



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

CC50/2025

Reportable	Yes/No
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In the matter between:

THE STATE

versus

NHLANHLA VINJWA

ACCUSED

JUDGMENT ON SENTENCE

Cengani-Mbakaza AJ

Introduction

[1] As evident from the findings in the main judgment, the accused is guilty of the offences of rape in contravention of s 3 of the Criminal Law (Sexual Offences and Related Matters Amendment Act) 32 of 2007 (SORMA) as well as murder of a 13-year-old girl. Pursuant to Section 51(1), Part 1, Schedule 2 of the Criminal Law Amendment Act 105 of 1997 (CLAA), the prescribed sentence is imprisonment for life in respect of each count. However as required by the law, the court may only deviate if the accused shows the existence of substantial and compelling circumstances.

[2] Before considering whether there are substantiation and compelling circumstances in this matter, I will first address the common law principles governing sentencing. Sentencing is widely regarded as the most difficult stage in criminal proceedings. Notwithstanding these challenges, courts are guided by a well-established body of principles that govern sentencing.

[3] Although the court is at this stage vested with discretion in determining an appropriate sentence, such discretion must be exercised objectively. More importantly, the court has a duty to take into account all surrounding factors in order to reach a just and appropriate sentence.

[4] In his body of work, SS Terblanche¹ summarises the issue of discretion. This is paraphrased as follows:

Judicial discretion is a key part of effective sentencing in South Africa, because sentencing cannot be individualised without it. However, this discretion is not unlimited; it is constrained by the law. South African law has increasingly moved towards requiring courts to consider sentences handed down in similar cases before. This trend gives the doctrine of precedent a stronger role in sentencing, drawing on the collective experience of judges nationwide to promote greater certainty and respect for the law.

True consistency in sentencing, which is distinct from rigid uniformity, can only be achieved if discretion is somewhat limited. Consistency is closely tied to ideas of justice and fairness, and since equality is central to South Africa's constitutional order, these values should take priority in sentencing decisions.

¹ A guide to Sentencing in South Africa, SS Terblanche, 3rd edition at page 46.

[5] The Appellate Division in *S v Zinn*² enunciated a triad approach consisting of the nature and seriousness of the offence, the accused's personal circumstances, and the interests of society.

[6] As an integral component of sentencing discretion and the principle of equality, the rights of victims must be duly considered and may not be disregarded in the sentencing process.

[7] The Supreme Court of Appeal (SCA) in *S v Matyityi*³ held:

‘[17] By accommodating the victim during the sentencing process the court will be better informed before sentencing about the after effects of the crime. The court will thus have at its disposal information pertaining to both the accused and victim and in that way hopefully a more balanced approach to sentencing can be achieved. Absent evidence from the victim the court will only have half of the information necessary to properly exercise its sentencing discretion. It is thus important that information pertaining not just to be the objective gravity of the offense but also the impact of the crime on the victim will be placed before court. Thus, in turn will contribute to the achievement of the right sense of balance and in the ultimate analysis will enhance proportionality rather than harshness.’

[8] The common law purposes of punishment are also well- established and warrant careful consideration. These purposes were described in *R v Swanepoel*⁴ as deterrent, preventative, reformatory and retributive. In *S v Rabi*⁵ reference was made to Gordon, *Criminal Law of Scotland* (1967) at 50 where it was stated that:

² 1962 (2) SA 537 A.

³ (695/09)[2010] ZASCA 127; 2011 (1) SACR 40 (SCA); [2010] 2 All SA 424 (SCA) 30 September 2010 at para 17.

⁴ 1945 AD 444 at 455

⁵ 1975 (4) SA 855 (A) at 862 A – B.

