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

CASE NO.: CC04/2023

In the matter between:

THE STATE

and

M[...] W[...]

Accused

JUDGMENT ON SENTENCE

GQAMANA J

[1] This case highlights once again the plight of vulnerable persons, in particular

women in our society who are often unable to defend themselves against violent perpetrators. The deceased was the mother of the accused and during her lifetime, they were residing at the same address.

[2] Courts have stated that violence by men towards women is pandemic in South Africa. The femicide rate is five times higher than the global average.¹

[3] Because of the prevalence of domestic violence against women, there is an expectation from communities in general for the courts to protect women against commission of such crimes.

[4] In *S v Rohde*,² the court there said the following:

‘Crime based on gender is an affliction in our society. Crimes against women are a social ill and if efforts by government and society are increasingly 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 women. The judiciary must guard against such perception and creating the impression that the lives of women are less worthy of protection.’

[5] In this case the accused has been convicted of murder committed under the circumstances contemplated in section 51 (1) of the Criminal Law Amendment Act 105 of 1997 as amended by Act 38 of 2007, read with Part 1 of Schedule 1 of Act 105 of 1997 as amended and further read with section 15 (g) of Act 12 of 2021, in that, the death of the victim resulted from physical assault as contemplated in paragraphs (a) and (b) of the definition of domestic violence in section 1 of the

¹ *S v Pillay* 2018 (2) SACR 192 (KZD) at para 1.

² 2019 (2) SACR 422 (WCC) at para 54.

Domestic Violence Act 116 of 1998, by the accused who is in a domestic relationship with the victim as defined in section 1 of the Act. Further the accused has been convicted of contravention of section 30 (1), (2) and (3) of the Older Person Act 13 of 2006 in that, he physically assaulted the deceased who was a 62-year-old female person by kicking her on the head and trampled on her.

[6] In imposing an appropriate sentence the court must consider the well-known triad factors mentioned in *S v Zinn*.³ An appropriate sentence should reflect the severity of the crime, while at the same time giving full consideration of all the mitigating and aggravating factors.

[7] The crime of murder has since time immemorial been considered by our courts as a very serious offence.

[8] In *S v Nyangwa*,⁴ this court said that:

‘The prevalence of the crime of murder is such that cognisance is sometimes loss of the extreme consequences that fall from it. Life is ended. And with it the enjoyment of all the rights vested in that person: dignity, equality and freedom, and the right to life itself. Not only is life ended, but the lives of family and friends are irreparably altered. It is for this reason that the rule of law requires that the perpetrator should, generally, be visited with harsh punishment. The act of punishment serves as retribution. It serves also to signify that such crimes will not be tolerated, that there is a significant and serious consequences to be suffered by the perpetrator. But, as a society founded upon the respect for and protection of human dignity, our criminal justice system also acknowledges that, where possible, the consequences should be ameliorated where there is a prospect that the perpetrator maybe rehabilitated and reintegrated into society upon the completion of the sentence imposed.’

[9] The court in imposing an appropriate sentence must strive to find a balance

³ 1969 (2) SA 537 (A).

⁴ Per Goosen J (then) (CC25/2018) [2019] ZAECD PEHC 46 (7 August 2019).

between too much and too little sentence because too light a sentence may not reflect the gravity of the offence and would tend to allay the fear of punishment in the minds of other people.

[10] In *R v Karg*,⁵ Schreiner JA said the following:

‘While the deterrent effect of punishment has remained as important as ever, it is, I think, correct to say that the retributive aspect has tended to yield ground to the aspects of prevention and correction. That is not doubt a good thing. But the element of retribution, is historically important is by no means absent from the modern approach. It is not wrong that the natural indignation of interested persons and the community at large should receive some recognition in the sentences the courts imposed. And it is not irrelevant to bear in mind that if sentencing for serious crimes is too lenient, the administration of justice may fall into disrepute and injured persons may incline to take the law into their own hands.’

[11] However having said all this, courts should not approach punishment in a spirit of anger, nor should it strive after severity or surrender to misplaced pity. Punishment is not a revenge.

