adults) and nine grandchildren. One of her six children was suffering from stroke, and she looked after her grandchildren who are born of her third and fifth born children who have since passed away. All the appellants were said to be first offenders.

[11] In asking the court to deviate from the prescribed sentence of life imprisonment, it was submitted on behalf of the appellants that the fact that they were first offenders and pleaded guilty to the charge against them was indicative of their prospects of rehabilitation and this constituted a substantial and compelling circumstance warranting the imposition of a lesser sentence.

[12] The prosecutor submitted, in aggravation of sentence, that the fact that the murder of the deceased was a contract killing called for a harsh sentence. He emphasized the fact that the third appellant took the law into her own hands instead of reporting the alleged threats by the deceased to the police. He took the view that the appellants' plea of guilty was a neutral factor and added that the overwhelming evidence against them constrained them to plead guilty to the charge. It was further submitted on behalf of the prosecution that none of the appellants' personal circumstances constituted substantial and compelling circumstances that would result in the reduction of their sentence from that which CLAA prescribes.

[13] In sentencing the appellants, the learned Regional Magistrate considered the callous brutality with which the appellants murdered the deceased who, he added, would not have put up a fight in her defence. He further remarked that the deceased must have suffered immensely before she ultimately died. The learned Regional Magistrate further took into consideration the fact that on the appellants' own showing, the murder of the deceased was an act of self-help whereby the first and second appellants were hired by the third appellant to murder her based on certain threats she was alleged to have made towards the third appellant. He found that none of the appellants' personal circumstances constituted substantial and compelling circumstances to justify a deviation from the prescribed sentence of life imprisonment.

The grounds of appeal

[14] In this Court, the appellants contend as their grounds of appeal, that:

- (a) The sentence of life imprisonment is so severe that it induces a sense of shock;
- (b) Their personal circumstances, viewed cumulatively, ought to have been found to constitute substantial and compelling circumstances that would justify a lesser sentence; and
- (c) The trial court erred in over emphasizing the 'triad of sentencing'.

The parties' submissions on appeal

[15] Mr *Madywede* submitted that the trial court ought to have considered the appellants' pleas of guilty as a sign of remorse. He asked us to find that the appellants' personal circumstances, cumulatively viewed, constitute substantial and compelling circumstances, and thus disturb the sentence imposed by the trial court.

[16] Mr *Methuso* persisted with the contention that the fact that the death of the deceased was a contract killing called for a severe sentence, and that no substantial and compelling circumstances existed from the appellants' personal circumstances which justified a deviation from the prescribed sentence of life imprisonment. He further submitted that it cannot be said, by reason only of the third appellant's advanced age, that life imprisonment was not an appropriate sentence to impose on her. In this regard he submitted that 'life imprisonment' means imprisonment for the rest of a person's natural life. It was further contended on behalf of the prosecution that, far from being a mitigating factor, the third appellant's advanced age ought to have enabled her to find prudence in reporting the threats that the deceased allegedly made to her to the police. Mr *Methuso* took issue with the fact that it was only in the appellants' heads of argument that an assertion was made that they showed remorse by pleading guilty to the charge of murder.

The legal principles

[17] Sentencing is a matter for the trial court's discretion. In the exercise of this function the trial court has a wide discretion in deciding which factors should be allowed to influence it in determining the measure of punishment and in determining the value to attach to each of the factors it takes into account. A failure to take certain factors into account or an improper determination of the value of such factors amounts to a misdirection, but only when the dictates of justice carry clear conviction that an error has been committed in this regard.² In the exercise of its appellate jurisdiction concerning the sentence imposed by the trial court, this Court 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.³

[18] In *S v Bailey*⁴ this principle was further explained as follows:

‘What then is the correct approach by an appellate court on appeal against a sentence imposed in terms of the Act? Can the appellate court interfere with such a sentence imposed by the trial court after exercising its discretion properly simply because it is not the sentence which it would have imposed or that it finds it shocking? The approach to an appeal on sentence imposed in terms of the Act, should in my view, be different to an approach to other sentences imposed under the ordinary sentencing regime. This in my view is so because the minimum sentences to be imposed are ordained by the Act. They cannot be departed from lightly or for flimsy reasons. It follows therefore, that a proper enquiry on appeal is whether the facts which were considered by the sentencing court are substantial and compelling or not.”

[19] There is indeed no straight jacketed definition of what constitutes substantial and compelling circumstances. As held in *Malgas*⁵ courts are required to approach the

² *S v Kibido* 1998 (2) SACR 213 (SCA) at 216g-l; *S v Pillay* 1977 (4) SA 531 (A), at 535E.

