



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

CASE NO.: CC45/2025

In the matter between:

THE STATE

and

ADOONS ARON BHUTANA

Accused

JUDGMENT ON SENTENCE

MHAMBI AJ

[1] Mr Adoons Aron Bhutana (the accused), was convicted by this court of the crime of murder of A[...] R[...], an adult female person, aged 32 years, “**the deceased**”. This court now proceeds to sentence the accused upon his conviction as aforesaid.

[2] It is appropriate to state that it is the court's unpleasant and difficult task to impose a sentence on the accused; however, justice demands that sentencing be the consequence following the commission of a crime and should be meted out by the courts.

[3] In imposing a sentence, this court will consider the common cause fact, as appearing in the trial evidence, that the accused was in a romantic relationship with the deceased person.

[4] The court in *S v Van Staden*¹ is clear to state that: -

“Murder committed by a man on a woman should not be treated lightly. It becomes worse where the perpetrator, as in this instance, was the deceased partner, who had the duty and responsibility to protect her and not to harm her. It is that killing like the one committed by the accused which necessitates the imposition of sentence to serve not only as a deterrent but also to have a retributive effect, violence against women is rife and the community expects, the courts to protect women against commission of such crimes”.

[5] As this court has stated in its judgment on verdict, the state relied on the provisions of Section 51 (1), read with part 1 of schedule 2, of the *Criminal Law Amendment Act, of 1997*, relating to a discretionary minimum sentence of life imprisonment in that the death of the deceased resulted from the physical

¹ 2014 ZASCA 43, (20 March 2017)

abuse, as contemplated in *Section 1 of the Domestic Violence Act 116 of 1998*, by the accused who was in a domestic relationship with her.

[6] In cases involving domestic violence, the guiding principle is what the SCA held in *Mudau v S*².

“[7] Domestic violence has become a scourge in our society and should not be treated lightly, but deplored and severely punished. Hardly a day passes without a report on media of a woman or a child being beaten, raped, or even killed in this country. Many women and children live in constant fear. This is in some respects a negation of many of their fundamental rights such as equality, human dignity and bodily integrity”.

[7] The fact of the matter is that murder, without fail, brings tragedy. There are always people who suffer a lot when the life of a loved one is unlawfully and unexpectedly taken. The chilling thing about this is that there appears to be no way of guarding against it happening. The only thing that one can do is live one's life the best as one can, do right by others, obey the law and hope that our fellow man will do so as well. This hope was unfortunately not realised in this instance. The deceased was killed in a horrific, brutal, inhuman and degrading manner by the accused person.

[8] The worsening part was for the accused to seek to implore a proposition that the deceased had hung herself in that aloe tree. The extent and manner in

² 2014 ZASCA 43 (31 March 2014) para 7.

which the deceased was brutally killed, with a high degree of mercilessness, is well clear from the postmortem examination. I need not repeat it as it is stated in the judgment on the verdict.

[9] I now turn to deal with legal principles applicable to the court's imposition of sentence. Justice demands that this court consider the well-known triad factors as were referred to in *S v Zinn*³, namely, the personal circumstances of the accused, the nature of the offences that have been committed and the interests of society. In so doing, the court should strike a balance and avoid over-emphasising one and under-emphasising the other. Lastly, the court needs to apply a degree of mercy.

[10] The same sentiments were echoed in *S v Banda and Others*⁴:-

“The elements of the trial contain an equilibrium and a tension. A court should, when determining a sentence, strive to accomplish and arrive at a judicious counter balance between these elements in order to ensure that one element is not unduly accentuated at the expense of and to the exclusion of the other. This is not merely a formula, nor a judicial incantation, the mere stating whereof satisfies the requirements, what is necessary is that the court shall consider, and try to balance evenly, the nature and circumstances of the offence, the characteristics of the offender and his circumstances and impact of the crime on the community, its welfare and concern”

³ 1969 (2) SA 537 (A).

⁴ 1991 (2) SA 352 (B) at 355 A -C

[11] This court is duly bound to consider the objective of punishment, namely deterrence, prevention, reformation and retribution.

[12] The general rule, as it was held by the Appellate Division in *S v Rabbie*⁵ :-

“Punishment should fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances”.

[13] The starting point upon conviction of murder under the circumstances of this case is that the statutory prescribed minimum sentence of life imprisonment in terms of the provisions of Section 51 (1) of the Criminal Law Amendment Act 38 of 2007, read with part 1 of Schedule 2 of Act 105 of 1997, should be imposed, unless I find that there are substantial and compelling circumstances justifying deviation therefrom.

[14] It was held in *S v Malgas*⁶ :-

“..... legislature has ordained life imprisonment or the particular prescribed period of imprisonment as the sentence which should ordinarily be imposed for the commission of the listed crimes in the specified circumstances. In short, the legislature aimed at ensuring a severe, standardized, and consistent response from the courts to the commission of such crimes unless there were, and could be seen to be, truly convincing reasons for a different response when considering sentence the emphasis was to be shifted to the objective gravity of the type of crime and the

⁵ 1995 (4) SA 855 (AD) at 862 G-H

⁶ 2001 (1) SACR 469 (SCA)

public's need for the effective sanctions against it. Specified sentences [are] not to be departed from lightly and for flimsy reasons which could not withstand scrutiny”.