[12] The point of departure in this case is that the prescribed minimum sentence of life imprisonment in respect of count 2 must be imposed, unless I find substantial and compelling circumstances which justify a departure therefrom.⁶

[13] If, I am of the view that having regard to the nature of the offence, the personal circumstances of the accused and the interests of society, the prescribe minimum sentence would be disproportionate and would be unjust to impose it, I would be justified to deviate from the minimum sentence.⁷

[14] I turn now to consider the personal circumstances of the accused: he was born

⁵ 1961 (1) SA 231 (A) at 236 A-B.

⁶ *S v Malgas* 2001 (1) SACR 469 (SCA).

⁷ *S v Vilakazi* 2009 (1) SACR 552 (SCA).

on 10 June 1979, and he is now 46 years of age. He has two minor children, 12 and 11 years old respectively, both of whom are residing with his grandmother here in Gqeberha. Their biological mother passed on in year 2019. He completed grade 9 secondary level and due to financial constraint, he was unable to further his academic studies. He was employed from 2006 to 2019 delivering newspapers. Not much is known on his income thereon, nor about his siblings. However, at the time of the commission of these offences he was residing at the same family home with the deceased and his now late father. Although he has previous convictions but all of them are irrelevant for purposes of this matter as they are not violent related, and as such he will be treated as first offender. He pleaded guilty only after the State had presented its case. He has not showed remorse. He has been in custody since 14 July 2022, awaiting trial. The relationship between the deceased and the accused was that of a mother and son relationship. Whether such relationship was a healthy one, the evidence in that regard is limited. However, the undisputed evidence from the accused is that, his mother was severely addicted to prescription medication like stilpayne and “PAX”. She would take these pain killers several times a day by crushing them into powder and lick them off her hand. The effect thereof would make her unsteady on her feet and unable to perform house chores. Because of that the atmosphere at his home was often very strained. This persisted even on the day that he assaulted the deceased.

[15] Counsel for the accused acknowledged that life sentence is applicable in respect of count 2. However, she submitted that such sentence would be disproportionate to the circumstances of this case and that each matter has to be considered based on the applicable facts and that, the traditional mitigating factors and aggravating factors had to be considered together. In pleading for a lesser sentence, the argument advanced was that, the personal circumstances of the

accused, the fact that he pleaded guilty and his clean record considered cumulatively with all his other personal circumstances do justify a lesser sentence. It was strongly argued that, although murder on its own is a serious offence especially because this matter involves domestic violence but, the manner in which it occurred, life imprisonment would be disproportionate. It was however, conceded that a lengthy sentence is unavoidable and that the accused is a capable candidate for rehabilitation.

[16] On the other hand, counsel for the State, argued for a life sentence in respect of the murder. It was argued that the accused assaulted the deceased viciously by repeatedly kicking and trampling on her head causing severe injuries as testified by Dr Hansloo and recorded in the postmortem report. It was argued that as a result of the accused actions, the deceased had to be admitted in hospital as she was severely weak. The deceased had to be incubated and was unable to speak in her last days of life. She remained in hospital until her last day. The injuries sustained by the deceased are well documented in the postmortem report and shall not be repeated, suffice to say that they were severe. The cause of death was recorded as being the complications following blunt force trauma to the head. I readily accept that, the assault was vicious and that murder, especially the presence of domestic violence is an aggravating factor which warrants this court to impose a harsher sentence.

[17] Although the accused has pleaded guilty, but he has showed no remorse. However, his actions of pleading guilty to me is an indication that he is a candidate for rehabilitation.

[18] There are plethora of authorities,⁸ which emphasises the scourge of violence by men towards women and which calls for court to impose harsher sentences to recognise the seriousness of such situations.

[19] Although the court must take into consideration the interests of society, but it must not over-emphasise the public interest and the general deterrence.

[20] The Supreme Court of Appeal in S v Crossley⁹ said:

“... any sentence imposed must have deterrent and retributive force. But of course, one must not sacrifice an accused person on the altar of deterrence. Whilst deterrence and retribution are legitimate elements of punishment, they are not the only ones, or for that matter, even the overriding ones. ... It is true that it is in the interest of justice that crime should be punished. However, punishment that is excessive serves neither the interests of justice nor those of society.”

