



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

NOT REPORTABLE

Case no: CC11/2025

In the matter between:

THE STATE

and

ZONDANI GWEZA BOBO

Accused

JUDGMENT ON SENTENCE

Govindjee J

[1] Mr Bobo has been convicted of the rape and murder of a two-year-old child. Both offences fall within the ambit of Part I of Schedule 2 of the Criminal Law Amendment Act, 1997,¹ which prescribes life imprisonment unless substantial and compelling circumstances exist to justify a lesser sentence.

¹ Act 105 of 1997. The victim was under the age of 18 years and her death was caused by the accused after he committed the rape.

[2] Section 276 of the Criminal Procedure Act, 1977² (the Act) provides for the sentences which courts can impose. The imposition of sentence is pre-eminently a matter for the discretion of the trial court, which is free to impose whatever sentence it deems appropriate provided it exercises its discretion judicially and properly. The general purpose of imposing a sentence is fourfold: retributive, preventative, rehabilitative (reformatory) and to act as a general deterrent.³

[3] The object of sentencing is not to satisfy public opinion, but to serve the public interest.⁴ A sentencing court must attempt to achieve a balance in its sentence, and not approach its task in a spirit of anger. While the retributive aspect tends to dominate, courts are enjoined to temper the punishment with a measure of mercy.⁵ Hastiness, the striving after severity and misplaced pity are inappropriate, as are so-called exemplary sentences.⁶ More serious cases clearly require severity, with a certain moderation of generosity where possible, for the appropriate balance to be struck.

[4] The well-known triad of factors to be considered consists of the crime, the offender and the interests of society,⁷ and these factors must be applied, in accordance with *S v Malgas*,⁸ to consider whether substantial and compelling circumstances exist to deviate from the prescribed minimum sentences.⁹

[5] Both counsel rightly acknowledge that the crimes are of the most serious kind. The facts underlying the convictions reveal acts of almost indescribable brutality. The deceased was a defenceless toddler, assaulted, raped per anum, and murdered by Mr Bobo, who took her away from a tavern while her mother was intoxicated. The medical evidence and photographs of the crime scene accepted into evidence reflect

² Act 51 of 1977.

³ *S v Rabie* 1975 (4) SA 855 (A).

⁴ *S v Mhlakhaza and Another* [1997] 2 All SA 185 (A) at 189. Also see *S v M* (Centre for Child Law as *amicus curiae*) 2007 (2) SACR 539 (CC).

⁵ *S v Rabie* above n 3 at 862G-H.

⁶ See *S v Khulu* 1975 (2) SA 518 (N) 521-522.

⁷ *S v Zinn* [1969] 3 All SA 57 (A) at 540G-H.

⁸ *S v Malgas* 2001 (1) SACR 469 (SCA); 2001 (2) SA 1222; [2001] 3 All SA 220; [2001] ZASCA 30 (*Malgas*).

⁹ See *Radebe v The State* [2019] ZAGPPHC 406; [2019] 3 All SA 938 (GP); 2019 (2) SACR 381 (GP) para 12.

the violence perpetrated, the use of a knife, sharp force trauma to her neck and blunt force to her head. These are injuries consistent with deliberate, forceful acts inflicted on a small, vulnerable body.

[6] Mr Bobo is 51 years of age. He has no previous convictions. He is married but separated from his wife and resides alone in Bedford. His level of education extends to Standard 7, and he is not permanently employed, surviving on occasional work. There are no pending matters against him. Mr Bobo has been in custody for approximately one year and four months since his arrest. It was not in dispute that he had consumed some alcohol on the night in question. Mr *Charles*, his counsel, emphasised that the fact that he is a first offender suggests hope for rehabilitation, particularly considering the role of alcohol, to be considered cumulatively with the other factors presented, notably his level of education, the time spent in custody and various admissions which shortened the duration of the trial.

[7] Incidents of rape and murder of a child always evoke outrage and revulsion from the citizenry.¹⁰ Courts have repeatedly reflected on the horrific nature of the offence of rape itself, given that it constitutes a humiliating, degrading and brutal invasion of the privacy, dignity, and person of the victim.¹¹ In *S v Vilakazi*,¹² the Supreme Court of Appeal confirmed that rape is a repulsive crime. The Constitutional Court has also explained the link between rape, sexual entitlement, male power and control over women as part of the social construction of masculinity in South Africa.¹³ Society expects that the scourge of gender-based violence must be addressed and must cease. In addition, children's rights are constitutionally protected, and rape of a child is by its nature one of the worst kinds of offences imaginable.