³ *S v Malgas* (117/2000) [2001] ZASCA 30; [2001] 3 All SA 220 (A); 2001 (2) SA 1222 (SCA); 2001 (1) SACR 469 (SCA) (19 March 2001) (*Malgas*), para 12.

⁴ 2013 (2) SACR 533 (SCA), para 20.

⁵ *S v Malgas* (117/2000) [2001] ZASCA 30; [2001] 3 All SA 220 (A); 2001 (2) SA 1222 (SCA); 2001 (1) SACR 469 (SCA) (19 March 2001) (*Malgas*), para 25.

imposition of sentence conscious that the legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the sentence that should ordinarily and in the absence of weighty justification be imposed for the listed crimes in the specified circumstances. The specified sentences are not to be departed from lightly and for flimsy reasons. Unless there are, and can be seen to be, truly convincing reasons for a different response, the crimes in question are therefore required to elicit a severe, standardised and consistent response from the courts.

[20] With these legal principles in mind, I turn to consider whether the appeal before us should succeed or not.

Discussion

[21] Even though there is no appeal against the conviction of the appellants, in the interests of clarity and legal certainty, something needs be said regarding the Regional Magistrate's findings pertaining to the appellants' guilty pleas. His pronouncement in that regard is encapsulated in the following excerpt of the record:

'The Court is satisfied that your pleas are an unequivocal admission of guilt to this charge of pre-meditated murder, and you are accordingly found GUILTY of premeditated [murder] as read with section 51(1) of part 1 of schedule 2 of the Criminal Law Amendment Act 105 of 1997 as amended.'

[22] It is trite that murder is a common law offence which is defined an unlawful and intentional killing of a human being. Section 51(1) of CLAA makes provision for various aggravating circumstances which, when proven to have existed at the time of the commission of the murder, will enjoin the court, upon conviction of the accused, to impose a minimum sentence of life imprisonment. In the presence of those aggravating circumstances, the prescribed minimum sentences will only be departed from if the court is satisfied that there are substantial and compelling circumstances which justify a lesser sentence.

[23] I mentioned elsewhere in this judgment that where the murder was pre-meditated or where the accused acted in the furtherance of common purpose in committing it, those circumstances would bring the murder within the purview of section 51(1) of CLAA. Therefore, the provisions of section 51(1) of CLAA should not be understood as creating new or separate offences of murder.⁶ Understood against this background, the appellants' conviction is in respect of the common law offence of murder which they indeed unequivocally admitted.

[24] I readily accept that had the appellants pleaded not guilty to the charge against them, the prosecution would bear the onus to prove beyond reasonable doubt that as alleged in the charge against them, they committed the murder in the furtherance of common purpose, or if it so wished, that the murder was premeditated or planned, so as to bring it within the scope of the minimum sentence of life imprisonment should they be convicted.

[25] As regards the meaning of the words 'premeditated or planned', in *S v PM*⁷, the court defined '*premeditated*' as 'something done deliberately after rationally considering the timing or method of so doing, calculated to increase the likelihood of success, or to evade detection or apprehension', and '*planned*' as 'a scheme, design or method of acting, doing, proceeding or making, which is developed in advance as a process, calculated to optimally achieve a goal.' And in *Kekana v S*⁸ it was held that it is not necessary that the appellant should have thought or planned his action a long period of time in advance before carrying out his plan, and that time is not the only consideration because even a few minutes are enough to carry out a premeditated action.

[26] Significantly, on the date of their trial the appellants were informed in the charge against them of the applicability of section 51(1) of CLAA by reason of the fact that 'in

⁶ *Kekana v The State* (37/2018) [2018] ZASCA 148 (31 October 2018), para 22; contrast, *Minister of Justice and Constitutional Development and Another v Masingili and Others* (CCT 44/13) [2013] ZACC 41; 2014 (1) BCLR 101 (CC); 2014 (1) SACR 437 (CC) (28 November 2013), para 16.

⁷ 2014 (2) SACR 481 (GP) at paras 35-36.

⁸ *Kekana v S* (629/13) [2014] ZASCA 158 (1 October 2014), para 13.

committing the murder, they acted in the furtherance of common purpose.’ That being so, the facts that the appellants admitted in their respective pleas, objectively viewed, establish that the murder was indeed premeditated and further, perhaps principally, that in committing it, they acted in the furtherance of common purpose. In either case, their conviction remains within the purview of section 51(1) of CLAA.

