



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, EAST LONDON CIRCUIT COURT)**

CASE NO.: CC21/2025

Reportable	YES/NO
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In the matter between:

THE STATE

versus

T[...] M[...]

ACCUSED

SENTENCE

Cengani-Mbakaza AJ

[1] Following guilty pleas, this court convicted the accused on the following charges:

1. Count 1 - Assault with intent to do grievous bodily harm read with the provisions of s 51(2)(b), Part 111 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997.
2. Count 2 - Murder read with the provisions of s 51(1), Part 1 of Schedule 2 of the Criminal Law Amendment Act 105 of 1997.

[2] The sentencing procedure is embedded in various legal statutes and the law is settled in this regard. In *RO & Another*¹, Heher JA states as follows at paragraph 30:

‘Sentencing is about achieving the right balance between (or in a more high-flown term, proportionality). The elements at play are the crime, the offender and the interests of society, or with a different nuance, prevention, retribution, reformation and deterrence. Invariably, there are overlaps that render the process unscientific, even a proper exercise of judicial function allows reasonable people to arrive at a different conclusion.’

[3] Similarly, the principles of punishment are explicitly discussed by a number of authors². In *S v Loggenberg*³, Willis J summarised these principles and stated that sentencing has five important functions. It must act as a deterrent, in otherwords, it must deter other members of the community from committing such acts or thinking that the price of wrongdoing is worthwhile; it must act as a specific deterrent, in other words, it must deter individual from being tempted to act in such a manner again. Sentencing must enable the possibility of correction unless it is very clear that this is unlikely. It must be protected of society, in otherwords society must be protected from those who do it harm. Sentencing must serve the society’s desire for retribution, in otherwords, society’s outrage at serious wrongdoing must be placated.

[4] In *casu*, the accused acknowledged the applicability of the Criminal Law Amendment Act in respect of both counts. As already noted in *Malgas*⁴, when determining whether substantial and compelling circumstances exist or not, the court must take into account all the factors that may reduce the accused’s

¹ 2010 (2) SACR 248 (SCA).

² Criminal Law, CR Snyman Sixth edition pages 12-13.

³ 2012 (1) SACR 462 (GSJ).

⁴ 2001 (1) SACR 469.

blameworthiness and mitigate culpability. The court summarised this approach at 470-471 as follows:

- A. 'Section 51 has limited but not eliminated the court's discretion in imposing sentence in respect of offences referred to in Part 1 of Schedule 2 (or imprisonment for other specified periods for offences listed in other parts of Schedule 2).
- B. Courts are required to approach the imposition of sentence conscious that the legislature has ordained life imprisonment (or particular prescribed period of imprisonment) as the sentence that should ordinarily and in the absence of weighty justification be imposed for the listed crime in the specified circumstances.
- C. Unless there are, and can be seen to be, truly convincing reasons for a different response, the crime in question are therefore required to elicit a severe, standardised and consistent response from the courts.
- D. The specified sentences are not to be departed from lightly or for flimsy reasons. Speculative hypotheses favourable to the offender, undue sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy underlying the legislation, and marginal differences in personal circumstances or degrees of participation between in co-offenders are to be excluded.
- E. The Legislature has however deliberately left it to the courts to decide whether the circumstances of any particular case call for a departure from the prescribed sentence. While the emphasis has shifted to the objective gravity of the type of crime and need for effective sanctions against it, this does not mean that all other considerations are to be ignored.
- F. All factors (other than those set out in D above) traditionally taken into account in sentencing (whether or not they diminish moral guilt) thus continue to play a role, none is excluded at the outset from consideration in the sentencing process.
- G. The ultimate impact of all the circumstances relevant to sentencing must be measured against the composite yardstick ('substantial and compelling') and must be such as cumulatively justify a departure from the standardised response that the Legislature has ordained.

- H. In applying the statutory provisions, it is inappropriately constricting to use the concepts developed in dealing with appeal against sentence as the sole criterion.
- I. If the sentencing court on consideration of the circumstances of the particular case is satisfied that they render the prescribed sentence unjust in that it would be disproportionate to the crime, the criminal and the needs of society, so that an injustice would be done by imposing that sentence, it is entitled to impose a lesser sentence.
- J. In so doing, account must be taken of the fact that crime of that particular kind has been singled out for severe punishment and that the sentence to be imposed in lieu of the prescribed sentence should be assessed paying due regard to the benchmark which the Legislature has provided.’

