

SOUTH AFRICA / JUDGMENT

S v Mabita (Sentence) (CC66/2023) [2024] ZAGPPHC 747 (1 August 2024)

[2024] ZAGPPHC 747

COURT

North Gauteng High Court, Pretoria

BEFORE

Mosopa

CASE / FILE NUMBER

CC66/2023

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: CC66/2023

DATE: 11-03-2024

(1) REPORTABLE: YES / NO.

(2) OF INTEREST TO OTHER JUDGES: YES / NO.

(3) REVISED.

DATE

SIGNATURE

In the matter between

STATE

and

CHRIS MABITA

Accused

SENTENCE

MOSOPA, J: On 6 March 2024 I convicted the accused on one count of murder read with the provisions of Section (2) of Act 105 of 1997. The accused was found guilty by the strength of his guilty plea.

The accused in his guilty plea statement admitted that he used excessive force when he grabbed the deceased by her neck and pressed her hard against the bed. The deceased and the accused were in a love relationship. This was a love relationship which was characterised by arguments because of the love relationship that the accused had with Nonhlanhla Mazibuko, even though no history of violence was mentioned. The accused terminated such relationship with Nonhlanhla a day before he murdered the deceased in this matter.

Section 11 of the Constitution provides that “Everyone has the right to life.” This is an absolute right afforded by the Constitution to every person in the Republic. The right is not subject to any limitation as provided by Section 36 of the Constitution. This is a right also enjoyed by the accused despite him ending the deceased’ right to life by his conduct.

This right is given to a living soul but unfortunately, it was taken away from the deceased forever. The accused will enjoy this right to life and this right cannot be arbitrarily taken away from him even by the government.

Closely linked to this right is the right to human dignity which is provided for in Section 10 of the Constitution which provides that “Everyone has inherent dignity and the right to have their dignity respected and protected.” The accused failed to respect and protect the right to human dignity of the deceased by killing her. The accused testified in mitigation of sentence and his evidence can be summarised as follows.

That he is currently 51 years old as he was born on 30 January 1973, and he was 50 years old at the time of the commission of the offence. The accused has five children who are 32 years old, 26 years old, 18 years old, 17 years old and five years old, they are all from different mothers.

All the accused’ children are staying with their mothers. Three children of the accused Thapelo, Relebohile and Lebogang are on government child support grant. Accused maintains a good relationship with his children.

He went as far as grade 11 with his education, he attended Central High School in Soshanguve. After leaving school he tried to venture into business with no success and he ended up securing employment at Wetherlys decorating house as a truck assistant. He then became a receiving manager and later a dispatch manager. As he had interest in decoration, he became a floor assistant, floor decorator and then he became a decorating sales assistant. Wetherlys decorating house went into liquidation in 2009.

Thereafter he was employed at Pyramid Clothing where he was in charge of transport and also as a forklift operator. Pyramid Clothing business was not doing good, and he left, he was then employed at Universal Paper for a period of six months as a forklift operator. In January 2012, He was then employed at BMW under an agency for a period of four years, he worked as a forklift operator for three months then as a quality controller and was then finally promoted as a team leader. After he left BMW, he was employed at Kraal Quarry as a maintenance officer for a period of one year and six months. In 2020 he was elected as a deputy community chairperson of the area he was residing in. In his capacity he played a pivotal role in solving problems affecting the

members of his community.

He gave an example of assisting a couple whose shack was engulfed with fire and both these people were deaf-mute. He also gave an example about the children who were left alone by their mother in the shack, and he assisted them, the first child was reunited with her biological father and the two young ones were taken by social workers and were placed at a home.

He pleaded guilty in this matter because he is the last person who handled the deceased with his hands before she died. He then drank rat poison after realising that the deceased was no longer breathing as he wanted to take his own life and follow the deceased. The mother of the deceased visited the accused in custody, and he was ashamed. The deceased' mother found him while he was sick and told him that as she is a Christian, she does not want to bear grudges.

In cross-examination he demonstrated how he used excessive force on the deceased by pressing her against a bed. After the testimony of the accused the defence closed its case in mitigation of sentence.

The state presented two victim impact statements which was then admitted into evidence. No oral testimony was led by the state. In his victim impact statement, Mr Michael Teko the father of the deceased stated how the deceased was raised and taught Christian values. He has also received salvation. In their family, the deceased was taking care of him and his wife as they were both pensioners. They had eight children, and the deceased was his favourite child.

