



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

CASE NO. CC 31/2025

In the matter between:

THE STATE

and

SAKHUMZI MHAGA

ACCUSED

JUDGMENT ON SENTENCE

Rugunanan J

[1] The accused was convicted on counts of murder (the *mens rea* being *dolus eventualis*) and attempting to defeat or obstruct the ends of justice. The

crimes were committed during the period 31 May 2024 to 4 June 2024 when he unlawfully and intentionally strangled and killed Ms Z[...] T[...] (the deceased victim), with whom he was involved in a romantic relationship. In attempting to avoid detection of the murder, the accused concealed the deceased's body under his bed and later buried it in a shallow grave not far from his place of residence.

[2] The indictment forewarns that the sentencing preferences pursued by the State for the accused's murder conviction are in accordance with the Criminal Law Amendment Act 105 of 1997, as amended. The provisions of s 51(1) read with Part I of Schedule 2 mandates a minimum sentence of life imprisonment. The operation of the sentence is triggered by the fact that the death of the victim resulted from physical abuse in a romantic relationship within the definitions of 'domestic violence' and 'domestic relationship' in s 1 of the Domestic Violence Act 116 of 1998. Alternatively, s 51(2)(a) of the Criminal Law Amendment Act mandates a minimum sentence of 15 years' imprisonment in a case of a first offender.

[3] The minimum sentence legislation enjoins a court to approach the imposition of sentence cognisant that the legislature has proclaimed the specified sentences as those which should ordinarily be imposed. The specified sentences may only be departed from if the court is satisfied that substantial and compelling circumstances exist which justify the imposition of a sentence lesser than the prescribed minimum.

[4] In determining the accused's sentence, the principal issue to be addressed is whether there are circumstances substantial and compelling which may justify deviation from the prescribed sentences.

[5] The starting point of the enquiry is the postulate that the imposition of the prescribed sentences should ordinarily be appropriate. The overarching

approach is that all factors traditionally taken into account (whether or not they diminish moral guilt) assume relevance.¹ Included is the foundational principle well-known as the *Zinn* triad, namely, the nature and seriousness of the crime, the interests of society and the personal circumstances of the accused.² Cognisance should also be taken of the purposes of sentence, namely retribution, prevention, deterrence and rehabilitation.³ Ultimately, the punishment must draw on mitigating and aggravating factors and reflect a carefully balanced and objective consideration – without undue emphasis – of all the relevant considerations mentioned above.⁴ The degree of emphasis of any relevant factor is ordinarily a matter falling within the realm of judicial discretion.⁵ The impact is measured against the composite yardstick ‘substantial and compelling’ and must be such as to cumulatively justify a departure from the prescribed sentences. The departure is only justified where the cumulative weight of all factors renders the prescribed sentences unjust or disproportionate. The caveat is that the prescribed sentences are not to be departed from lightly or for flimsy reasons, or without weighty justification, or if there are no truly convincing reasons for a different response, or for reasons attributed to misplaced sympathy.⁶ In its entirety, the enquiry is nuanced. It is a unitary

¹ See generally *S v Malgas* 2001 (2) SA 1222 (SCA) para 25. In determining whether or not substantial and compelling circumstances may exist, *S v Vilakazi* 2009 (1) SACR 40 (SCA) makes it plain that a court must consider: ‘All factors relevant to the nature and seriousness of the criminal act itself as well as all relevant personal and other circumstances relating to the offender which could have a bearing on the seriousness of the offence and the culpability of the offender. If a court is indeed satisfied that a lesser sentence is called for in a particular case thus justifying a departure from the prescribed sentence then it hardly needs saying that the court is bound to impose that lesser sentence.’

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

³ *S v Rabie* 1975 (4) SA 855 (A) at 862A.

⁴ *S v Thonga* 1993 (1) SACR 365 (V) at 370d–e.

⁵ *S v Rabie supra* at 864F.

⁶ *S v Malgas supra paras 8, 9 and 18*; *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 of 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

exercise of all the aforesaid interconnected factors – it is innately controversial⁷ and often not undertaken without considerable difficulty given the tensions that may exist between them.

