



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

NOT REPORTABLE

Case no: CC27/2025

In the matter between:

THE STATE

and

KHANYISO GQANGENI

Accused

JUDGMENT ON SENTENCE

Govindjee J

[1] Ms N[...] M[...] (the deceased) was murdered in her home on 17 September 2022. She died because of multiple injuries sustained on her body and caused by a blunt object. Mr Gqangeni was convicted of her murder, housebreaking with intent to steal and robbery with aggravating circumstances. In respect of the murder count, it is common cause that the conviction triggers the provisions of s 51(1) of the Criminal

Law Amendment Act, 1997, on the basis of the link between the murder and robbery with aggravating circumstances.¹ Mr Gqangeni faces imprisonment for life unless the court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence. Imprisonment for a period not less than 15 years is prescribed for the conviction of robbery with aggravating circumstances.² The main question to be determined is whether there are substantial and compelling circumstances to deviate from these prescribed minimum sentences, including whether the imposition of such punishment is proportionate to the crimes perpetrated.

Nature of the crimes and surrounding circumstances

[2] Mr Gqangeni, accompanied by a 16-year-old accomplice (Mr M[...]), decided to break into the house of the deceased on the night of the incident. Their motive was to obtain money. Mr Gqangeni knew that the deceased lived in the premises. At some point he decided to kick open a locked door. The sound roused the deceased, who proceeded from her room towards the lounge area. On the evidence, Mr Gqangeni struck her on the head with an iron rod as she walked down the passage. Instead of leaving the premises as suggested by Mr M[...], Mr Gqangeni, fearing that he would be identified, removed a brick from underneath the deceased's bed and dropped it onto the back of the deceased's head.

[3] The chief post-mortem findings reflect multiple external injuries, a fractured skull, ribs and spinal column, intercranial bleeding and spinal canal bleeding. Death was described as having been caused by 'multiple injuries' and the doctor who testified explained that the head injuries, which had been caused by the iron bar and brick, had themselves been sufficient to cause death. The evidence revealed that the force of application of these objects was severe, to the extent that it had been sufficient to cause a fracture across the base of the skull.

¹ Act 105 of 1997 (the Minimum Sentences Act). The definition of 'aggravating circumstances' is contained in s 1 of the Criminal Procedure Act, 1977 (Act 51 of 1977) (the Act).

² S 51(2)(a)(i) of the Minimum Sentences Act. I have specifically considered whether a probation officer's report might aid the enquiry and deem this unnecessary in the circumstances. See *E v N* 2014 (1) SACR 198 (SCA); [2012] ZASCA 148.

[4] The photographs of the body accepted into evidence reflect the brutality of the deceased's demise. The deceased was 78 years of age at the time of her death.

The accused

[5] Mr Gqangeni is a first offender. He was 23 years of age at the time of the incident and is unmarried with no children. He was raised by a single mother, a domestic worker, and his highest level of education was grade 11. He worked for a construction business at the time of the incident, earning approximately R2000,00 per month. Following arrest, he was released on warning and attended each scheduled court appearance. Mr Gqangeni did not testify in mitigation of sentence. It was submitted on his behalf that he was a candidate for rehabilitation and that the application of a measure of mercy was warranted in the circumstances.

The interests of society

[6] The offence occurred in the sanctity of the deceased's home. The deceased, an older person, suffered a violent death in a manner excoriated by society. The prevalence and nature of the offences, together with the age and gender of the victim are aggravating features of the crimes. Society demands that stern sentences be meted out in cases where a person's life is extinguished through the conduct of another. Murder is the ultimate crime, constituting an irreversible violation of the constitutional right to life. In *S v Rohde*,³ the court held that the rate of murder of women in South Africa is alarmingly high, compared to the global average. According to that judgment, attitudes to women determine how women are treated in society and the judiciary must guard against creating the impression that the lives of women are less worthy of protection.

Analysis

[7] To determine an appropriate sentence requires weighing and balancing the nature and seriousness of the crime, the interests of society and the personal circumstances of the accused carefully, without unduly emphasising any of these factors.⁴ As Mr *Giqwa* reiterated, the court must not approach its task in a spirit of

³ *S v Rohde* 2019 (2) SACR 422 (WCC) para 54.

⁴ *S v Zinn* 1969 (2) SA 537 (A) (*Zinn*) at 540G–H.

anger or a deliberate attempt to demonstrate severity or set an example to satisfy public opinion. The object of sentencing is to serve the public interest.⁵ Where possible, and if the circumstances justify this, the sentence must be blended with a measure of mercy.⁶

[8] The court must also be alive to the purposes of sentence, which, in general terms, are retribution, prevention, deterrence and rehabilitation.⁷ More serious cases clearly require severity with a certain moderation of generosity where appropriate, for the appropriate balance to be struck. Where minimum sentences have been prescribed by the legislature, these are to be viewed as generally appropriate for the offences concerned and are not to be departed from lightly or for flimsy reasons, or based on misplaced pity.⁸ As held in *S v Matyityi*, ‘...courts are not free to subvert the will of the legislature by resort to vague, ill-defined concepts such as “relative youthfulness” or other equally vague and ill-founded hypotheses that appear to fit the particular sentencing officer’s personal notion of fairness. Predictable outcomes, not outcomes based on the whim of an individual judicial officer, [are] foundational to the rule of law which lies at the heart of our constitutional order.’⁹

[9] The main factors highlighted in favour of Mr Gqangeni are that he is a first offender and was aged almost 24 at the time of the incident. These factors, on their own, do not constitute a substantial and compelling circumstance justifying deviation from the prescribed minimum sentences. His upbringing by a single mother,

⁵ *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).

