



IN THE HIGH COURT OF AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NO: CC11/2021

In the matter between:

THE STATE

and

KYLE RUITERS

JUDGMENT ON SENTENCE: 30 NOVEMBER 2023

HENNEY, J

INTRODUCTION

[1] The accused in this matter pleaded guilty to a charge of murder, violating a corpse and attempting to defeat the ends of justice. The circumstances and the facts upon which he has pleaded is set out in a statement in terms of the provisions of section 112(2) of the Criminal Procedure Act 51 of 1977 ("the CPA"). On the basis of this plea, the court found the accused guilty on 9 May 2023. In order to give appropriate context to the sentencing judgment, this court will now deal with some of the facts and circumstances as set out in the plea of guilty by the accused.

[2] Prior to the murder of the deceased in this matter, the accused was an extensive drug user that had incurred drug debt in the amount of R30,000 with a drug dealer. He further stated in his plea statement that the drug dealer threatened him with severe consequences if he did not pay this outstanding debt. It is for this reason that he

formulated the plan to murder someone and take high valued items in order to pay off the debt. To achieve this, he researched various possible victims and made notes and videos of his intended victim's movements to and from their residences, their work and any incidental places they frequented. He also tracked their activity on social media sites.

[3] The deceased lived in the same complex as he did and was included in his list of potential victims. As part of his planning to kill the deceased, he made several videos of her movements and notes of his intention to kill her. On 21 August 2019, he decided to kill the deceased. He also drafted a message he wanted to post on social media should the deceased's friends and family look for her. The message was the following *'Hey everyone I have left for a couple of days for a Bible retreat...'*. He however did not post the message, which was later downloaded by the police after seizing his cell phone.

[4] On 21 August 2019 sometime after 16H00, he observed the deceased walking to her flat that was situated on the floor above his. She was carrying what appeared to be shopping items. He watched and waited as she proceeded to her flat and opened it. He further waited until she entered and immediately followed her inside. Whereafter he accosted her in the kitchen, grabbed a knife that was on the counter and started stabbing the deceased. He was in front of the deceased, she resisted his attack and sustained defensive wounds on the arms and upper forearms.

[5] He stabbed her multiple times in the neck and on her body, until he realised that she was dead. He decided that in order to dispose of the body it was best to dismember it. Prior to the murder, he had researched dismemberment of bodies. In order to do this, he looked around in the deceased's flat for items he could use to dismember the deceased. He came across a small handheld saw which he used to dismember the

deceased's body. He dragged the body of the deceased from the kitchen to the bathroom, where he continued with the process of dismembering it. At some point, he found it difficult to continue the dismemberment with the items he had at that stage and decided to wait until the next morning. He then locked the flat of the deceased at about 10pm that evening and went to his own flat. At his flat, he changed his clothing and went to sleep.

[6] The next morning at about 7 AM he returned to the flat of the deceased. He thereafter tried to find out the trading hours of a nearby hardware store in order to secure further tools to continue with the dismemberment of the body. The head of the deceased was still inside the flat which he had already dismembered the previous night. He decided to dispose of it and took it and placed it in a backpack for the purposes of disposing of it.

[7] He thereafter proceeded to walk to the hardware store and dispose of the head in some bushes nearby. At the hardware store, he proceeded to purchase one pair of plastic gloves and a backsaw. He later, in the process of further dismemberment of the body of the deceased, made several trips between his flat and that of the deceased, moving parts of her body between her flat, and his flat.

[8] He proceeded to finish the dismemberment of the deceased body into 9 parts and placed it in various cooler boxes that he found in the deceased's flat and his own. After he had disposed of all the dismembered parts of the deceased's body, he proceeded to clean the crime scene which included the passage wall and bedroom of deceased. He also removed some of the bloodied items and deposited it in the waste disposal bins of the flat.