[6] Focus shifts to the evidence. No oral evidence was presented by either of the parties during the sentence proceedings. Sworn affidavits were tendered and submissions were made from the bar. Strictly speaking, evidence in mitigation and aggravation should be placed before court by way of oral evidence given on oath.⁸ The accused did not raise issue with the contents of the State’s affidavit by the deceased’s father, Mr S[...] B[...]. The State, however, indicated that it took issue with the affidavit deposed by the accused. It was submitted for the accused that relevant facts regarding a proper sentence could not be ignored by the court and that the accused should be afforded the opportunity to place them before the court in the manner of his choosing. Section 274(1) of the Criminal Procedure Act 51 of 1977 states that ‘a court may, before passing sentence, receive such evidence as it thinks fit in order to inform itself as to the proper sentence to be passed.’ Consistent with the principle of a fair trial is the recognition of the need that all facts relevant to sentence be placed before the court.⁹ Deferring to constitutional and statutory demands, the accused’s affidavit was accepted. While both sets of affidavits carry evidential weight, they effectively insulate the deponents from being cross-examined.

offences. Courts are obliged to impose those sentences unless there are truly convincing reasons for departing from them. 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, is foundational to the rule of law which lies at the heart of our constitutional order.’

⁷ See *S v M* 2007 (2) SACR 539 (CC) para 10 and fn 3 of the judgment wherein reference is made to the variety of public expectations, *inter alia* the justness of the sentence, the condemnation of the crime, the protection of the public against future crimes, the reformation of the offender, the deterrent effect on potential offenders, the interests of victims of crime, and the expectation that the sentence must be restorative in the sense of compensation the victim who suffered loss.

⁸ Du Toit *et al* Commentary on the Criminal Procedure Act at 28-5 [Service 59, 2017]. Oral statements from the bar, if admitted, carry the same weight as facts presented to the court as evidence under oath, and the court is bound to consider them as though they had been proved in evidence. The default position is that evidence should be presented on oath as such evidence can be tested in cross-examination. See *Cele v The State* (681/2024) [2025] ZASCA 199 (19 December 2025) paras 10 and 11.

⁹ *S v Mokela* 2012 (1) SACR 431 (SCA) at 437e.

[7] In mitigation, the personal circumstances of the accused are gathered from his affidavit. He was born in Willowvale and is presently 35 years of age. He is the third eldest of six siblings. He attended school in East London and matriculated in 2009 whereafter he attended Fort Hare University. He graduated with an LLB degree in 2014, and in 2019 he obtained a diploma in Labour Law from the University of South Africa (Unisa). At the time of the commission of the offences for which he was arrested and convicted, he was reading for an LLM degree at Nelson Mandela University. The accused is unmarried and has a five-year old child who lives with her mother, a former girlfriend of the accused. The child is schooling and is dependent on the accused for financial support. Prior to his arrest the accused held employment in KwaMaqoma (formerly Fort Beaufort) with the Department of Labour as a supervisor for labour inspectors. The deceased was a co-employee with whom he was involved in a steady romantic relationship since February 2023.

[8] Avowing that it is not good to speak ill of the dead, the accused describes the relationship as ‘very rocky’ – both he and the deceased contributed to their relationship problems. Their problems were known to the deceased’s brother, her sister and an aunt. The accused expresses remorse. He wished to apologise to the deceased’s family but was not allowed to do so. He declares his respect for the parents of the deceased even though he never met them in person. Having read the affidavit of the deceased’s father, the accused proclaims that he comprehends, the trauma which the deceased’s family are experiencing and expresses the hope that he will be forgiven.

[9] Commenting on the broader circumstances of the commission of the offences, the accused states that he and the deceased consumed alcohol. Even though the alcohol did not affect his faculties, he asserts that it did play some role in his conduct. After the physical altercation with the deceased, he panicked

when he realised that she was dead – and somewhat uncharacteristic of his personality, he buried her. It is extraordinary to perceive that the accused gathered the physical strength to do so while maintaining that alcohol played some role in his conduct. No weight is accorded to his intake of alcohol as a mitigating factor.

[10] The accused proclaims that he is ‘extremely traumatised by the event’ and wanted to commit suicide but disclosed what had happened which led to the discovery of the deceased’s body shortly after the incident. As for the specific circumstances attendant on the commission of the offences he maintains that he ‘played open cards with the court’. It is understood in that regard, that he relies on the statement of facts tendered in his plea of guilty.

[11] The affidavit by the deceased’s father Mr B[...] contains hearsay matter. The contents of the affidavit were not disputed and the material assumes weight in aggravation of sentence. Mr B[...] described the deceased as a ‘vibrant young woman who carried herself with dignity, compassion and respect’. She was the pride of his family. After the passing of her mother in 2021, she assumed responsibility for her late mother’s maternal responsibilities.

[12] The deceased was also the breadwinner of the family and assumed financial responsibility for the well-being of her siblings. The family are struggling to cope with their altered traumatic circumstances and the attendant financial distress brought upon them by the loss of financial support and the unexpected additional funeral expenses of the deceased. Mr B[...] and his family are undergoing continuous counselling.