[6] With these principles in mind and taking into account the factors encapsulated in *Zinn*⁵, I now consider the circumstances of this case. The deceased is the accused’s wife and the complainant in count 1 is their child (the child). The child was a 9-year-old at the time of the incidents. The couple has been in a tumultuous and abusive relationship. The accused’s sister advised them to divorce and live separate lives. This did not materialise but the abuse continued. The abuse had an impact on the children as demonstrated by the events of 1 February 2025. In an egregious incident that occurred, the child in the absence of his parents, scared and chased his siblings while carrying a knife.

[7] Subsequently, when the accused returned home, he assaulted the child causing him grievous bodily harm. This incident is classified as a first episode. The second episode concerns the incident that led to the deceased’s death. The most aggravating features of the second episode are demonstrated by the accused’s own version of events. As the couple’s personal and financial

⁵ In *S v Zinn* 1969 (2) SA 537 (a), the court dealt with the basic triad of sentencing considering the crime, the criminal and interests of society.

circumstances changed, they began to consume liquor. Despite the accused's appreciation of the wrongfulness of his action and his ability to act in accordance with such appreciation, the quarrel that led to the deceased's death was exacerbated by the excessive consumption of alcohol.

[8] The accused's anger was fuelled by the deceased's confrontation and her failure to sleep at home that day. Although the accused stated that he tried to calm the deceased, the confrontation escalated. In a fit of anger, the accused severely assaulted the deceased. Despite the deceased's attempts to retaliate including falling, her efforts were unsuccessful. What is more aggravating is that the deceased was lying on the ground helplessly while the assault with dangerous weapons including a stick and a three-legged iron pot continued. The accused assaulted the deceased all over the body including her head.

[9] Dr Khunyuza, the Chief Medical Officer conducted a post mortem examination on the deceased's body. In her examination, she noted the following:

- Bloodless dissection was performed on this body to investigate the possibility of strangulation.
- Round depressed skull fracture right occiput.
- Base of skull fracture middle crania fossa
- Subdural haemorrhages.
- Pressure applied to neck - bruised neck muscle.
- Aspirated blood airways + lungs, collapsed lungs.
- Contusion liver, no laceration.
- Contusion kidneys & congestion.

The cause of death was reported to be multiple injuries, blunt trauma on the head, crushed syndrome and blunt trauma on the neck.

[10] Another aggravating factor is that the second episode occurred in the presence of the children. Clearly, the accused disregarded their best interests. I agree with both counsel that there was extreme violation of human rights in this case and such actions cannot be tolerated. The right to life is considered a fundamental right, essential for the enjoyment of all rights. It is a cornerstone of human dignity and a foundational principle in many international human rights instruments.

[11] According to the social worker's assessment, the two minor children who were present during the second incident suffered significant trauma which had impacted their daily lives, including their studies. The rights of children are also safeguarded by various legal instruments. Subjecting a child to abuse, as in the present instance, is strictly prohibited by the law.

[12] I now consider the accused's personal circumstances: He is 35 years of age. His highest level of education is standard 9, he could not finish his studies due to financial constraints. His parents were married but parted ways. His father could not afford to raise his children due to financial difficulties. Subsequently, he was raised by his grandparents. Counsel for the accused informed the court that the passing of the accused's father affected his psychological state. This was confirmed by her sister who testified in the proceedings tabling the accused's personal circumstances. His father was swept away by the sea and his body was never recovered. He worked in various institutions, first he was doing odd jobs earning R350, he later joined Caltex garage at Kidd's beach and worked as a petrol attendant earning R4500 per month. He was later employed by the Department of Agriculture, Forestry and Fisheries earning R5200 per month. He played a significant role in raising his minor children.

[13] Currently, the accused's minor children born of marriage stay with his sister. Most significantly, his sister lacks means to raise them and the minor children are not beneficiaries of the social grant because the application that the accused's sister made with the Department of Social Development was disapproved.

[14] I now deal with the last leg of the *Zinn* approach, the interests of the society. Both parties acknowledged that the cases involving murder between members of the same family have frequented our courts. In *Kekane v The State*⁶, Mathopo AJA (as he then was), remarked at par 20 as follows:

‘Domestic violence has become a scourge in our society and should not be treated lightly. It has to be deplored and also severely punished. Hardly a day passes without a report in the media of a woman or a child being beaten, raped or even killed in this country. Many women and children live in constant fear for their lives. This is in some respects a negation of many of their fundamental rights such as equality, human dignity and bodily integrity...’