‘The retributive theory finds the justification for punishment in a past act a wrong which requires punishment or expiation ... the other theories, reformative, preventive and deterrent, all find their justification in the future, in the good that will be produced as a result of punishment’

[9] The deterrence has been described as the “essential”, “all important”, “paramount” and “universal admitted” object of punishment.⁶ In *R v Karg*⁷ it was held while the deterrent effect of punishment has remained as important as ever, the retributive effect whilst by no means absent from the modern approach to sentencing has tendered to yield ground to aspects of prevention and correction. It was however pointed out in *Karg*⁸ as far as retributive effect of punishment is concerned that if sentences for serious crimes are too lenient, the administration of justice may fall into disrepute and injured persons may be inclined to take the law into their own hands.

The nature and seriousness of the crimes

[10] The following constitute aggravating circumstances: This young girl was brutally and violently killed. The egregious nature of the offences is difficult to describe. The accused lured her to his home and took advantage of her, knowing that the child trusted him. On the day of the incident, she asked him for a mere R5. Instead of giving it to her, the accused asked her to come to his home to fetch it. Upon arrival, he asked her to do his laundry. He then suggested that they pray together, and it was at that point, while the child was in a vulnerable state, that he raped and strangled her to death.

⁶ See *S v Khumalo & Others* 1984 ZASCA 30, 1984 (3) SA 327 AD at 330 E.

⁷ 1961 (1) SA 231 at 236 A – B.

⁸ Fn 7 supra.

[11] The two causes of death, as described by Dr Jwaqa, illustrate the distinct nature of the circumstances in this case. The causes of death were ligature strangulation and blunt force trauma to the head. In addition, the child suffered other injuries to her internal organs, including multiple oedemas. Upon thorough examination of her genitals, Dr Jwaqa noted severe, fresh, multiple injuries.

[12] The preamble in SORMA emphasises the importance of protecting the rights of victims, particularly women, children and people with mental disabilities. The preamble highlights the need to recognise the rights to equality⁹, privacy, dignity¹⁰, freedom of and security of persons, which includes the right to be free from all forms of abuse.¹¹ This matter highlights how the deceased's rights as entrenched in the Constitution were violated.

The accused's personal circumstances

[13] The state listed the accused's previous convictions, highlighting his prior conduct. These previous convictions stem from offences related to possession of drugs and assault. It is common cause that they were committed long time ago.

[14] The accused did not testify in mitigation of sentence; however, his counsel presented the following personal circumstances: the accused was 33 years old at the time the offences were committed. He was raised by his step father after his mother died when he was very young. He worked in one of the factories in Johannesburg where his step father was also employed. He was dismissed for persistent lateness due to transport difficulties.

⁹ Section 9 of the Constitution.

¹⁰ Section 10 of the Constitution.

¹¹Section 12(1) of the Constitution.

[15] He was later employed at Cell -C and when the company relocated to KwaZulu- Natal, he was transferred there. Subsequently, he was retrenched due to circumstances at the new site. Afterwards, he moved to Maletswai, where he supported himself doing odd jobs such as washing cars.

The interests of the society

[16] The interests of the society play a significant role in arriving at a just and appropriate sentence. Our courts have a duty to take the public feelings into account especially considering the rate at which the crime is skyrocketing. This, however, does not mean that the court's discretion should be eroded. In *S v Mhlakaza*¹², the court stated that “*the plague of lawlessness and violence has to end and that the interests of society must be given absolute priority.*”

[17] It goes without saying that appropriate sentences reinforce public trust in the criminal justice system. Therefore, the courts are duty-bound to demonstrate that the criminal justice system is fair and effective to upholding the rule of law. In *S v Banda*¹³ Friedman J, held:

‘The court fulfils an important function in applying the law in the community. It has the duty to maintain law and order. The court operates in society and its decisions have an impact on individuals in the ordinary circumstances of daily life. It covers all possible ground. There is no space in life it does not include. The court must also by its decisions, and imposition of sentence, promotes respect for the law, and in doing so must reflect the seriousness of the offence, and provide just punishment for the offender while taking into account the personal circumstances of the offender. The feelings and requirements of the community, the protection of society against the accused and other potential offenders must be considered, as well as the maintenance of peace and tranquillity in the land needs to be taken into account.’

¹² 1997 (1) SACR 515 (SCA).

¹³ 1991 (2) SA 325 (BG).