[13] According to Mr B [...], the tragedy that has befallen the deceased has exacerbated his poor health and has emotionally destroyed her younger sister. The sister has been particularly affected by the incident and has not found peace

since the death of her elder sibling. Sometime before the deceased was killed, the younger sister received a message from the deceased saying that if she ever went missing, the first person to confront should be the accused.

[14] In summary, Mr B[...] expresses himself in the following terms:

‘Emotionally I am completely broken. I once carried in my heart a beautiful picture of my daughter – full of life, energy, laughter, and promise. That picture has been replaced by the haunting image of how my daughter was murdered, buried like a dog, and later found in a shallow grave. On the evening when my daughter’s body was recovered, I was personally present and witnessed her being dug out of that shallow grave in a deserted field in Fort Beaufort. That horrific image remains engraved in my mind to this day. The condition of her body was so distressing that the family could not even view her during the burial. That is the picture I carry with me always.

The memory of seeing her body in that state – so disfigured that our family could not even view her during her burial – has left a permanent scar on my mind. I carry that painful image with me every single day. It is something no parent should ever have to endure. ... The pain of knowing what my daughter went through before her death is unbearable...’

[15] On its own the bare picture created by the divergent evidence in mitigation and aggravation is unavailing. The depth of the enquiry into substantial and compelling circumstances requires collaborative analysis with the triad formulation and the purpose of imposing sentence.

[16] The accused’s personal circumstances indicate that his relationship with the deceased was rocky. Except for the plea of guilty in which he indicated that the deceased was a jealous person, the accused gives no explanation for what he meant to convey by that description of his relationship with her. Nothing is said about whether this related to instability, tumultuousness, or a gruelling partnership marked by frequent arguments, conflicts, or emotional tension.

[17] What is known is that the accused and the deceased were romantic partners in a relationship that endured for more than a year and that her murder is an instance of gender-based violence, more particularly, intimate femicide. This observation converges with the nature and seriousness of the crime.¹⁰

[18] Resonating therewith is the shift in emphasis to the ‘objective gravity’ of the crime as underscored by the Supreme Court of Appeal in *S v Malgas*.¹¹ In *S v Manyathi*¹² 2025 (1) SACR 446 (ECMk), a recent judgment of this court, Govindjee J observed (his footnotes consecutively incorporated herein):

‘Gender-based violence manifests in various forms, including physical harm. It is mostly perpetrated by the current or former intimate partner and may end in the murder of a female partner.¹³ Depending on various factors, such as location, between 25-65% of women in South Africa reported ever experiencing physical / sexual and emotional abuse by a current or ex-partner.¹⁴ The killing of women by intimate partners (also known as intimate female homicide or intimate femicide) is the most extreme form and consequence of violence against women.¹⁵ In *S v Kasongo (Kasongo)*, expert testimony revealed that intimate femicide was much more common in South Africa compared to other countries, with an average of almost 3 women killed by their intimate partners per day.’¹⁶

[19] In the course of the plea proceedings the State led expert medical evidence by Doctor Sithandiwe Kunyuza with regard to the mechanism of the deceased’s death. The physiological and biological processes in the chain of events leading to death was explained in significant detail and should be read as if incorporated herein. The judgment on conviction indicates that the expert

¹⁰ The corrosive and destructive impact of gender based violence and femicide (GBVF) on families and the concomitant economic cost to society moved the president during November 2025 to declare it a pandemic and a national disaster. See <https://www.gov.za/blog/violence-against-women-national-disaster-demands-national-action>; also <https://www.parliament.gov.za/press-releases/media-statement-committee-welcomes-presidents-declaration-gbvf-national-crisis>; accessed 15 February 2026.

¹¹ At 1230G.

¹² *S v Manyathi* 2025 (1) SACR 446 (ECMk) para 1.

¹³ A van der Merwe ‘Sentencing’ (2023) 36 *SACJ* 341 at 349.

¹⁴ *S v Kasongo* [2022] ZAWCHC 224; 2023 (1) SACR 321 (WCC) (*Kasongo*) para 14.

¹⁵ S Mathews *et al* ‘Every six hours a woman is killed by her intimate partner: A national study of female homicide in South Africa’ *MRC Policy Brief* (No. 5) (June 2004).

