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**IN THE HIGH COURT OF SOUTH AFRICA
[EASTERN CAPE DIVISION: MAKHANDA]**

Case No. CC39/2025

In the matter between:

THE STATE

and

D[...] B[...]

Accused

SENTENCE

JOLWANA J

[1] The accused was charged with and convicted of the murder of his partner with whom he stayed, a 22 year old young woman on 26 October 2024. The State had invoked the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997 (the Minimum Sentences Act) read with Part 1 of Schedule 2 thereof in respect of which a discretionary minimum sentence of life imprisonment is applicable. The basis for the invocation of the Minimum Sentences Act was that the death of the

deceased resulted from physical abuse as contemplated in the Domestic Violence Act¹

[2] Section 1 of the Domestic Violence Act defines a domestic relationship as “a relationship between a complainant and a respondent in any of the following ways –

- “(a) they are or were married to each other including marriage according to any law, custom or religion;
- (b) they (whether they are of the same or of the opposite sex) live or lived together in a relationship in the nature of a marriage although they are not, or were not, married to each other or are not able to be married to each other;
- (c) they are the parents of a child or are persons who have or had parental responsibility for that child (whether or not at the same time);
- (d) they are family members related by consanguinity, affinity or adoption;
- (e) they are or were in an engagement, dating or customary relationship, including an actual or perceived relationship of any duration; or
- (f) they are persons in a close relationship that share or shared the same residence.”

[3] Section 51(1) of the Minimum Sentences Act provides that notwithstanding any other law, but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person it has convicted of an offence referred to in Part 1 of Schedule 2 to imprisonment for life. The relevant provision of Part 1 of Schedule 2 of the Minimum Sentences Act is paragraph (g) which provides that where murder was committed in circumstances in which the death of the victim resulted from physical abuse or sexual abuse, as contemplated in paragraphs (a) and (b) of the definition of domestic violence” in section 1 of the Domestic Violence Act, 1998 (Act No. 116 of 1998), by the accused who is or was in a domestic relationship as defined in section 1 of that Act, with the victim.

¹ Act 116 of 1998.

[4] This brings me to the accused's guilty plea. After the charge of murder was put to the accused, he pleaded guilty to murder as charged. His legal representative confirmed that the plea of guilty was in accordance with the instructions he obtained from the accused. In this regard the legal representative of the accused advised the court that he had prepared a section 112 (2) of the Criminal Procedure Act 51 of 1977 (the Act) at the best of the accused which the accused duly signed. Section 112 (2) of the Act provides that,

"If an accused or his legal adviser hands a written statement by the accused into court, in which the accused sets out the facts which he admits and on which he has pleaded guilty, the court may, in lieu of questioning the accused under subsection 1 (b), convict the accused on the strength of such written statement and sentence him as provided in the said subsection if the court is satisfied that the accused is guilty of the offence to which he has pleaded guilty: Provided that the court may in its discretion put any question to the accused in order to clarify any matter raised in the statement."

[5] In his statement the accused explained the circumstances in which he ended up murdering the deceased as follows: He and the deceased were in a romantic relationship and lived together in an outside room in which his mother and his aunt stayed. During the evening on 26 October 2024 he was with his aunt and the deceased drinking homemade alcohol at a place in which alcohol was being sold. They thereafter went back to their place of residence where they continued drinking up until they would have consumed a number of litres of homemade wine. At some stage he went to his room leaving the deceased with his aunt. The deceased also came to his room some time later.

[6] He and the deceased started arguing about the wine they had been drinking together. He then became angry and picked up a stick that was in his room and hit her with it and further hit her with his fist until the deceased was lying on the floor at

which stage he dragged her out of the room and went back into his room and fell asleep. The next morning he was woken up by his aunt. Police later arrived and he was arrested.

[7] The accused admitted that the injuries detailed in the post mortem examination report were inflicted by him. While assault was as a result of the alcohol he had consumed as a result of which he was drunk when he assaulted the deceased, he was not so drunk that he did not know what he was doing and that what he was doing was wrong. He knew that the deceased may die as a result of being hit with a stick and fists several times especially the blow to the head of the deceased. Therefore, he foresaw the possibility of the deceased dying as a result of the assault. He, however, reconciled himself with the possibility of the deceased dying. However, did not directly intend to kill the deceased.

[8] He has been informed that the post mortem examination report has revealed that the deceased was pregnant at the time of the assault. He was, however, unaware of the said pregnancy. In the final analysis, he admitted unlawfully and intentionally killing the deceased.

[9] After the conviction of the accused, the State called Dr De Beer who conducted the postmortem examination on the body of the deceased. He testified that on 29 October 2024, he conducted a postmortem examination on the body of the deceased. His chief postmortem findings were that the deceased had multiple areas of bruising in the scalp; there was a right sided subdural bleeding of the brain; there was brain oedema or swelling of the brain; there were multiple deep bruises on arms and legs; and there were multiple abrasions on limbs and trunk. He also established that the deceased was pregnant with a 600 grams female foetus. His conclusion was

that the cause of death was blunt force head injury. He explained that the deceased was about 20-24 weeks pregnant or about 4 months pregnant at the time of her death. He further testified that it was not possible for him to conclusively say that the accused could have been aware that the deceased was pregnant as it is often very difficult to always tell from a naked eye. Dr de Beer further testified that after the assault, the bleeding in the brain could have lasted for between 30 minutes and that during that time the deceased could have been unconscious.