He also stated that deceased has a child who is 11 years old, and she was taking good care of her child. The family cannot believe what happened to her. The deceased' child experiences nightmares, there is a change in her sleeping pattern, and she is now a sickly child. The person who was providing for the family is no more and he must use his pension money to maintain his grandchildren including the deceased' child.

The second victim statement was done by Ms Rose Dintwe a colleague of the deceased at AVBOB head office Pretoria. She said that the deceased was not only friend to her but was also a sister and that they have been friends for three years before the death of the deceased. She further described the deceased as a trustworthy and an honest person. That no one can erase the memories that she has with the deceased. They used to celebrate their birthdays together with their children and from now on her birthday is going to be different.

The death of the deceased affected her so bad because she can no longer trust men and fears for her children's safety should she bring men around them. She is hurt because of how the death of the deceased has affected the deceased' daughter as she saw in her WhatsApp status where she wrote how she misses her mother and in December she wrote that it will be her first Christmas without her mother and her first birthday without her mother.

In considering sentence, the Court must have regard to the seriousness of the offence, the personal circumstances of the accused and the interest of society. There must be balance of factors that may constitute substantial and compelling circumstances that warrant deviation from the prescribed sentence. The considerations have become well-established as in the Zinn triad namely the crime, the offender and the interest of society (see the matter of State vs. Zinn, 1969, Vol. 2, 537(A) at 540(G)).

The accused' employment history directs to the fact that he had a stable work environment. He is currently a community leader and plays a pivotal role in assisting members of the community in resolving their problems. Most importantly he rescued three minor children who were left alone in a shack for a period of three days without food and water to bath. The place where the children were discovered from was unhealthy and it had a foul-smell.

This is a character of a responsible and selfless leader considering that when the children were rescued, he was the only person present at that time. At the age of 51 years old, the accused has an unblemished criminal record which is unlikely in South Africa.

The accused has children even though some had attained the age of majority, and they are independent, but some were dependent on him for maintenance. The little money that he would earn in his position as a community leader and from selling stands, he would use it to maintain his children.

The accused is not a day-to-day criminal but his action on the day he killed the deceased makes him a criminal. The deceased' child is now without a mother because of the accused actions. The child is only 11 years old and she is going through traumatic effects of having to deal with the loss of her mother.

There is no mention of her father, but it is likely that she currently stays with the parents of the deceased, and they are the ones who are taking care of her. Both the deceased' parents are pensioners, and they used their money not only to maintain the deceased' child but also their other grandchildren.

The family of the deceased is devastated by the death of the deceased at the hands of the accused but bears no grudges because of their Christian beliefs. The mother of the deceased had in an unprecedented manner visited the killer of her daughter in prison and told him that she bears no grudges. The friend of the deceased who was also a colleague is devastated by the death of the deceased.

There is a serious spread of people killing their intimate partners in South Africa. The reason for such crimes differs and it is absolutely important that each case must be individualised and dealt with according to its merits. The deceased died an unnecessary and painful death at the hands of the accused. The cause of death is recorded as consistent with an asphyxial death which is mainly common in cases of strangulation.

The accused demonstrated how he was pressing the neck of the deceased and this is consistent with strangulation. The post-mortem report did not record the mass of the deceased but by looking at the scene photo album it is clear that the deceased was neither a chubby nor a muscular person. But upon observing the accused, he is a muscular person.

On the day of the incident, the accused wanted to attend the community meeting, but the deceased was not in favour of him attending such as she wanted to spend quality time with the accused. On the first occasion after the deceased pulled him with his t-shirt the deceased only pushed her to the bed. On the second occasion the actions of the accused were more drastic and brutal. The accused did not explain to this court why he did not conduct himself in the manner in which he handled the deceased in the first occasion. Hence, I say that the death of the deceased was unnecessary.

Accused was a well-respected community leader as he described himself as a father of the community. He was able to resolve conflicts pertaining to the members of the community which he led. However, he was unable to peacefully resolve issues pertaining to his relationship despite having acquired a skill of doing that through his previous engagements with the community members.

The accused cheated on the deceased with Nonhlanhla much to the disapproval of the deceased. The accused degraded the deceased in the sense that Nonhlanhla would always swear at the deceased even though it is the accused who caused the circumstances. I am alive to the fact that the accused ended his relationship with Nonhlanhla but accused testified that on the day of the death of the deceased, after the deceased accompanied her daughter to the school bus on her return, she met Nonhlanhla and a quarrel ensued between the two.