⁶ *Zinn* above n 4.

⁷ *S v Rabie* 1975 (4) SA 855 (A).

⁸ *S v Matyityi* 2011 (1) SACR 40 (SCA) para 23: ‘Despite certain limited successes there has been no real let-up in the crime pandemic that engulfs our country. The situation continues to be alarming. It follows that, to borrow from *Malgas*, it still is “no longer business as usual”. And yet one notices all too frequently a willingness on the part of sentencing courts to deviate from the minimum sentences prescribed by the legislature for the flimsiest reasons – reasons, as here, that do not survive scrutiny. As *Malgas* makes plain, courts have a duty, despite any personal doubts about the efficacy of the policy or personal aversion to it, to implement those sentences. Our courts derive their power from the Constitution and, like other arms of State, owe their fealty to it. Our constitutional order can hardly survive if courts fail to properly patrol the boundaries of their own power by showing due deference to the legitimate domains of power of the other arms of State. Here Parliament has spoken. It has ordained the minimum sentences for certain specified offences. Courts are obliged to impose those sentences unless there are truly convincing reasons for departing from them.’

⁹ *S v Matyityi* above n 8 para 23.

employment and adherence to the warning to attend court throughout the duration of the trial, while factors in his favour, are not substantial and compelling.

[10] It remains incumbent upon this court, before imposing the prescribed sentences, to assess, upon a consideration of all the circumstances of the case, whether these sentences are indeed proportionate to the offences.¹⁰ If a court is satisfied that a lesser sentence is called for in the circumstances, thus justifying a departure from the prescribed sentence, the court is bound to impose that lesser sentence.¹¹

[11] The nature of the offence, particularly the nature of the violence inflicted upon the deceased, with the direct intention to kill her, is a weighty consideration. Mr Gqangeni admitted that he knew the deceased. This must include knowledge that she was an older person and, given the way he patrolled the corridor leading to the various rooms in search of money, that there was nobody else in the home at the time. The evidence suggests that the deceased was sleeping in the safety of her home, only to be awoken by the sound of an intruder kicking open a locked door in her house. Having used an iron bar to strike the deceased on the back of the head, in a manner designed to cause her grievous bodily harm, Mr Gqangeni had the opportunity to spare the deceased's life as she lay on the floor before him, helpless. Instead, he committed himself to ending her life, proceeded to her bedroom, drew out the brick that was used to prop up her bed, and applied that object with force to the back of her head in a manner that killed her.

[12] Society rightly considers such violations of a person's privacy, bodily integrity, dignity and life in the most serious light. As Plasket J held in *S v Petse*,¹² housebreaking, robbery with aggravating circumstances and murder are all offences which are rife not only in the jurisdiction of this court but throughout the country. It is the prevalence of the second and third of these offences that is a major reason for the prescribed sentences created by the Minimum Sentences Act being on the statute book. The attack on the deceased was wholly unnecessary and

¹⁰ *S v Vilakazi* 2009 (1) SACR 552 (SCA) paras 14–15.

¹¹ See *S v Tafeni* 2016 (2) SACR 720 (WCC) para 9 and the authorities cited there.

¹² *S v Petse* 2018 JDR 1948 (ECG) para 10.

incomprehensible, following the planned housebreaking. To make matters worse, instead of desisting when he had the opportunity of doing so, Mr Gqangeni decided to end the deceased's life in the manner already described. In the circumstances, the following remarks of the court in *S v Kagongo* are apposite:¹³

'The Judiciary should speak such that we demonstrate that we are not cold, aloof and far removed from the contemporary challenges. Where circumstances permit, we should show that we heed the public's constitutional call to make the punishment of crimes against women, especially their brutal, cruel and unnecessary killing more severe as part of the overall responsibility of the Republic of South Africa to provide a conducive environment to live ... without fear or physical ... violence.'

[13] In all the circumstances, Mr Gqangeni's personal circumstances, notably his age at the time of the incident and the fact that he was a first offender, coupled with the disadvantages of his upbringing, his employment, education level and diligence in attending court, must give way to the features of the crime, and society's revulsion to the perpetration of such conduct, particularly when the victim is a defenceless, elderly woman. Considering the various aspects of the triad, discussed above, I am satisfied that there is an absence of substantial and compelling circumstances, individually or cumulatively, to warrant a departure from the prescribed minimum sentences for murder and robbery with aggravating circumstances, and that their imposition would not be disproportionate. In coming to that conclusion, I have considered the absence of premeditation as a feature of the crime and not given any undue weight to the absence of remorse. The possibility of rehabilitation by virtue of a less severe punishment has also been considered, bearing in mind that Mr Gqangeni was a first offender aged 23 at the time of the incident. The SCA has repeatedly confirmed that the starting point in a matter such as this remains the prescribed minimum sentence ordained by the legislature, rather than guidance from a range of disparate cases.¹⁴ Cases must be decided on their own peculiar facts. As to the submissions in respect of relative youthfulness, I consider the later decision of *S v Van Willing*¹⁵ to be apposite, rather than *S v Nkomo*, referred to me by Mr

¹³ *S v Kasongo* [2022] ZAWCHC 224; 2023 (1) SACR 321 (WCC) para 36.