Therefore, it is imperative for the courts to protect the society by imposing stiffer sentences in cases of this nature.

[15] The next question is whether the accused has shown the existence of substantial and compelling circumstances. I believe so, and I will start with the issue of remorse. As already noted in *Matyityi*⁷, a plea of guilty is not a sign of remorse per se, it may demonstrate a sign of feeling pity for oneself. In the present matter, despite the absence of a medical report for the first count, the accused took a responsible step by pleading guilty, choosing not to rely on technicalities and placing the burden solely on the state. His legal representative submitted that during consultation, he spontaneously made his intention clear,

⁶ (629/13) [2014] ZASCA 158 (1 October 2014).

⁷ *S v Matyityi* (695/09) [2010] ZASCA 127 (30 September 2010).

indicating from his first appearance in the High Court that he intended to plead guilty to the crimes.

[16] Furthermore, the accused chose not to have his children, the state's key witnesses, testify, demonstrating consideration for their well-being and avoiding potential secondary victimisation. The commission of criminal activities and attributing blame to liquor consumption is not condoned. However, this is a case where the accused's culpability was reduced due to the consumption of alcohol. While it is not in the best interests of the children to have a violent parent, the accused is the primary caregiver. In *S v M (Centre for Child Law as Amicus Curiae)*⁸, the court set out the guidelines to be taken into account when sentencing a primary caregiver. Although in that matter the court acknowledged that there is no formula that can guarantee right results, it went on to say there must be uniformity of principle, consistency of treatment and individualisation of the outcome in such cases. If on the *Zinn* approach the appropriate sentence is clearly custodial and the convicted person is a primary caregiver, the court must apply its mind to whether it is necessary to take steps to ensure that the children will be adequately cared for while the caregiver is incarcerated.⁹

[17] Therefore, this court cannot overlook the issue of the social well-being of the minor children concerned. As the upper guardian of all minor children, this court has an obligation to safeguard their best interests. The children's Act 38 of 2005 (the Children's Act addresses such situations. Section 47 (1) of the Children's Act provides:

'If it appears to any courts in the course of proceedings that a child involved in or affected by those proceedings is in need of care and protection as contemplated in section 150, the court must order that the question whether the child is in need of care

⁸ [2007] ZACC 18; 2008 (3) 232 CC at para 36.

⁹ *S v M* at fn 7 *supra*.

and protection be referred to a designated social worker for an investigation contemplated in section 155(2).’

[18] After consideration, and having taken all the factors cumulatively, I conclude that the nature and seriousness of the crimes weigh more heavily than the accused’s personal circumstances warranting a long term of imprisonment.

[19] Resultantly, in terms of s 51 (3) of the Criminal Law Amendment Act 105 of 1997, the accused is sentenced as follows:

- (a) Count 1 - Assault with intent to do grievous bodily harm - The accused is sentenced to 8 (eight) years’ imprisonment.
 - (b) Count 2- Murder - The accused is sentenced to 25 (twenty-five) years’ imprisonment.
 - (c) In terms of section 280 (1) of the Criminal Procedure Act 51 of 1977, the sentence in count 1 shall run concurrently with the sentence in Count 2. Therefore, the accused will serve an effective term of 25 (twenty-five) years’ imprisonment.
 - (d) In terms of Section 47 (1) of the Children’s Act 38 of 2005, a designated social worker shall investigate whether the accused’s minor children are in need of care and protection. Upon investigation, she or he must compile a report within 90 (ninety) days from the date of this order and report to the Children’s Court in East London.
 - (e) The Registrar of this court in collaboration with counsel for the state and the defence, is directed to ensure that this order is brought to the attention of the designated social worker for implementation.
 - (f) In terms of section 103 (1) of the Firearms Control Act 60 of 2000, the accused remains unfit to possess a firearm, by operation of law.
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N CENGANI-MBAKAZA
JUDGE OF THE HIGH COURT (ACTING)

APPEARANCES:

Counsel for the State : Adv Nohayi
DPP, Makhanda

Counsel for the Defence : Adv Nomlala
Legal Aid - South Africa

Date Heard : 27 August 2025
Date Delivered : 29 August 2025