[27] Regrettable as it may be that the learned Regional Magistrate found that they were guilty of ‘premeditated murder’ in circumstances where this allegation was not pertinently made by the prosecution in the charge against the appellants, this legal error is not, in the present circumstances, of a nature that vitiated the appellant’s right to a fair trial, they did not suffer the prejudice envisaged in *S v Kolea*.⁹ From the record, there is no indication that they would have conducted their defence differently had the prosecution specifically, and/or additionally alleged that the murder was premeditated. We need not, in the exercise of our inherent powers to intervene, interfere with the appellants’ conviction. This, however, should not be interpreted as exonerating the prosecution from its duty as laid down in *S v Legoa*,¹⁰ of informing the accused of the charge she/he is to meet with sufficient detail, including the applicable penal provisions sought to be relied upon in the case against that accused. This is an indispensable principle of the law which is entrenched in our criminal justice system.

[28] In the discussion that follows I deal with the contentions made in support of the grounds of appeal relied upon in this appeal.

[29] Among the submissions that were made in the appellants’ heads of argument is that they had pleaded guilty to the charge as a sign of remorse and that they have prospects to be rehabilitated. Reliance was placed, inter alia, on *S v Landau*¹¹ where it

⁹ In *S v Kolea* 2013 (1) SACR 409 (SCA) at para 9, the court held as follows: ‘Thus the question that should be posed should be the following: Did the appellant have a fair trial and, more specifically, was the appellant sufficiently apprised of the charge he or she was facing, and was he or she informed, in good time, of any likelihood of his or her being subjected to any enhanced punishment in terms of the applicable legislation.’ See also *S v Ndlovu* 2003 (1) SACR 331 (SCA) at para 12.

¹⁰ 2003 (1) SACR 13 (SCA) at para 20.

¹¹ 2000 (2) SACR 673 (W) at 679; and *S v Mvelase* 1958 (3) SA 126 (N).

was held that a plea of guilt is sometimes an accused's expression of genuine co-operation, remorse and desire not to waste the court's time in defending the indefensible.

[30] I agree that the issue of remorse arose for the first time in the appellant's heads of argument. That being so, even had that assertion been made by the appellants both during their trial before the Regional Magistrate and in the notice of appeal, it is settled law that remorse is a factual question which is determined from the surrounding actions of the accused rather than what he or she says in court. The Court, in *S v Matyityi*¹², explained the notion of remorse as follows:

'Whether the offender is sincerely remorseful and not simply feeling sorry for himself or herself at having been caught is a factual question. It is to the surrounding actions of the accused rather than what he says in court that one should rather look. 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. Until and unless that happens the genuineness of the contrition alleged to exist cannot be determined. After all, before a court can find that an accused person is genuinely remorseful, it needs to have a proper appreciation of inter alia: what motivated the accused to commit the deed; what has since provoked his or her change of heart; and whether he or she does indeed have a true appreciation of the consequences of those actions. . . '

[31] The contention that the appellants showed remorse by pleading guilty to the charge and have prospects of rehabilitation does not, in any event, find support from what appears from the record. To begin with, where an accused, as in this case, chooses to make submissions from the bar in mitigation of sentence after conviction upon a plea of guilty, the court is left with limited information as would be set out in the statement outlining the plea of guilty and the submissions so made in mitigation of

¹² *S v Matyityi* (695/09) [2010] ZASCA 127; 2011 (1) SACR 40 (SCA); [2010] 2 All SA 424 (SCA) (30 September 2010), para 13.

sentence. What troubles my mind in the present case is the fact that from the record, no details were given regarding how the discovery of the body of the deceased came about. Nowhere was the trial court told that the appellants took any steps in assisting the police solve the murder. In their plea statements, the first and second appellants merely stated that they were arrested after the discovery of the body of the deceased.

[32] Furthermore, the fact that the appellants eschewed any connection to the gunshot wound that the pathologist observed on the body of the deceased is not without significance. Not only that, even though the first and second appellants stated that a hammer was used in killing the deceased, that appears to be incongruous with Dr Mrenqwa-Mazwi's finding that the deceased had 'a huge stab wound cutting through the skull from top to bottom,' and that the skull was in two halves with extensive brain injury. I make this observation mindful of the fact that what the appellants stated, are the facts that the prosecution accepted despite what the findings of the pathologist indicate.