[9] The manner in which the accused described the premeditated, senseless and cold-blooded killing and dismemberment of the body of the deceased, is a chilling account of an evil and callous individual; someone who has no regard for the sanctity of life of any individual, to such an extent that the court has great difficulty finding any words to describe his evil conduct. It is against this background and circumstances that this court has to impose an appropriate sentence.

[10] The immediate question that arise is if regard should be had to the callous manner in which the accused committed the murder; what kind of person would commit such a horrendous deed? It seems prior to the conviction and after his arrest the accused was assessed in accordance with the provisions of section 79(2) of the CPA. In terms of this assessment the following was stated by Professor Kaliski *'He is not mentally ill and has definite psychopathic traits. If convicted the court should be cautious whether he be declared a danger to the physical and mental well-being of others as envisaged in section 286A of the Criminal Procedure Act'*.

[11] After conviction, the state, based on the initial report by Professor Kaliski, requested the court to adjourn the proceedings in order to obtain a report in terms of the provisions of section 286A¹ (2) and (3) of the CPA. This report was presented to this

¹ **286A Declaration of certain persons as dangerous criminals:**

- (1) Subject to the provisions of subsections (2), (3) and (4), a superior court or a regional court which convicts a person of one or more offences, may, if it is satisfied that the said person represents a danger to the physical or mental well-being of other persons and that the community should be protected against him, declare him a dangerous criminal.
- (2) (a) If it appears to a court referred to in subsection (1) or if it is alleged before such court that the accused is a dangerous criminal, the court may after conviction direct that the matter be enquired into and be reported on in accordance with the provisions of subsection (3).
 - (b) Before the court commits an accused for an enquiry in terms of subsection (3), the court shall inform such accused of its intention and explain to him the provisions of this section and of section 286B as well as the gravity of those provisions.
- (3)(a) Where a court issues a direction under subsection (2)(a), the relevant enquiry shall be conducted and be reported on—

court and evidence was given by one of the panel of psychiatrists that assessed the accused.

The panel found that: *'Mr Ruiters represents a danger to the physical and mental well-being of other persons he should be declared a dangerous criminal as per section 286A of the Criminal Procedure Act 51 of 1977. From a psychiatric point of view, he shows no genuine remorse for the offence, deceitfulness and a pervasive pattern of violating the rights of others. He was assessed as having antisocial personality disorder, a diagnosis which offer a poor prognosis for rehabilitation.'*

[12] Before a court can make a declaration that a person would be declared a dangerous criminal in terms of the provision of section 286A of the CPA, the Act requires that the court must make two definitive findings. Firstly, it must be satisfied that the person represents a danger to the physical or mental well-being of other persons.

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- (i) by the medical superintendent of a psychiatric hospital designated by the court, or by a psychiatrist appointed by such medical superintendent at the request of the court; and
 - (ii) by a psychiatrist appointed by the accused if he so wishes.
 - (b) (i) The court may for the purposes of such enquiry commit the accused to a psychiatric hospital or other place designated by the court, for such periods, not exceeding 30 days at a time, as the court may from time to time determine, and if an accused is in custody when he is so committed, he shall, while he is so committed, be deemed to be in the lawful custody of the person or the authority in whose custody he was at the time of such committal.
 - (ii) When the period of committal is extended for the first time under subparagraph (i), such extension may be granted in the absence of the accused unless the accused or his legal representative requests otherwise.
 - (c) The relevant report shall be in writing and shall be submitted in triplicate to the registrar or the clerk of the court, as the case may be, who shall make a copy thereof available to the prosecutor and the accused or his legal representative.
 - (d) The report shall—
 - (i) include a description of the nature of the enquiry; and
 - (ii) include a finding as to the question whether the accused represents a danger to the physical or mental well-being of other persons.
 - (e) If the persons conducting the enquiry are not unanimous in their finding under paragraph (d)(ii), such fact shall be mentioned in the report and each of such persons shall give his finding on the matter in question.

Secondly, the community should be protected against such a person. Both of these requirements must be met.