¹⁰ *Director of Public Prosecutions Eastern Cape v Coko* 2024 (2) SACR 113 (SCA) para 6.

¹¹ See, for example, *Director of Public Prosecutions, KwaZulu-Natal v Ndlovu* 2024 (1) SACR 561 (SCA) para 73.

¹² *S v Vilakazi* 2012 (6) SA 353 (SCA); [2008] 4 All SA 396; [2008] ZASCA 87 2009 (1) SACR 552 (SCA) (*Vilakazi*) at 555h.

¹³ *S v Tshabalala and Another* 2020 (2) SACR 38 (CC) para 1; *Masiya v Director of Public Prosecution, Pretoria and Another (Centre for Applied Legal Studies and Another; Amici Curiae)* 2007 (2) SACR 435 (CC); 2007 (8 BCLR 827; [2007] ZACC 9.

[8] Similarly, society demands that the most severe sentences be meted out in cases where a child's life is extinguished through the conduct of another. The crime constitutes an irreversible violation of the constitutional right to life and, in the present circumstances, has been perpetrated upon a defenceless toddler. It has been held in this Division that the impact of murder on the family of a deceased person can never be adequately described or measured.¹⁴

[9] Society's reproach has translated into legislation which by way of a prescribed, albeit discretionary minimum sentence regime, has drastically impacted upon the exercise of a court's discretion in imposing a sentence.¹⁵ As the SCA has clarified, it is no longer business as usual. A court does not have a clean state to determine whatever sentence it deems fit. It must sentence fully conscious of the fact that the legislature has specified life imprisonment as the sentence which should ordinarily be imposed for such crimes.¹⁶

[10] A sentence of life imprisonment is the ultimate punishment and requires extremely careful consideration prior to imposition. The court has received sufficient information to undertake this difficult enquiry.¹⁷ Mr *Charles* argued that Mr Bobo's personal circumstances, considered cumulatively, justified a departure from the prescribed minimum sentences. Indeed, none of the considerations taken in isolation may be classified as 'substantial and compelling' in my view.¹⁸ The question remains whether the imposition of the minimum sentences are proportionate to the particular offences.¹⁹ Courts are not vehicles for injustice and disproportionate sentences are not to be imposed.²⁰ In order to justify the deprivation of Mr Bobo's freedom to the maximum extent, it must be shown that it is reasonably necessary to curb the

¹⁴ *S v Ximiya* [2015] ZAECHC 9 para 2.

¹⁵ *S v September* [2014] ZAECHC 38 para 8.

¹⁶ *Malgas* above n 8 paras 7–9.

¹⁷ See s 274 of the CPA. I have specifically considered whether a probation officer's report might aid the enquiry and determined that this is unnecessary in the circumstances. Also see *S v EN* 2014 (1) SACR 198 (SCA); [2012] ZASCA 148.

¹⁸ See *S v MM* 2023 (1) SACR 415 (*MM*) para 14.

¹⁹ *S v Vilakazi* above n 12 para 15; *S v Dodo* 2001 (1) SACR 594 (CC); 2001 (3) SA 382; 2001 (5) BCLR 423; [2001] ZACC 16 (*Dodo*) paras 37–38.

²⁰ *Vilakazi* above n 12 para 18.

offence and punish the offender, so that the length of punishment is proportionate to the offence.²¹

[11] It is therefore important to consider the various circumstances, described above, cumulatively. Mr Bobo's treatment as a first offender, time spent in custody and alcohol consumption, in the context of possible rehabilitation prospects, merits special consideration.