[33] However, the prosecution's acceptance of such facts did not detract from the trial court's power to consider an appropriate sentence upon a conviction of murder to which the appellants pleaded guilty. I hasten to state that this Court cannot, in the exercise of its appellate jurisdiction, be expected to close its eyes to any of the facts that were before the trial court when it sentenced the appellants despite any concessions that the prosecution may have made. To think otherwise would result in an absurdity and a travesty of justice.

[34] What is manifest from the record is that the appellants did not take the trial court into confidence regarding their actions in committing the murder in so far as the gunshot wound is concerned and how the stab wound that Dr Mrenqwa-Mazwi observed was caused. This has a bearing on the alleged remorse on their part. Simply put, if the appellants failed to fully disclose the facts relevant to the murder, it becomes difficult to conceive how they showed genuine remorse and how there are prospects that they will be rehabilitated. While I am not unmindful of the fact that the gunshot wound does not appear, from the findings of Dr Mrenqwa-Mazwi, to be associated with the cause of the

deceased's death, it was important that the appellants lay themselves bare before the trial court if the end goal was to convince the court that they were remorseful of their actions and were candidates for rehabilitation.

[35] An incomplete picture of the circumstances surrounding the death of the deceased was portrayed by the appellants and accepted by the prosecution without demur despite the objective facts regarding the nature and extent of the injuries that the postmortem report recorded. The prosecution's shortsightedness in that regard must be censured. Moreover, it seems that the second appellant minimized his role to only holding the deceased while the first appellant, on his narration, bludgeoned her with the hammer. These observations belie the remorse that the appellants are said to have displayed in the same way that they negate the contention that they have prospects of being rehabilitated.

[36] In any event, even if we were to accept that the appellants have prospects of being rehabilitated, in *S v Swart*,¹³ the Court pointed out that each of the elements for the purpose of punishment need not be given the same weight, but rather that proper weight must be accorded to each according to the circumstances of the case. It further held that 'serious crimes will usually require that retribution and deterrence should come to the fore and that the rehabilitation of the offender will consequently play a relatively smaller role.'

[37] Suffice it to say that despite the appellants' failure to fully disclose how they killed the deceased, in so far as this was relevant for the purposes of sentence, the least that they disclosed during their plea proceedings still establishes that the deceased was killed with callous disregard of her own life. Not only that, but her life was also bought by the third appellant, so to speak, for R2 500.00 and the cruel hands of the first and second appellants delivered it.

¹³ 2004 (2) SACR 370 (SCA) at para 12.

[38] Lastly, the motive for the murder was that the deceased had made certain threats to the third appellant. Quite perplexing is the fact that instead of reporting the alleged threats to the police or local authorities, the third appellant arrogated unto herself the right to permanently remove from existence ‘a perceived threat to her peace,’ as it were. She found resorting to self-help a viable and prudent course. That simply cannot be – the right to life is a precious and invaluable gift that everyone has a right to enjoy. The deceased had hers taken away in a senseless and callous manner.

[39] It has been held that the prescribed minimum sentences are not to be departed from for flimsy reasons that would not withstand scrutiny; and that in cases of serious crime, the personal circumstances of the offender by themselves, will necessarily recede into the background.¹⁴ At this point I must deal with Mr *Madywede*’s submission that in respect of the third appellant who was 68 years of age when she committed the murder, the sentence of life imprisonment was inappropriate in that it would mean that she would not ever come out of prison alive. The starting point should be the fact that life imprisonment indeed means imprisonment for the rest of a person’s natural life.¹⁵

[40] To my mind, it would be sending out a wrong message if, in every case, the courts were to be lenient towards older offenders merely on the basis that they are of advanced age. In fact, as correctly submitted by Mr *Methuso*, it would be expected that with the third appellant’s advanced age came wisdom. And in this case, the expectation is that the third appellant, at the advanced age of 68 years would be possessed of the prudence to report the alleged threats that the deceased made to her to the authorities.

[41] I interpose to re-state the now trite principle that in cases of serious crime, once it becomes clear that the crime is deserving of a substantial period of imprisonment, the questions whether the accused is married or single, whether he has two children or three, whether or not he is in employment, are in themselves largely immaterial to what

¹⁴ *Malgas*, footnote 4 supra, para 25.

¹⁵ *S v Solomon and Others* (CC23/2018) [2020] ZAWCHC 118; 2021 (1) SACR 533 (WCC) (12 October 2020), para 27.

that period should be.¹⁶ In *S v Abrahams*¹⁷ where the appellant was 53 years at the time of conviction and 54 years at the time he was sentenced it was held that the age of the accused is not in itself a mitigating factor.