[13] The purpose of a declaration as a dangerous person is clear, and that is to protect the community or other persons against those who present a danger to the physical or mental well-being or against whom the community would generally require protection from. Apart from the psychiatric report on the findings of the panel, there is sufficient evidence that was placed before the court proving that the accused presents a danger to the physical or mental well-being of other persons and furthermore, that the community should be protected against him. This evidence was provided by the accused himself, that before committing the horrendous offences, he formulated a plan to murder someone and that he researched various possible victims and their movements.

[14] A further disturbing feature of this case is the fact that the accused, prior to the murder of the deceased, researched the dismemberment of bodies before killing her. Another disturbing aspect of this case which points to the accused being a dangerous individual is the numerous entries he made on his cellular phone about harming members of the public, I cite a few examples:

14.1 On 29 April 2019, he made a note where he professes to be grateful that he is a *'charming psychopath and I am grateful that I am a smart serial killer'*. In this note he also mentions the name of a female person that works at Miladys;

14.2 On 27 May 2019, a note was made on *'chemicals, frostbite, dangerous chemicals and updates to be done to (name of person) and (name of person)'*. In this note he also mentions research on security and how they operate;

14.3 On 25 July 2019, a note was made by him '*Why are you going to kill (name of person)*'

14.4 From the notes made on his cell phone it seems that he was stalking a female that was driving a motorbike and he made a note of the specific motorbike's registration number. One of the notes he made was to search for CF numberplates and how to do a number plate check. It is clear that he intended to trace somebody by means of a number or registration plate.

14.5 On 1 August 2019, he made a note stating the following '*Do something that will be out of the ordinary like break into a place, kill an animal and cut it up, kill someone do something to move closer to your goal heck even follow someone*'.

[15] In *S v Bull and Another; S v Chavulla and Others*² the Supreme Court of Appeal said that a court in making a predictive judgment of dangerousness must consider the personal characteristics of the accused, as revealed by the psychiatric assessment, the facts and circumstances of the case and the accused's history of violent behaviour, particularly the accused previous convictions. The court must draw its own conclusions. The court must furthermore be satisfied that such conduct is likely to continue and to result in the kind of suffering the provision seeks to protect, namely conduct which endanger the life and safety of physical or mental being of other persons.

[16] Although it is stated in the above-mentioned judgment that in making a predictive judgment on dangerousness, an accused's history of violent behaviour and particularly his previous convictions should be looked at as one of the factors to make the determination; it seems that it is only but one of the factors to consider. If however, it is

² 2001(2) SACR 681(SCA)

apparent on the evidence presented in a case that an accused person represents a danger to the physical and mental well-being of other persons, the declaration of a person as a dangerous criminal is satisfied. This was held in *S v T*³, where the accused was a 23-year-old first offender suffering from mixed personality disorder who had repeatedly and savagely raped a 15-year-old female over a period of 5 hours. It seems the test is and remains, irrespective of the fact whether a person is a first offender or whether such a person has a history of violent behaviour, represents a danger to the physical or mental well-being of other persons and that the community should be protected against him.

[17] The accused in this case has no history of violent behaviour or any previous convictions. It seems that the accused represents a danger to the physical and mental well-being of society based on his own admission, particularly with regard to the violent and brutal manner in which he killed and dismembered the deceased, and his unnatural interest and desire to harm people. This fact is furthermore underlined by his conduct in stalking female persons as indicated on the notes made on his cellular phone prior to the murder of the deceased.

[18] I am therefore satisfied that the accused is a person referred to in terms of section 286A (1) of the CPA. This court however, even if it is satisfied that an accused represents a danger to the physical or mental well-being of other persons and that the community should be protected against the accused, there is no obligation to declare the accused a dangerous criminal as stated in *Chavulla*.⁴

³ 1997(1) SACR 496 at page 498 paragraph h-j

⁴ Paragraphs 7 and paragraph 16

What also needs to be considered in this particular matter, is that the legislature has deemed it appropriate to prescribe a sentence in terms of the provisions of section 51 (1) of the Criminal Law (sentencing) Amendment Act 105 of 1997 (“the CLAA”) because both these offences falls within Part 1 of Schedule 2 in that the murder was planned or premeditated. The court is obliged to impose the sentence unless it can find that there are substantial and compelling circumstances to deviate from the prescribed sentence of life imprisonment.