[12] There is no rule of thumb in respect of the calculation of the weight to be given to the period spent by an accused awaiting trial. The SCA has held that a mechanical formula to determine the extent to which the proposed sentence should be reduced, by reason of the period of detention prior to conviction, is unhelpful. Instead, the circumstances of an individual accused must be assessed in each case in determining the extent to which the sentence proposed should be reduced. The better approach is to consider the period in detention pre-sentencing as but one of the factors that should be considered in deciding, in all the circumstances, whether the effective period of imprisonment to be imposed is justified and proportionate to the crime committed.²²

[13] While it is accepted that Mr Bobo had consumed alcohol before committing the offences, there is no evidence to support the conclusion that this affected his appreciation of the wrongfulness of his conduct at the time he committed the offences. His own testimony, it must be noted, failed to highlight this factor, which is unsupported by the other evidence presented. It is trite that, for intoxication to be considered as a substantial and compelling circumstance in mitigation, it must be shown that the consumption of alcohol had impaired or affected the accused's mental faculties or judgment and thereby diminished his moral blameworthiness.²³ On the facts of this case, Mr Bobo appreciated the wrongfulness of his conduct, was able to distinguish right from wrong and nonetheless proceeded to rape and murder the deceased.

²¹ *S v Dodo* above n 19 para 37.

²² *S v Radebe and Another* 2013 (2) SACR 165 (SCA) paras 13–14.

²³ *S v Cele* 1990 (1) SACR 251 (A) at 254*h–i* and 255*b–c*.

[14] That he is a first offender, had consumed alcohol before committing the offences, has been in custody for more than a year and his relatively low level of education pale into insignificance when considering the gravity of the offences for which he has been convicted.²⁴ There is also little to support the claim that Mr Bobo is a suitable candidate for rehabilitation, so that sentences short of life imprisonment ought to be imposed. While he made certain admissions, he proclaimed his innocence by concocting a fanciful tale in the face of overwhelming evidence, including a DNA match, that revealed his criminal conduct. His actions upon his return to the tavern, remaining there in jovial spirits until it closed that evening, and the lies he told the deceased's mother and the police in the aftermath of the incident are not suggestive of rehabilitation prospects. There has been no full disclosure of his motive for committing the gruesome crimes, acceptance of wrongdoing or expression of remorse. The rape and murder perpetrated, atrocious and repulsive as these crimes are, were made more repugnant considering the age of the victim.²⁵

[15] The evidence reveals Mr Bobo to be a violent individual who raped, stabbed and applied deadly blunt force trauma to the head of the child, severing the neck vessels and breaking the top and base of the skull, before simply abandoning her half-naked body and returning to the tavern to continue with an evening of merriment. While he is a first offender, this shows a flagrant disregard for the sanctity of human life and offends our society's constitutional values to their core.²⁶ It would be a misdirection in the present circumstances to elevate this consideration, the time spent in custody and alcohol consumption, coupled with the other general or neutral factors advanced in mitigation, to substantial and compelling circumstances sufficient to impose lesser sentences than the prescribed minimum sentence. There is simply no justifiable basis to do so and no basis for a sympathetic approach on the facts. I fully appreciate that the outcome of this analysis has profound consequences for Mr Bobo and results in the imposition of the most severe sentence possible.

[16] As life imprisonment is the result, the sentences automatically run concurrently in terms of legislation. Given the nature of the offences, the accused is

²⁴ See *Director of Public Prosecutions, Grahamstown v Peli* 2018 (2) SACR 1 (SCA) para 9.

²⁵ *Ibid* para 11.

²⁶ Cf *S v Trombetta* [2024] ZANWHC 129 para 26.

declared unfit to possess a firearm. In terms of s 299A of the Act, any immediate relative of the deceased present is informed that they have a right, subject to the directives issued by the Commissioner of Correctional Services, to make representations when placement of the accused on parole, on day parole or under correctional supervision is considered or to attend any relevant meeting of the parole board.

Order

[17] The following sentences are imposed:

- (i) Count 1, rape in contravention of section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007: life imprisonment.
- (ii) Count 2, murder: life imprisonment.
- (iii) In terms of section 50(2) of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 32 of 2007, the particulars of the accused, as a convicted sexual offender, must be entered into the National Register for Sexual Offenders.

A GOVINDJEE
JUDGE OF THE HIGH COURT

Heard: 22 October 2025

Delivered: 24 October 2025

Appearances:

For the State: Adv Phikiso

Instructed by: Deputy Director of Public Prosecutions: Eastern Cape

For the Accused: Mr Charles

Instructed by: Legal Aid South Africa