[10] The accused did not testify in mitigation of sentence. His legal representative made submissions on his behalf. The personal circumstances of the accused that were brought to the attention of the court were the following. He was born on 1 January 1994 and he was therefore 31 years old. This means that he was about 30 years or so at the time of the incident. The accused is not married. He and the deceased met at Springbok Vlake Farm in 2023 where they were both employed. They started a relationship as a result of which they had been living together for almost a year at the time of the incident. They had a child together who unfortunately passed on not long after his birth. The accused earned R500.00 a week from his employment. He left school at grade 9. His mother and aunt at whose yard he and the deceased lived have since unfortunately died. He has three siblings which consists of two brothers and one sister.

[11] The accused had one previous conviction of theft which happened about 15 years ago when the accused was a teenager of about 15 years old or so. He was pleaded guilty to the offence. He has been in custody since his arrest in October 2024 which is a period of about a little less than a year. He had, however, been granted bail of R200.00 which he could not afford resulting in him remaining in custody. It was submitted that the accused is for all intents and purposes, a first

offender with good prospects of rehabilitation. He has requested his legal representation to advise the court that he is deeply remorseful about his actions which resulted in the death of the deceased. He had not intended to kill the deceased. He was drunk after having consumed a lot of alcohol. However, he was not so drunk as to be unaware of what he was doing. It was submitted that he became angry when he had an argument with the deceased. His drunkenness exacerbated his anger resulting in him acting in the manner he did. He therefore had no direct intention to murder the deceased although, despite being drunk, he did foresee the death of the deceased resulting from his actions. In the final analysis, it was submitted that taking into account all the accused's personal circumstances considered cumulatively and the circumstances in which the death of the deceased occurred, there were substantial and compelling circumstances as would justify a departure from the prescribed minimum sentence of life imprisonment.

[12] In aggravation of sentence, it was submitted on behalf of the State that the accused has committed an obviously very serious offence which the society looks upon courts to protect it as it has unfortunately become very prevalent over the years. The deceased was brutally murdered while she was pregnant, by being assaulted with a stick. She was then dragged out of the room in which the assault took place and left outside. Her body was discovered the following morning. It was submitted that the accused had no choice but to plead guilty as he was faced with overwhelming evidence. The State conceded that the circumstances of the accused's previous conviction are indeed such that he is a first offender and that he has good prospects of rehabilitation. It was also not disputed that he had consumed alcohol. It was further conceded that there was no evidence that the accused set out to kill the deceased and therefore, it could not be said that he had direct intention to

kill her. However, the State could not accept that the accused was remorseful. It was submitted that if he was remorseful, he should have played open cards with the court by testifying so that his alleged remorse would be based on the evidence he would have given under oath.

[13] The State's submission with regard to the personal circumstances of the accused was that, as was stated in *Vilakazi*² in which the court said that where the offence is serious, the personal circumstances of the accused, while they remain relevant, they do recede into the background, the material consideration being whether on the facts of a particular case and those personal circumstances of the accused, he can be expected to re-offend, being a material consideration.

[14] In this matter, there is no basis for concluding that there are no prospects of rehabilitation. Not only is the accused, at the age of 31, essentially a first offender, there is no history of an abusive relationship between him and the deceased at all. They had consumed a substantial amount of liquor when their fight started which, I have no doubt in my mind, played a big role in the violent conduct of the accused. When the offence was committed, the deceased was about four months pregnant, there is no evidence that he knew that she was pregnant. This is not to excuse his conduct but merely to point out that it certainly cannot be considered as an aggravating factor.

[15] I have no doubt that not departing from the prescribed minimum sentence of life imprisonment in this case would result in a disproportionate sentence being imposed. This is especially so in light of the fact that there is no basis to conclude that the accused laboured a direct intention to murder the deceased. In *Ludidi*³

² S v Vilakazi 2009(1) SACR 552 at 574 para 58.

³ Loyiso Ludidid and Others vs 2025(1) SACR 225 (SCA) at paras9-10.

Nicholls JA had occasion to deal with the principle of proportionately, albeit in a different factual context. She said:

“The context in which the offence occurred is always germane to sentence. In *S v Malgas* which is the *locus classicus* of what constitutes substantial and compelling circumstances warranting a deviation from the prescribed minimum sentence, the court said:

‘If the sentencing court on consideration of the circumstances of the particular case is satisfied that they render the prescribed sentence unjustified 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.’

That proportionately is central to whether a sentence is cruel, inhumane or degrading was confirmed by the Constitutional Court in *S v Dodo*. It is not just proportionality between the mandatory sentence legislated upon, and the sentence which the offence merits, that would lead to an infringement of the right not to be deprived of freedom arbitrarily without just cause in terms of s 12(1) (a) of the Constitution, but rather whether it is grossly disproportionate.”

[16] In light of the personal circumstances of the accused mentioned earlier and the circumstances in which the offence was committed, I am of the view that substantial and compelling circumstances exists justifying a departure from the prescribed minimum sentence of life imprisonment. The loss of life of a young woman at the age of 22 years in the hands of her partner is in its very nature, abhorrent. This is especially so in our society where gender-based violence has reached alarming proportions. This calls for a very stiff sentences that would send a message that even where alcohol has been a factor, an accused will not get away with a sentence that might send a wrong message to would offenders. This would be sentences that make a mockery of the criminal justice system by unintentionally conveying a message that drunkenness will result in light sentences. That would be a very dangerous message that could imperil the society that courts must protect.

[17] In the result, the accused is sentenced as follows:

1. You are sentenced to 25 years imprisonment for the murder of the A[...] I[...] K[...].
2. You are declared unfit to possess a firearm in terms of section 103 of the Firearms Control Act 60 of 2000.

M.S. JOLWANA

JUDGE OF THE HIGH COURT

Appearance

Counsel for the State : V. Mqeke

Instructed by : NPA

MAKAHAND

Attorney for the accused : D. Geldenhuys

Instructed by : Legal Aid South Africa

MAKHANDA

Date heard : 16 October 2025

Date delivered : 16 October 2025