The accused attempted to end his life after drinking rat poison upon realising that he has killed the deceased. I fully agree with Mr Lalane on behalf of the state that this conduct by the accused was meant to avoid justice and having to deal with the consequences of his conduct. Why did he first drink four quarts of beer before drinking poison? and why did he have to travel as far as Itsoseng to go and attempt to kill himself? Those questions can only be answered by the accused.

The accused is convicted of murder read with the provisions of Section 51(2) of Act 105 of 1997 which provides as follows:

“Notwithstanding any other law but subject to Subsection (3) and (6), a Regional Court or a High Court shall sentence a person who has been convicted of an offence referred to in (a) Part 2 of Schedule 2 in the case of (i) a first offender to imprisonment for a period not less than 15 years.”

Provided that the maximum term of imprisonment that a Regional Court may impose in terms of this subsection shall not exceed the minimum term of imprisonment that it must impose in terms of this subsection by more than five years.

Section 51(3)(a) provides:

“If any Court referred to in subsection (1) or (2) is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in those subsections, it shall enter the circumstances on the record of the proceedings and must thereupon impose such lesser sentence.”

Accused pleaded guilty to an alternative lesser charge in terms of Section 51(2) of Act 105 of 1997 and the indictment was amended to read as such.

The Supreme Court of Appeal in matter of State vs. Kekana, 2019, Vol. 1, SACR1 (SCCA) at paragraph 19 when dealing with a similar matter stated that:

“As a general proposition, where the minimum sentences provided for in the CLAA are applicable, an accused is not entitled to pre-determine

or pre-empt his or her sentence by referring, without more, to s 51(2).[4] If he or she wishes for that sub-section to apply, and for the resultant lesser sentence to be considered, he or she must set out the facts from which such conclusion can be premised. Without such facts, the court is not restricted to a lesser sentence merely because the accused had made reference to s 51(2). To accept otherwise would lead to absurd consequences.”

Accused stated in his Section 112 statement that he did not plan the killing of the deceased as the deceased was about to terminate their relationship. The state failed to prove any planning or premeditation in killing the deceased.

In my considered view, the state should have simply refused to accept such averments contained in the guilty plea if it had anything to gainsay that. It is therefore accepted by this Court that the murder was not planned or premeditated to fall under the purview of Section 51(1) of Act 105 of 1997. As a result, the accused need to be dealt with in terms of the provisions of Section 51(2) of Act 105 of 1997.

In the matter of State vs. SMM 2013 Vol. 2, SACR 292 SCA at paragraph 13 the following was stated:

“It is also self-evident that sentence must always be individualised, for punishment must always fit the crime, the criminal and the circumstances of the case. It is equally important to remind ourselves that sentencing should always be considered and passed dispassionately, objectively and upon a careful consideration of all relevant factors. Public sentiment cannot be ignored, but it can never be permitted to displace the careful judgment and fine balancing that are involved in arriving at an appropriate sentence. Courts must therefore always strive to arrive at a sentence which is just and fair to both the victim and the perpetrator, has regard to the nature of the crime and takes account of the interests of society. Sentencing involves a very high degree of responsibility which should be carried out with equanimity.”

As Corbett JA put in State vs. Rabie 1975 (4) SA 855 (A):

“A judicial officer should not approach punishment in a spirit of anger because, being human, that will make it difficult for him to achieve that delicate balance between the crime, the criminal and the interests of society which his task B and the objects of punishment demand of him. Nor should he strive after severity; nor, on the other hand, surrender to misplaced pity. While not flinching from firmness, where firmness is called for, he should approach his task with a humane and compassionate understanding of human frailties and the pressures of society which contribute to criminality.”

In the post-mortem report the following was recorded in the chief post-mortem finding on the deceased;

- (1) Her eyes are congested with petechial haemorrhage seen.
- (2) Bloodless dissection of the neck shows haemorrhages in the soft tissues on the neck and a fracture of the hyoid bone.
- (3) A bruise is present in her tongue; and
- (4) No other significant disease is present in the organs.