[19] The problem the court however has in this particular case as was pointed out in the matter of *Chavulla*⁵... ‘*Since the abolition of the death penalty, this court has consistently recognised that life imprisonment is the most severe and onerous sentence which can be imposed and that it is the appropriate sentence to impose in those cases where the accused must effectively be removed from society. . .*’.

The court in *Chavulla* continues to state the following⁶ about the difference between a sentence of life imprisonment and a declaration of a person as a dangerous criminal:

‘. . .[T]he trial Court, despite its fully justified view that the farm-house murders were crimes of the most extreme seriousness, did not consider imposing a sentence of life imprisonment in respect of any of the appellants ...

... Had the trial Court properly considered its sentencing options it would not, in my view, have acted in terms of ss 286A and 286B but would, instead, have sentenced each of the appellants to life imprisonment. The first appellant has no previous convictions but he is no less to blame for the crimes committed at Nieuwoudtville than the others. Like the other appellants, he deserves no other sentence than the most severe sentence which a court can impose, namely one of life imprisonment.’ (Own underlining).

⁵ At paragraph [21]

⁶ At paragraphs [43] – [44]

[20] What is illustrated by this case is that there is a disconnect between the provisions of the CLAA and the provisions of Section 286A of the CPA. The first anomaly is that if a court make a declaration that a person is a dangerous criminal in terms of Section 286A(1) of the CPA, it may lead to the court imposing a lesser sentence than life imprisonment. In order to impose a lesser sentence in this case, which is an order declaring the accused to be a dangerous criminal, the court has to find that there are substantial and compelling circumstances to deviate from the most severe sentence which is life imprisonment.

[21] A case can hardly be made out that once a person is viewed to be a dangerous criminal, that, that can constitute a fact for a court to conclude that there are substantial and compelling circumstances. In fact, it should be a consideration that militates against a finding that there are substantial and compelling circumstances. This is a factor which the legislature has overlooked. It failed to pay due regard to the provisions of section 286A⁷ when the provisions of the CLAA were introduced; the provisions of section 286A was completely ignored in the formulation of the CLAA. I think the reason for this was because initially in 1997, when the CLAA was enacted, it was meant to be a temporary measure.

[22] A further disconnect between the provisions of section 286A and the provisions of the CLAA is the more onerous provision of that section which requires the court to direct that an enquiry be held, if it is alleged that a person is a dangerous criminal which is in essence a psychiatric evaluation with the specific purpose to enquire whether such

⁷ As well as 286 of the CPA declaring a person a habitual criminal

a person is a dangerous criminal. In order for the court to impose a sentence of a mandatory life imprisonment which is a more severe sentence, no such enquiry is necessary; and in practise this seldom, if ever, happens.

[23] It therefore seems that it would be less onerous to impose the more severe sentence of life imprisonment than a less severe sentence of a declaration of a person to be a dangerous criminal. This is clearly an anomaly between the provisions of the CLAA and the provisions of Section 286A. Parliament has clearly not taken into consideration the provisions of Section 286A which is an indispensable and important sentencing tool when it enacted the provisions of the CLAA. I think it is for these reasons that this important sentencing tool is being under-utilised. *Hamman, Albertus & Nortje*⁸ bemoans the fact that although ‘*The violent nature of some crimes and the high crime rate in South Africa reflect the fact that some offenders constitute a real threat to the security of communities. It is understandable, therefore, that the state seeks to protect its citizens through preventive measures. Although South Africa has certain legal provisions on its statutory books, it seems that the declaration of persons as dangerous criminals is under-utilised.*’

The authors further states:

‘Though the courts can impose heavy sentences in an attempt to deter these offenders and the correctional system is aimed at rehabilitating and reintegrating them back into society as law abiding citizens, there are unfortunately some who will continue to pose a serious threat to the safety and well-being of others. Such dangerous offenders pose a clear threat to a society intent

⁸ Hamman, Albertus & Nortje “*Deciphering dangerousness: A Critical analysis of Section 286A and B of the Criminal Procedure Act 51 of 1977*” PER / PELJ 2019 (22) – DOI <http://dx.doi.org/10.17159/1727-3781/2019/v22i0a5950>

on achieving peace and safety. The State is therefore obliged to address and prevent the possible menace that such offenders pose. Prior to 1994 the death penalty was regarded as the ultimate punishment. Currently, however, life imprisonment (25 years imprisonment) is one of the most serious punishments that can be imposed by a court and is regarded as a substitute for the death penalty. What many probably do not realise is that since 1 November 1993 there has been a provision in our law which permits a court to declare someone a dangerous criminal and to impose an indeterminate sentence. The power of courts to make such a declaration and impose such a sentence is contained in section 286A and 286B of the Criminal Procedure Act 51 of 1977.’⁹

[24] What is however apparent from the *Chavulla* judgment is that the most severe form of punishment a court can impose is one of life imprisonment and clearly that a declaration of a person as a dangerous criminal is a lesser sentence. Should the court, even if it is of the view that the accused is a dangerous criminal, be inclined to make such a declaration, it first has to find that there are substantial and compelling circumstances to deviate from the prescribed sentence of life imprisonment.

I have already dealt with the circumstances under which the offence was committed. I shall now deal with the accused personal circumstances.

PERSONAL CIRCUMSTANCES OF ACCUSED

[25] The accused is a first offender, and he has never been in trouble with the law before. At the time of the commission of the offence he was 24 years old and is currently 28 years of age. He had a uniquely difficult upbringing. He was born in Boksburg,

⁹ Hamman *supra* at pg 2

Gauteng in 1995. His biological parents were not married, and they were living with his maternal grandparents. Both his biological parents were addicts. As a result of this, he was abandoned by his parents when he was 17 months old. They were unable to take care of him due to their addiction and his biological aunt raised him as her own child. After that, he was relocated from Gauteng to Cape Town to live with his biological aunt.

[26] He was brought up under the impression that his biological aunt was in fact his real mother as she raised him as her own child. He attended school in the Western Cape and he repeated grades 4, 9 and 11. He eventually matriculated in 2016 at the age of 21. He also did not fit in socially and was often bullied at school. As a teenager when he found out that his foster mother was not his biological mother, it had an immense impact on him emotionally and psychologically. He was not accepted through his teenage years by others and started experimenting with dagga at a young age. Throughout high school, he became dependent on it, which led into transition into harder drugs. After he matriculated during 2016, he tried to obtain employment in 2017 and 2018. He held various jobs but due to his drug use, he was unable to hold steady employment. It was also during this time that he formulated the idea that he wanted to be a writer of crime novels.

[27] During 2019, he was deeply in drug debt and without money to pay the debt to buy more drugs. This spiralled him into a horrible frame of mind that led to his actions which took the life of an innocent person. He often wanted to apologise to the family and friends of the deceased but understands it is impossible for him to do so, but had submitted a handwritten note which was read out in court wherein he extends his apology to the family and friends of the deceased.

[28] He initially tried to cover his tracks and hide the body of the deceased and even tried to mislead the police in trying to recover parts of the body. He however, after he had spoken to the investigating officer who impressed upon him the importance of recovering the body so that it would give closure to the family of the deceased, decided to assist the police in recovering the body. He also told the investigating officer that he was prepared to make a confession, which he did, and it was always his desire to plead guilty to the charges. He always understood that his actions meant that he would go to prison for a very long time and accepted that he is accountable for his crimes.