[15] The principle in *S v Malgas* was affirmed in *S v Vilakazi*⁷, to the extent that:-

“..... it is incumbent upon a court in every case, before it imposes a prescribed sentence, to assess, upon consideration of all the circumstances of the particular case, whatever the prescribed sentence is indeed proportionate to the particular offence....”

A different sentence must be imposed if the court is satisfied that substantial and compelling circumstances exist which “**justify it**”.

[16] I turn now to deal with the circumstances of this case, applying the sentencing principles I have cited above.

[17] Ms McCullum, Counsel for the accused, presented the accused's personal circumstances as follows: - the accused is 34 years old, residing in Adelaide, due to economic and family circumstances, he was forced to leave school at Grade 6. He then worked as a farm worker between Komgoue and Adelaide. He is a breadwinner at home, he lives with his parents, his brother and daughter of his brother. He has no children born to the deceased.

[18] Consequent to the deceased's death, he has a girlfriend, with whom he has a minor child, and the child and her mother depend on him for maintenance.

⁷ 2009 (1) SACR 552 (SCA)

[19] Mrs Mc Cullum conceded to the seriousness of the offence within which the accused has been convicted of, however, she submitted that alcohol consumption should be blameworthy for the accused's conduct. It was not the accused's intention to kill the deceased; the involvement of alcohol played a part in having the accused strangling the deceased to her death. It was further submitted that the accused paid to the deceased family an amount of R2 500.00, he cooperated with the police and upon his release on bail, he remained in trial attendance until his conviction. The accused is the first offender. Ms McCullum pleaded for this court to provide the accused a second chance to correct his error; however, she conceded that long-term imprisonment is deserving of him than life imprisonment.

[20] In aggravating the imposition of sentence, the state submitted SAP 69, proving that the accused has no previous convictions.

[21] The State further called the evidence of P[...] R[...]. She is the aunt of the deceased. She confirmed that the deceased was employed on the wool section of the farm where the accused was working. According to her, the accused and the deceased were in a romantic relationship for about 7 or 8 years, and they had no children. She testified about an incident when the deceased was hospitalised due to a stab wound on the arm, allegedly stabbed by the accused person. She confirmed that the accused, subsequent to the deceased's death, visited their home and left an amount of R2 500.00, assisting towards the deceased's burial;

however, he did not ask for forgiveness, he maintained his innocence relating to the deceased's death.

[23] She further testified that the deceased was looking after her sister's child, who predeceased her. She described the emotional and disturbing atmosphere caused by the deceased's death in the entire family.

[24] Ms Van Rooyen, Counsel for the State, in her address, affirmed the seriousness of the offence of which the accused has been convicted of. She submitted that the aggravating factor in this case is the act of domestic violence. She referred this court to the passage, paragraph 6 of the judgment in *Madau v S*⁸, (as cited in this judgment above).

[25] She submitted that the circumstances of this case do not permit the deviation from the imposition of the prescribed minimum sentence. She cited factors, for example: - the prevalence of the offence of murder, the fact that the accused committed the offence against his intimate partner and that society expects the court to deter the criminals. She maintains that the accused has no prospects of rehabilitation and that he has shown no remorse.

[26] In an attempt to persuade this court to impose the prescribed minimum sentence, the state referred to authorities like *Matyityi*⁹, *S v Milan*¹⁰, and others.

⁸ Footnote 2 above

⁹ 2011 (1) SA 40 (SCA)

¹⁰ 2023 ZASCA 3, January 2023 at para 59.

[27] After having considered the circumstances of this case, the submissions by Counsels, I share the same view as the court in *S v Lourens*¹¹ as follows: -

“[15] Imposing a sentence is an action that requires the court to work purposefully, at finding the most appropriate defence in a manner which accords with an accused’s fair trial right as entrenched in Section 35 of the Constitution. Our courts have emphasised repeatedly that a sentence imposed must always be individualised, considered and passed dispassionately, objectively and upon consideration of all relevant factors on the basis that retribution and revenge alone do not drive sentencing.”

[28] Having said that, I agree with both Counsel that the accused cannot escape a period of long-term imprisonment. However, the accused is still relatively young and deserves a second chance, and I have hope that he will utilise the term of his imprisonment to rehabilitate and refrain from alcohol or drugs, so that he can be reintegrated into society upon completion of his sentence. I understand that whatever sentence this court may impose, it will not at all bring back the life of the deceased; most importantly, it is that at least the family of the deceased will find closure.

[29] Accordingly, the accused is sentenced to 20 years' imprisonment.

¹¹ 2016 (2) SACR (WC)

M MHAMBI

ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the State : *Adv. Van Rooyen*

Instructed by : Director of Public Prosecutions
Makhanda

Counsel for the Accused : *Adv. Mc Cullum*

Instructed by : Legal Aid Board of South Africa
Makhanda

Heard on : 10 - 14 November 2025

Judgment on Conviction Delivered on : 19 November 2025