¹⁶ *Kasongo* above para 15.

evidence contradicted the version put up by the accused in his statement of facts. The expert evidence was, in addition, not inconsistent with the objective findings in the post-mortem report, nor with those objectively depicted in the series of photographs that were admitted into evidence. On a conspectus of the evidence, it may reasonably be concluded that the ordeal suffered by the deceased was torturous and that her life came to a brutal and an undignified end with unspeakable violence.

[20] In imposing sentence recognition should be accorded to the natural indignation of the community at large (sometimes variously referred to as the interests of society or the public interest) and the fears and apprehensions of interested persons.¹⁷ As interested persons, the effect of a crime is in most instances readily apparent through the testimony of family members and victims. The affidavit by the deceased's father Mr B[...] requires no further elaboration. Both he and his family are painfully enduring the devastating effects of their altered circumstances brought about by the murder of the deceased. His only plea is that he asks that 'justice be served for my daughter ... whose life was taken in such a cruel and inhumane manner.'

[21] To determine an appropriate sentence, the overarching approach requires the court to weigh and attempt to balance all relevant factors without unduly emphasising any one of them. The task should not be approached by the court in a spirit of anger, or by attempting to deliberately exhibit severity, or to set an example to placate public opinion. It is not the object of sentencing to satisfy public opinion,¹⁸ but to serve the public interest;¹⁹ and where possible – if the circumstances justify this – the sentence must be melded with a degree of

¹⁷ See *S v M* 1997 (1) SACR 276 (WLD) at 277*i*.

¹⁸ *S v Ishwarall and Another* (CC103/2015) [2018] ZAKZDHC 55 (8 November 2018) para 26.

¹⁹ *S v Mhlakhaza and Another* (386/96) [1997] ZASCA 7 (13 March 1997) para 7. Also see *S v Manyathi* fn12 para 16 and the cases referenced.

mercy.²⁰ In that regard considerable store was placed on the remorse expressed by the accused. In *S v Matyityi* the Supreme Court of Appeal definitively stated:²¹

‘There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but that does not without more translate to genuine remorse ... genuine contrition can only come from an appreciation and acknowledgement of the extent of one’s error ... It is the surrounding actions of the accused, rather than what he says in court, that one should rather look at. In order for the remorse to be a valid consideration, the penitence must be sincere and the accused must take the court fully into his or her confidence.’

[22] The accused did not take this court into his confidence when he decided not to testify in mitigation. That, however, was his choice. The consequence of that choice is that this court accepts that the accused regrets his actions but it is not persuaded that there is evidence of genuine remorse. In attempting to underline his professed remorse the accused states in his affidavit that he, ‘gave the information out as to what happened, [t]hat is why the deceased’s body was discovered so shortly after the incident’. It was disclosed by the prosecution during address in aggravation of sentence that the deceased’s body was discovered on 4 June 2024 and that he was arrested on 6 June 2024. On the facts, the discovery preceded the arrest. Precisely how the accused gave out information is not disclosed. Absent such evidence, there is nothing indicative of his level of insight into the commission of the offences in order to assess his prospects of rehabilitation. Remorse must precede rehabilitation. The aspect of rehabilitation was, in any event, not explored during argument in mitigation, and no basis has been laid therefor.²² In the case of very serious crime deserving of long term imprisonment, it is not a significant consideration.²³

²⁰ *S v Rabie* supra at 862G. In *S v Zinn* supra at 541C: ‘The purpose of punishment ... should not be to destroy the offender completely.’

²¹ *S v Matyityi* supra at 47a-c.

²² *S v Nkomo* 2007 (2) SACR 198 (SCA) at 203e.

²³ SS Terblanche, *A Guide to Sentencing in South Africa* (LexisNexis, 3ed. 2016) at 152.

[23] Pointing to the accused's circumstances and the commission of the offence, on their own, none of the individual factors, such as the fact that he supports a child, or that he is a first offender, or that alcohol played a role would move this court to impose an indulgent sentence. Tritely, if the role of alcohol is to be considered a substantial and compelling factor in mitigation, it must be shown that the accused's consumption impaired his faculties or judgment and diminished his moral blameworthiness.²⁴

[24] The accused is 35 years of age and a material consideration is whether he can be expected to offend again. While that can never be confidently predicted his circumstances might assist in making at least some assessment. In this case the accused had reached a mature age without any previous brushes with the law. He is educated and held stable employment. He has the intellectual capability to advance his career and improve his station in life. These attributes are not indicative of an inherently lawless character. As for the circumstances relating to the commission of the offence, the deceased exhibited jealousy when she saw the accused's former girlfriend at the tavern. She slapped the accused once they returned from the tavern to his flat. These are matters that should not be excluded from assessing the events that followed. To that may be added, as mitigating features, that the accused belatedly regrets his actions and that the murder was not committed with *dolus directus*.²⁵

[25] In the final assessment, the preceding considerations cumulatively suffice to demonstrate that it would be disproportionate to impose the life sentence for the crime of murder. This remark does not diminish the impact on the deceased's family and the gruesome nature of the crime. The medical evidence

²⁴ DPP, *Grahamstown v Peli* 2018 (2) SACR 1 (SCA) at 4g.

