

SOUTH AFRICA / JUDGMENT

Batsietseng v S (Appeal) (CA13/2020)

[2025] ZANWHC 94 (2 June 2025)

[2025] ZANWHC 94**COURT**

North West High Court, Mafikeng

BEFORE

J T Djaje, W Malane

CASE / FILE NUMBER

CA 13/2020

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Policy**IN****THE HIGH COURT OF SOUTH AFRICA****NORTH WEST DIVISION –****MAHIKENG****CASE****NO: CA 13/2020****Reportable:**

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In

the matter between: NNGALI
GIDEON BATSIETSENG
APPELLANT
AND
THE
STATE
RESPONDENT
CRIMINAL
APPEAL
DJAJE
DJP & MALANE AJ

Heard: 4 APRIL 2025

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses.
The date for the hand-down is deemed to be 2 JUNE 2025.
ORDER
The following order is

made: 1.
The appeal against sentence is dismissed.

JUDGMENT

DJAJE DJP

- [1] The appellant herein was convicted of one count of murder and one count of rape in the Regional Court held in Klerksdorp. On the count of murder, he was sentenced to ten years imprisonment and to life imprisonment for the rape count. He now appeals against sentence only exercising his automatic right of appeal.
- [2] The charge in count 1 was that the appellant unlawfully and intentionally killed the deceased, M[...] M[...] M[...]. It was alleged that the death of the deceased was caused by the appellant in committing or attempting to commit an offence of rape. In the count of rape, the appellant was charged with having had unlawful and intentional sexual intercourse with the deceased, M[...] M[...] M[...] without her consent. The appellant pleaded guilty to the count of murder, but the state did not accept the plea and a plea of not guilty was entered by the court a quo. In relation to the count of rape, the appellant admitted to the sexual intercourse that it was consensual.
- [3] A statement by the appellant was read into the record as follows:
- “It read, reads as follows:*
- “I am the accused herein and the count of murder has been explained to me by my attorney and thus I make the statement freely, and*

voluntarily and without any undue influence thereto.

I plead guilty to the crime of murder in that on or upon 5 March 2017 and at or near Jouberton in the Regional Division of North West I did unlawfully and intentionally kill M[...] M[...] M[...] a female person.

I state that I had confirmed that the deceased about cheating on me. We ended up in the outside toilet of my residential place because we did not want to cause noise for my sleeping grandmother.

I was upset and the deceased was trying to calm me down and she started kissing me. We then had sexual intercourse by the, by, by consent.

After I ejaculated I ask her about the cheating again and she denied it. I got upset as, as she, as I imagine her having sex with another man.

I then started to, I then started strangling her to scare her to tell me the truth. I noticed that she urinated on herself and I let go and she slumped over on the toilet seat. I [indistinct] the state to take my guilty plea as a sign of remorse and consider it in mitigation of sentence.”

- [4] As stated above the court a quo was not satisfied that the appellant admitted all the elements of the offence of murder and a plea of not guilty was entered in respect of the two counts. The state called two witnesses. The appellant’s grandmother testified that the toilet where the incident took place is at her premises. She knew the deceased as the girlfriend to the appellant, but she had not seen her for some time before the date of the incident being the 5th of March. On the date of the incident, she was woken up by a commotion from the outside toilet. She went to look through the window and saw the appellant coming out of the toilet. She went out to investigate and before entering the toilet, she saw the t-shirt that was worn by the deceased earlier on. At that time the appellant had left and only came back after two days. She called Samuel and the police were eventually called to the scene.
- [5] The next witness was Luyanda Kuselo who was the current boyfriend to the deceased. He testified that the appellant approached him and confronted him about his relationship with the deceased. Further that the appellant asked him to stop his relationship with the deceased and he, the appellant was trying to restore his relationship with the deceased. Later, he met with the deceased and the appellant arrived whilst the deceased was leaving. The appellant walked away with the deceased holding her hand. They walked towards the appellant’s place of residence. The next day he heard that the deceased had passed away and was found in a toilet at the appellant’s residence.
- [6] The appellant elected not to testify and closed his case after the state’s case.
- [7] The court during sentence found that there were no substantial and compelling circumstances to deviate from the prescribed minimum sentence in the count of rape and sentenced the appellant to life imprisonment.

- [8] In the main the appellant's ground of appeal is that the sentence of life imprisonment is excessive as the appellant age and lack of previous convictions should have been considered as substantial and compelling for the court to deviate from imposing the minimum sentence. It was argued that the appellant as a first offender was a candidate for rehabilitation.
- [9] In contention the respondent submitted that the sentence imposed was appropriate and there is no reason for this Court to interfere.
- [10] Sentence is a matter for the discretion of the court burdened with the task of imposing it. A Court of Appeal will be entitled to interfere with the sentence imposed by the trial court if the sentence is disturbingly inappropriate or out of proportion to the seriousness of the offence. See: *S v Romer* 2011 (2) SACR 153 (SCA) paragraph 22
- [11] In imposing the appropriate sentence the court should always balance the nature and circumstances of the offence, the personal circumstances of the offender and the impact of the crime on the community, its welfare and concern. See: *S v Banda and Others* 1991(2) SA 352 BGD) at page 355.
- [12] As far as the seriousness of the offence is concerned Nugent JA stated as follows in *S v Vilakazi* 2009 (1) SACR 552 (SCA) paragraph 58:

"In cases of serious crime the personal circumstances of the offender, by themselves, will necessarily recede into the background".

- [13] In the main the appellant argued that the court a quo overemphasised the interest of the society and imposed an inappropriate sentence. The appellant in this matter had sexual intercourse with the deceased in a toilet, knowing that she was in relationship with another person. Despite the deceased pleading with him he proceeded to strangle her and caused her death. It is improbable that the deceased could have agreed to have sexual intercourse with the appellant when she had just been with her boyfriend. The appellant's action of confronting the deceased's boyfriend about their relationship is a display of disrespect and going on to walk away with the deceased in the presence of her

boyfriend. The appellant allowed his jealousy to control him, and he ended up committing the offences convicted of. After the state had called the witnesses to testify, he did not give a version to rebut what was stated in evidence. In addition, after the deceased was found in the toilet, he disappeared and only came back after two days. This was a display of no remorse for his actions. The court a quo in sentencing the appellant correctly found that there were no substantial and compelling circumstances. In my view, this sentence imposed is appropriate and need not be interfered with.

- [14] Looking at the facts of this case, the personal circumstances of the appellant, the mitigating and aggravating features, as well as the submissions by both counsel, the sentence imposed by the court a quo is not severe and excessive, but appropriate under the circumstances of this case. The appellant's action was repulsive and abhorrent as he could not accept that the

deceased had moved on to a relationship with another person. The argument raised on behalf of the appellant that the sentence of life imprisonment is shockingly inappropriate has no merit and stands to be rejected. In the result the appeal must fail.

Order

[15] Consequently, the following order is made:

1. The appeal against sentence is dismissed.

J T DJAJE

DEPUTY JUDGE PRESIDENT

NORTH WEST DIVISION; MAHIKENG

I agree

W MALANE

ACTING JUDGE OF THE HIGH COURT

APPEARANCES

DATE OF HEARING

: 11 APRIL 2025

DATE OF JUDGMENT

: 02 JUNE 2025

COUNSEL FOR THE APPELLANT :

COUNSEL FOR THE RESPONDENT : ADV B C KUNENE

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