¹⁴ *S v Nkunkuma* 2014 (2) SACR 168 (SCA) para 10.

¹⁵ *S v Van Willing* [2007] 3 All SA 596 (SCA); 2007 (2) SACR 198 (SCA); 2015 JDR 0625 (SCA) para 43–46.

Giqwa, a case involving multiple rape.¹⁶ To quote the former, involving the imposition of life sentences to co-accused aged 23 and 22 at the time of the offences:¹⁷

‘The reason why youths’ ages are taken into consideration during the sentencing process is because of their immaturity and the possibility that their judgment might have been impaired and therefore could bow to peer or other undue pressure to commit crimes. However, I cannot find that the appellants, in the instant matter, were immature or intellectually undeveloped. As was remarked in *S v Matyityi* a person of 20 years should show that he was immature to such an extent that his immaturity would be a mitigating factor. That was not done in the instant matter. Similarly the appellants did not show that their addiction to drugs had anything to do with the commission of the crime ... Murder is a heinous crime.’

[14] Similarly, rather than demonstrating an inexperienced youth becoming involved in crime based on outside influence, the facts show that it was Mr Gqangeni that was the instigator and acted of his own accord in attacking and then murdering the deceased in the sanctity of her place of residence. Absent evidence as to his level of maturity and moral blameworthiness at the time, his age is a neutral factor.¹⁸ If there was a motive for doing so, it can only be that he hoped to avoid detection. Having noisily kicked open the door of a locked room, he must have realised that he might be confronted. His response was cruel. It is significant that he ignored Mr M[...]’s suggestion that they leave the premises, instead taking the time to locate an object that he could use for his intended purpose, removing it from under the deceased’s bed and applying it, in front of Mr M[...], in a manner that caused her death. Given that there is no basis for departure from the prescribed minimum sentences, Mr Gqangeni faces life imprisonment for murder. In terms of s 39(2)(a)(i) of the Correctional Services Act, 1998,¹⁹ the other sentences imposed must run concurrently with the life sentence.

Discharge in terms of s 204

[15] The court postponed the determination of Mr M[...]’s discharge from prosecution in terms of s 204 of the Act. The SCA has recently endorsed the

¹⁶ *S v Nkomo* [2006] ZASCA 139; *S v Van Willing* above n 15.

¹⁷ *S v Van Willing* *ibid*, citing *S v Matyityi* above n 8 para 14.

¹⁸ *Moloto v The State* [2025] ZASCA 169 para 18.

¹⁹ Act 111 of 1998.

decision in *Mahomed v Attorney-General of Natal and Others*.²⁰ In that matter, Howard JP held that once a person had been called as a witness for the prosecution and 'warned' in accordance with s 204(1)(a) of the Act, they acquired a right to an order discharging them from prosecution for the offences specified if, in the opinion of the court, they frankly and honestly answered all questions put to them.²¹ Considering the assessment of the evidence, it is apparent that Mr M[...], in my opinion, indeed answered the questions put to him frankly and honestly. He therefore qualifies for discharge from prosecution regarding the offences specified at the commencement of his testimony and regarding any offence in respect of which a verdict of guilty would be competent upon a charge relating to the specified offences. The discharge is duly entered on the record of these proceedings.

Order

[16] The accused, Khanyiso Gqangeni is sentenced as follows:

- a) Count 1 (murder) – life imprisonment.
- b) Count 2 (housebreaking with intent to steal) – 4 years imprisonment.
- c) Count 3 (robbery with aggravating circumstances) – 15 years imprisonment.

The sentences imposed on counts 2 and 3 run concurrently with the sentence on count 1.

It is ordered that Mr M[...], the s 204 witness, is discharged from prosecution in respect of the offences specified on the record by the prosecutor and for any offence in respect of which a verdict of guilty would be competent upon a charge relating to the offences so specified.

A GOVINDJEE

²⁰ *Mahomed v Attorney-General of Natal and Others* 1996 (1) SACR 139 (N) at 145 quoted with approval in *S v Thabethe and Others* 2025 (2) SACR 335 (SCA) para 82.

²¹ S 204(2) of the Act.

JUDGE OF THE HIGH COURT

Heard: 10 October 2025

Delivered: 18 November 2025

Appearances:

For the State: Adv N Ngxingwa

Instructed by: Office of the Director of Public Prosecutions
Bhisho

For the Accused: Adv AH Giquwa

Instructed by: Legal Aid South Africa
Qonce