Discussion

[18] I now proceed to deal with the enquiry on whether the accused has shown the existence of substantial and compelling circumstances. In terms of the CLAA, there is no clear definition of what constitutes substantial and compelling circumstances. However, the SCA in *S v Malgas* (Malgas)¹⁴ held:

‘[25] E. The legislature has however, deliberately left it to the courts to decide whether the circumstances of any particular case call for a departure from the prescribed sentence. While the emphasis has shifted to the objective gravity of the type of crime and the need for effective sanctions against it, this does not mean all other considerations are to be ignored. F All factors (other than those set out in D above) traditionally taken into account in sentencing (whether or not they diminish moral guilt) thus continue to play a role; none is excluded at the outset from consideration in sentencing process . G The ultimate impact of all circumstances relevant to sentencing must be measured against the composite yardstick(“substantial and compelling” and must be such as cumulatively justify a departure from the standardised response that the legislature has ordained...’

[19] In *Malgas*¹⁵, the SCA emphasised that departing from the prescribed sentences cannot be justified by favouritism or flimsy reasons. The court stated that weak excuses or speculations that benefit the offender or hesitation to imprison first time offenders including the court’s own misgivings about the sentencing policy are not valid reasons for departure.

[20] Having regard to all the circumstances surrounding this matter, I conclude that the nature and seriousness of the crimes, as well as the interests of the society, weigh more heavily than the accused’s personal circumstances.

¹⁴ [2001] ZASCA 30.

¹⁵ See *Malgas* fn 13, at para 25D (paraphrased).

[21] It should be acknowledged that this court is an upper guardian of all the minors and the best interests of the minor children will remain paramount. The right to life as envisaged in the Constitution, is one of the most significant rights.

[22] Without overemphasising the seriousness of the crimes, the deceased's grandmother was deeply distressed when she testified. She loved her granddaughter and she regarded all this as a loss, given that the deceased was a minor with a promising future ahead of her. I find this understandable, given that the loss of a loved one invariably imposes substantial economic, emotional and psychological strain.

[22] In contrast, the accused did not demonstrate any substantial and compelling circumstances. Instead, the circumstances of this matter, including parts of the statement he made to Capt Oelofse operate to his disadvantage. For instance, he mischaracterised the traditional practice of *ukuthwasa* or becoming a *sangoma* as a basis for the commission of the offences of killings and rape. There is no way that this traditional sacred practice may provide any such justifications as implied by the accused. Upon consideration of all the circumstances of this matter, the conclusion is that the accused showed no remorse for his conduct

[23] Having considered the matter, I find that the circumstances advanced by the accused before this court are flimsy reasons. Resultantly, there is no justification to depart from the minimum sentences prescribed.

Order

[24] Consequently, the following sentences are imposed:

1. Count 1, Rape-In terms of section 51(1) Part 1 of Schedule 2, of the Criminal Law Amendment Act 105 of 1997, the accused is sentenced to imprisonment for life.
2. Count 2, Murder- In terms of section 51(1) Part 1 of Schedule 2, of the Criminal Law Amendment Act 105 of 1997, the accused is sentenced to imprisonment for life.
3. By operation of law, the sentence in count 2 shall run concurrently with the sentence in count 1. Therefore, the accused shall serve an effective term of life imprisonment.
4. In terms of section 120 (4) of the Children's Act 38 of 2005 and section 41 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 , the accused is declared unsuitable to work with children. It is directed that his particulars be entered in Part B of the National Child Protection Register.
5. 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 must be included in the National Register for Sex Offenders.
6. In terms of section 103(1)(g) of the Firearms Control Act 60 of 2000, the accused remains unfit to possess a firearm.

N CENGANI-MBAKAZA
ACTING JUDGE OF THE HIGH COURT

APPEARANCES:

For the state : *Adv Phikiso*
DPP, Makhanda

For the accused : *Ms Mac Callum*
Legal Aid-SA, Makhanda

Date Heard : 21 May 2026
Date Delivered : 22 May 2026