[42] In *S v J A*¹⁸ the appellant was 59 years of age when he was sentenced in the High Court to life imprisonment for the rape of his 12-year-old daughter. On appeal to the Full Court it was contended, inter alia, that his advanced age should have been considered a mitigating factor since he would only become eligible for parole no sooner than the age of 74, and possibly, only when he reached the age of 84 (in terms of s 73 of the Correctional Services Act 111 of 1998). No such contention was pertinently made before us. However, on the appropriateness of the sentence of life imprisonment where an offender is of advanced age, and after considering a number of authorities, the Full Court in *S v J A* held as follows:

[36] A sentence of life imprisonment must, from the viewpoint of the courts, be seen as exactly that — imprisonment for the rest of the natural life of the offender. That must also be assumed to have been the intention of the legislature in enacting s 51(1) of the Act.

[37] This must necessarily be the case, because such a sentence would technically empower the executive to keep the offender in custody for the rest of his or her natural life. The possibility that a sentenced offender may later be released on parole is dependent upon a statutory power and discretion which lie within the domain of the executive, and courts are therefore not entitled to take into account the possibility of such release when considering a sentence, let alone the possible timing of such release.

[38] The function of a court in imposing sentence is to determine the maximum period a convicted person may be imprisoned and it cannot, in my view, in doing

¹⁶ *S v Vilakazi* 2009 (1) SACR 552 (SCA) at para 58.

¹⁷ 2002 (1) SACR 116 (SCA), para 27; see also *Barendse v S* (CA 181/08) [2009] ZAECHGHC 75; 2010 (2) SACR 616 (ECG) (6 November 2009).

¹⁸ 2017 (2) SACR 143 (NCK).

so take into account or rely on the possibility that the offender could be released on parole after having served a specified portion of that maximum period.

[39] The approach cannot in my view be different where the issue in a particular case is whether life imprisonment would be an appropriate sentence. It is not for the sentencing court to try to work out how old an offender could be when (if at all) the executive decides to release him or her on parole. The fact that a person who is 25 years old at the time of sentencing is more likely to serve a longer period of imprisonment than a person who is 60 years old at the time of sentencing if both were to remain in prison for the rest of their natural lives, would also not justify a sentencing court to not impose a life sentence of imprisonment where it is statutorily required.

[43] I respectfully align myself with the approach adopted by the Full Court in *S v J A*. I make the finding that in the circumstances of the present case, the contention that because the third appellant was 68 years of age when she was convicted, and therefore this constituted a substantial and compelling circumstance, cannot be sustained.

[44] In the light of the foregoing, it can hardly be said that the learned Regional Magistrate misdirected himself in finding that the appellants' personal circumstances cumulatively viewed, did not constitute substantial and compelling circumstances. His decision cannot be faulted. I deal next with the contention that the sentence of life imprisonment induces a sense of shock.

[45] To begin with, the phrase must not be used as an epithet that expresses unfounded disapproval of how the court's sentencing discretion was exercised. More is entailed in saying that the sentence induces a sense of shock against an understanding first, of what society requires or expects of the law in punishing crime. I am acutely alive to the fact that each case is to be assessed in accordance with its unique circumstances. With that said, sight must not be lost of the gravity of the offence that the appellants have committed. The callous brutality with which they murdered the deceased, as correctly observed by the learned Regional Magistrate, must have

exposed her to an amount of suffering before her death. Moreover, contract killings are prevalent, and it is unsurprising that society demands the imposition of the severest punishment upon those who commit such monstrous offences.¹⁹

[46] I am unable to agree with the contention that the sentence of life imprisonment that the learned Regional Magistrate imposed on the appellants induces a sense of shock. There is no reason to interfere with it. The appeal falls to be dismissed.

[47] In the result, I would make the following order:

1. The appeal against sentence is dismissed and the sentence of life imprisonment imposed on each of the appellants is confirmed.

L. RUSI
JUDGE OF THE HIGH COURT

I agree:

M. MHAMBI
JUDGE OF THE HIGH COURT (ACTING)

Appearances:

For the appellant : *Mr A Madywede*
: Legal Aid South Africa, Mthatha local office

¹⁹ *Monye and Another v S* 2017 (1) SACR 329 (SCA), at para 22.

Counsel for the first respondent : *Adv. L Methuso*
The Office of the Director of Public Prosecutions,
Mthatha

Date heard : 19 February 2025

Date delivered : 19 August 2025