Dr Van Wyk was requested to explain what is asphyxia and she opined as follows in an affidavit in terms of Section 202(4) of Act 51 of 1977 which is an annexure to the post-mortem report;

- (1) The fact that the eyes of the deceased are congested with petechial haemorrhages. This features are noted as classical signs of asphyxia.
- (2) Bloodless neck dissection reveals haemorrhages in soft tissues. Bruising was seen within the muscle of the neck and that points towards the blunt trauma to the neck and it is commonly seen in cases of manual strangulation.
- (3) There is a bruise present with her tongue, and this could be an indication that there was a struggle and that she bit her tongue. Haemorrhages of tongue and be useful for the diagnosis in case of lethal neck compressions.
- (4) The hyoid bone is a bone that is present in the neck and the base of the tongue, the muscle of the floor of the mouth attaches to this bone. The fracture to this bone is very significant and indicates blunt trauma to the neck and normally common in cases of manual strangulation; and
- (5) Lastly no other cause of death was identified.

No micro pathology of any disease was seen within the organs and no other external injuries were present. The injuries sustained by the deceased are not consistent with the demonstration by the accused as the injuries are much more severe. The lack of blood on the parts where the injuries are located is a sign that the deceased bled internally. The bruise on the tongue shows how intense was the struggle between the accused and the deceased. The cause of death was as a result of the strangulation that the accused did, the accused did on the deceased.

The accused after killing the deceased instead of reporting the matter to police he attempted to end his own life. It is not clear as to when the body of the deceased was discovered as the accused mentioned that he informed the police when he woke up at the hospital about his involvement in the killing of the deceased. It is also not clear when did the accused regain consciousness after drinking rat poison.

What can count in his favour is that the accused after informing the police that he killed the deceased he also made a confession statement before a magistrate. The confession statement was not presented as evidence but I was informed from the bar that it is in line with the facts of the matter.

This Court must now determine is whether or not there are substantial and compelling circumstances in the case of the accused. In the matter of State vs. Roslee it was stated that there is no onus on the accused to present such, but it is important for the accused to raise such factors to be seriously considered.

Ms Augustine on behalf of the accused contended that I must consider deviating from the prescribed minimum sentence by sentencing accused to 10 years imprisonment and suspend five years of that sentence. Mr Lalane on behalf of the state contended that the circumstances of the case do not warrant deviation from the prescribed minimum sentence and this court must not impose a sentence less than 15 years imprisonment.

This is a fact conceded by the accused under cross-examination when he was asked what his attitude would be if he is sentenced to a lengthy imprisonment sentence, and he said that it would be justice for the deceased.

It is trite that in cases of serious crime the personal circumstances of the offender, by themselves, will necessarily recede into the background. (See the matter of S v Vilakazi 2009 (1) SACR 552 (SCA) at paragraph 58.)

The accused killed a vulnerable and defenceless person with no justification. In the matter of State vs. Matyityi, 2010, Vol. 1, SACR40 it was stated that a plea of guilty in an open and shut case is a new trial factor. There was overwhelming evidence against the accused and his plea of guilty cannot be equated to remorse.

The mother of the deceased took it upon herself to go and visit the accused in prison and the accused never took an initiative to reach out to the family of the deceased. Although the accused is in custody, he has a family which he can instruct to reach out to the family of the deceased on his behalf.

There was no single word of apology to the deceased and the deceased' family which came out of the mouth of the accused when he testified. He said nothing about the minor child of the deceased who is 11 years old, despite knowing that the child is now motherless because of his actions. I am therefore convinced that the accused failed to successfully table before me what can be considered as substantial and compelling circumstances.

In State vs. Nkomo 2007 (2) SACR 198 SCA the Court stated:

"In Malgas, however, it was held that in determining whether there are substantial and compelling circumstances, a court

must be conscious that the Legislature has ordained a sentence that should ordinarily be imposed for the crime specified, and that there should be truly convincing reasons for a different response."

I have already stated none exist in this matter. It is unfortunate that accused at his age now is facing a prison sentence. The accused failed to resolve a conflict in a civilised manner. As a leader of the community, he was deeply involved in solving people's problems and he should have known better.

The sentence that I am going to impose on you today I want it to be a sentence that will in future teach you how to better resolve disputes. Women in this country has been for long relegated something that is below their male counterparts and these types of conducts must come to an end. Women have the right to coexist with their male counterparts, they have a right to be respected and treated with dignity.

No amount of sentence will bring the life of the deceased back. But the accused should be confronted with a sentence that will deter other people from committing similar offences.

Having considered the above the accused will be sentenced as follows;

1. Count 1 of murder you will be sentenced to 18 years imprisonment. That will be your sentence.

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MOSOPA, J

JUDGE OF THE HIGH COURT

DATE:.....

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