[21] In this case the evidence before me in relation to the circumstances under which the deceased was physically assaulted by the accused are set out in the statement in terms of section 112 (2) of the Criminal Procedure Act. In summary, the accused has stated that, on the day in question between 10h00 and 11h00 in the morning, he was woken up by his mother who was calling him outside to the backyard. Upon attending to that, he found her lying on the grass fully intoxicated from the drugs to the extent that she was unable to stand on her feet. The deceased requested him to assist her in taking down the clothing off the washing line. He became angry and frustrated by the deceased because she was intoxicated again. He complied with the request by the deceased, and he took down the washcloth and the other clothing. He dragged the deceased across the lawn in a grassy area with stones and small rocks to the back door. He further dragged her two steps at

⁸ Mudau v S 2014 ZASCA 43 (31) March 2014; S v van Staden [2017] ZANHC 21 (20 March 2017, S v Rohde (*supra*), S v Pillay (*supra*).

⁹ 2008 (1) SACR 223 (SCA) at para 35.

the back door. While they were inside the house in the kitchen area, he shouted at her for being intoxicated and he lost control of his emotions, and he kicked the deceased several times on the head. He admitted that he knew that the deceased was an elderly person in a vulnerable state and him kicking her in the head could possibly cause fatal consequences but despite that, he continued kicking her. He admitted that the intention in the form of *dolus eventualis* was present. He noticed that the deceased was bleeding, and he used the cloth to clean her head. Thereafter he took the deceased to her bedroom to sleep and he also went to his own bedroom. He was only woken up later that day when his late father and the deceased were talking to the police. The deceased was then taken to hospital, and he never saw her again. He only became aware of her death later while he was already in custody.

[22] The State witnesses, Ms Vellem, Sgt Mtongana and Ms Agnew testified on how weak the deceased was because of the extent of the injuries she sustained. Ms Agnew together with the investigating officer had to call an ambulance to take the deceased to hospital. The doctor that examined the deceased at hospital, Dr Bouwer also confirmed that the deceased was unconscious on admission. Doctor Mbombo also testified how the condition of the deceased deteriorated to the extent that she had to be incubated.

[23] There was no victim-impact evidence presented by the State and as a result I have no knowledge and the extent of the impact of the deceased's death to her children, family, friends and to the society in general. Despite the absence of that evidence, the injuries suffered by the deceased were severe and in any event murder in itself is a serious offence. In addition, there was domestic violence involved. However, the circumstances under which the offence took place and the personal circumstances of the accused makes me uneasy to impose the life

sentence.

[24] In *S v Malgas*, the Supreme Court of Appeal said the following:

“The greater the sense of unease a court feels about the imposition of a prescribed sentence, the greater its anxiety will be it may be perpetuating an injustice. Once a court reaches the point where unease has hardened into a conviction that an injustice will be done, that can only because it is satisfied that the circumstances of the particular case render the prescribed sentence unjust or, as some might prefer to put it, disproportionate to the crime, the criminal and the legitimate needs of the society. If that is a result of the consideration of the circumstances, the court is entitled to characterise them as substantial and compelling and as such as to justify the imposition of a lesser sentence.”

[25] In this matter, the circumstances of this case, his plea of guilty, the period of three years in custody awaiting trial, his clean record and his home environment are in my view amount to substantial and compelling circumstances justifying lesser sentence than the life imprisonment. I hold the view that the accused stands a chance to be rehabilitated and integrated into society upon completion of his sentence. The period of imprisonment that I intend to impose will give him an opportunity to work on his anger and control of his emotions and would assist in rehabilitating himself and to respect women and life in general.

[26] Furthermore taking into consideration the fact that both counts 2 and 3 were committed at the same, it would be appropriate to order that the sentence to run concurrently.

[27] In the circumstances the accused is sentenced as follows:

- 1. On count 2, (murder) the accused is sentenced to 20 years’ imprisonment**
- 2. On count 3, (contravention of section 30 (1), (2) and (3) of the Older Person**

Act, 13 of 2006) the accused is sentenced to 4 years' imprisonment

3. The sentence imposed on count 3 shall run concurrently with the sentence imposed on count 2.

N GQAMANA
JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the State : *Adv Cerfontein*

Instructed by : Director of Public Prosecutions
Gqeberha

Counsel for Defence : *Adv J Coertzen*

Instructed by : Legal Aid
Gqeberha

Heard on : 17 September 2025

Judgment delivered on : 18 September 2025