²⁵ *S v Sigwahla* 1967 (4) SA 566 (A) at 571H: 'Trial courts, in their conspectus of possible extenuating circumstances, should not overlook the fact (if it be such) that it is a case of *dolus eventualis* [and] while it cannot be said that this factor must necessarily be an extenuating circumstance, in many cases it may well be so, either alone or together with other features, depending on the particular facts of the case.'

revealed that manual strangulation of a victim requires physical contact – the perpetrator would notice signs of the victim losing breath and struggling. The deduction that the accused lacked empathy for the deceased is obvious.

[26] In what has been an onerous task for this court the reasons for a finding of disproportionality were painstakingly considered and cannot be said to be flimsy or to have been lightly taken. The accused's conviction for murder is undoubtedly for a very shocking and serious offence. Retribution and deterrence must assume prominence which renders it unlikely for the imposition of a lenient sentence.

[27] A substantial sentence of twenty-eight (28) years' imprisonment seems to be sufficient to bring home to the accused the gravity of the conviction for murder and to exact sufficient retribution for his crime. To make him pay for it with the remainder of his life would seem to be grossly disproportionate where the cumulative weight of the evidential material points to the presence of substantial and compelling circumstances. Where these are shown life imprisonment would not be mandatory, nor would the prescribed minimum of 15 years' imprisonment be competent as a mandatory alternative.²⁶

[28] The ultimate sentence imposed on the accused is, however, within the discretion of this court, this with due recognition accorded for the legislature's desire for a firmer punishment.²⁷ In that regard it has been held that the purpose of the Criminal Law Amendment Act is 'to ensure that consistently heavier sentences are imposed in relation to the serious crimes covered by section 51'.²⁸ To ensure that consistently heavier sentences are imposed the legislature did not limit the discretion of the court to impose a sentence in excess of the prescribed

²⁶ See *S v Mahomotsa* 2002 (2) SACR 435 (SCA) para 18.

²⁷ *S v Mahomotsa supra* para 18.

²⁸ *S v Mthembu* 2011 (1) SACR 272 (KZP) at 278*d-i* and the cases cited therein.

minimum. The question as to whether a sentence in excess of the prescribed minimum is competent was answered in the affirmative in *S v Mthembu* 2011 (1) SACR 272 (KZP) which was approved of and confirmed on appeal in *S v Mthembu* 2012 (1) SACR 517 (SCA). The full court held as follows:²⁹

‘In order to ensure that consistently heavier sentences were imposed, the intention of the legislature was to limit the discretion of courts in one direction, ie the imposition of sentences less than the prescribed minimum, and to leave the courts’ discretion unlimited in the other direction, ie to impose sentences heavier than the prescribed minimum.’

[29] Counsel for the accused did not make any submissions to the contrary, and having considered the matter anxiously, I am of the view that a sentence of 28 years’ imprisonment is justified. The order below reflects the sentence imposed for the second count of attempting to defeat or obstruct the ends of justice. It is not inappropriate to order that part of the sentences should run concurrently.

[30] In the result the accused is sentenced as follows:

1. On count 1, Murder – the accused is sentenced to 28 (twenty-eight) years’ imprisonment.
2. On count 2, Attempting to defeat or obstruct the ends of justice – the accused is sentenced to 4 (four) years’ imprisonment.
3. It is further ordered that 2 (two) years of the sentence on count 2 shall run concurrently with the sentence on count 1 so that the accused serves an effective thirty 30 (thirty) years’ imprisonment.

²⁹ *S v Mthembu* 2011 (1) SACR 272 (KZP) at 278g. See also *S v Khomo* (CCD 50/2020) [2020] ZAKZPHC 60 (16 October 2020) para 32.

M. S. RUGUNANAN
JUDGE OF THE HIGH COURT

Appearances:

For the State: *H Obermeyer*, Instructed by the Office of the Director of Public Prosecutions, Makhanda.

For the Accused: *M F T Botha*, Instructed by Makhanya Attorneys, Makhanda.

Date heard: 9 February 2026.

Date delivered: 20 February 2026.