One of his aspirations is to pursue a bachelor's degree and further his studies beyond that. A further aspiration is to stay clean from drugs. Lastly, he states that he expresses his apologies for his actions and the effect it had on so many. He will accept any sentence the court imposes.

INTEREST OF SOCIETY

[29] It is in cases like this where a defenceless and innocent woman became the victim of a monster that the interest of society demands a court to give effect to the deterrent aspect of punishment. The deceased it seems had very little chance because she was ambushed by the accused. He stalked her and entered her house at a time when she was at her most vulnerable, when she had to open the door while carrying groceries and was not aware of her surroundings. This gave the accused an opportunity to slip into her flat. She was brutally murdered in her home which was meant to be a place of safety. This is once again one of those cases in which our society is under threat of the scourge of violence committed against an innocent woman and where a woman is targeted by monsters like the accused.

[30] The loss of the deceased, and the monstrous brutality which accompanied it, had an extremely traumatic impact on the family. In a victim impact statement that was handed up by the prosecutor from the sister of the deceased this fact is clearly evident. She states that she suffers from nightmares. As a hairdresser she cannot trust any male persons. She lost faith in her fellow human beings and in the goodness of mankind. She suffers from permanent anxiety to the extent that she loses bladder control when people shout or argue. She had withdrawn herself from being part of big groups of people. She is also scared to go outside of her house out of fear of being attacked. The deceased was her best friend and only sister. It is difficult for her to live a normal life. Although she received psychological treatment for a few months, she however would have to undergo such treatment for the rest of her life.

[31] The court has to make a determination whether they are substantial and compelling circumstances to deviate from the prescribed sentence. In my view, the circumstances as presented by the accused pales into insignificance if one should have regard to the totality of the circumstances of this case, to conclude that there are substantial and compelling circumstances to deviate from the prescribed sentence. The crime alone and the manner in which it was committed where the accused not only violently and brutally murdered the deceased, but also dismembered her body whereafter he placed the parts of her body at different places, clearly shows a lack of respect for the sanctity of human life. On the totality of the evidence the accused is without a doubt a dangerous criminal, who not only poses a danger to society as a whole, but in particular, to women in our society.

[32] In serious cases like this, the interest of society is of paramount importance. Society demands that the court should also send a message that life is not cheap and

that women and the public are protected against monsters like the accused. Based on the above, therefore the only appropriate sentence that the court can impose in this particular case, in respect of the murder charge, is one of life imprisonment in terms of the provisions of section 51(1) of the CLAA.

[33] There can be no doubt that in this case, there are no substantial and compelling circumstances given the fact that the accused and from the conduct of the accused prior to committing the offence, not only in respect of the deceased, but also in respect of other women he stalked, would commit similar offences again if released back in society. The court therefore has to send out a clear message to the accused and people like him that in such circumstances, it would impose the severest punishment permitted by law, which is a sentence of life imprisonment.

[34] In respect of Count 1: The murder of Lynette Volschenck: the accused is sentenced to life imprisonment;

In respect of Count 2, violating a corpse, the accused is sentenced to 15 years imprisonment;

In respect of Count 4, the charge of attempting to defeat the ends of justice, the accused sentenced to 5 years imprisonment.

It is ordered in terms of the provisions of section 280(2) of the CPA, that all the sentences be served concurrently.

In terms of the provisions of section 102 of the Firearms Control Act, 90 of 2000, the accused is declared unfit to possess a firearm.

[35] I make a further order that the Registrar of this court submit a copy of this judgment to the Provincial Commissioner of Correctional Services accompanied with the report of the panel of psychiatrists and psychologists, the victim impact report of the sister of the deceased must accompany the warrant of committal to prison of the accused. Furthermore, that a copy of the indictment, the section 112(2) guilty plea statement, the post-mortem report, the photographs of the crime scene also accompany the warrant of committal, which should form part of the accused's '*prisoner profile*' for consideration by the prison authorities in their further conduct and management of the accused as a prisoner.

R.C.A. Henney

Judge of the High Court