

SOUTH AFRICA / JUDGMENT

S v Mathebula (Sentence) (KS32/2023)

[2024] ZANCHC 47 (19 April 2024)

[2024] ZANCHC 47

COURT

Northern Cape High Court, Kimberley

BEFORE

Nxumalo

CASE / FILE NUMBER

KS32/2023

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IN THE HIGH COURT OF SOUTH AFRICA

(NORTHERN CAPE DIVISION, KIMBERLEY)

CASE NO: KS32/2023

DATE HEARD: 15 – 19 APRIL 2024

In the matter between:

THE STATE

and

MATHEBULA, RONALD

Accused

Coram: Nxumalo, J

JUDGMENT:**SENTENCING****THE INDICTMENT AND PLEA:**

- [1] The accused in these proceedings is one Mr Ronald Mathebula, a 36-year-old male and South African citizen, residing at 5[...] W[...] P[...] Street, Ritchie, in the District of Francis Baard. He is charged with one count of murder, read with Section 51(2) of Act 105 of 1997.[1]

[2] The State alleged that on or about 03 August 2023 and or at or near 5[...] W[...] P[...] Street, Ritchie, the accused unlawfully and intentionally killed one Robin Collin Boikanyo, an adult male person,

by stabbing him with a knife. The accused, who was legally represented, pleaded guilty to the said charged.

SUMMARY OF THE SUBSTANTIAL FACTS IN TERMS OF SECTION 144(3)(a) ACT 51 OF 1977:

[3] The charge proffered against the accused is predicated against the following facts, in sum: During the evening of 02 August 2023 the accused, together with one Ms Sarah Smith; Ms Sanna Bitterbos; Tamson Dole and the deceased were all having drinks at one tavern called Gorgor's Place. On 03 August at 01h30, the accused, Sarah

Smith and Sanna Bitterbos went home. The deceased joined them.

[4] Upon arrival at the aforesaid address, the deceased suggested that more beers be bought. Bitterbos went to bed, while the rest went to buy beers at one place called "Aunt Emily's Place". They consumed some of the said beers on their way back home. Upon their arrival home they found the doors locked and knocked on the doors and windows. While the others were knocking, the accused went elsewhere to buy some cigarettes. While the accused was away, the deceased touched Sarah on her elbow to inform her that he was going to check the window on the other side of the house. After a while, the accused joined Sarah on the porch and they continued to knock on the window

together.

[5] At some stage the accused suddenly grabbed the deceased on his chest, swore at him and started fighting him. Sarah sought to intervene, to no avail. Whilst the fight ensued, the deceased

fell from the porch and landed on his back. The accused, who was armed with a knife, proceeded to stab the deceased repeatedly.

The deceased sustained 19 cuts and/or incised wounds and succumbed thereto. The accused thereafter reported the incident

at the Modder Rivier Police Station, where he was immediately arrested.

[6] A post-mortem examination was conducted on the body of the deceased and it was found that the cause of death was a stab wound in the chest. It is against this backdrop that the State alleged that murder of the deceased by the accused was planned and/or premeditated.

ACCUSED'S WRITTEN STATEMENT AND ADMISSIONS IN TERMS OF SECTIONS 112(2) AND 220 OF THE ACT:

[7] A written statement within the contemplation of Section 112(2) of the CRIMINAL PROCEDURE ACT (“CPA”), on behalf of the accused was handed up; admitted and marked Exhibit A, in these proceedings. In terms of the said statement and as alluded above; the accused: freely, voluntarily and upon legal advice, pleaded guilty to the said offence whilst in his sound and sober senses. The State, for its own part, accept the facts as stated by the accused.

[8] The said statement is quoted hereunder in toto; to wit:

“1

I the undersigned Ronal Mathebula the accused in the matter ...do hereby plead guilty to the charge against that is one of Murder read with provisions of Section 51(2) CLAA.

2.

I was not forced or influenced by anyone to plead guilty and I do so freely and voluntarily in my sound and sober senses.

3.

The facts I plead guilty to are as follow that on Thursday the 02nd August of 2023 I was at Gori tavern from the morning until earlier hours of the 03rd August 2023. We were busy consuming alcohol black label beers and some gin shots, it was my girlfriend Jessica, her sister Sanna and Temmie. We had finished the whole case of the black label beers and bought some more of the black label beers I lost count how many beers were consumed and the number of shots.

3.1

Whiles at the tavern the deceased joined us as we were about to leave, I did not know him prior to that encounter. He was introduced by my girlfriend as her friend someone they normally hang out with as I was not from Richie but only visiting my girlfriend. I had no problem with that as I continue buying more beers. We left the tavern; the deceased also tag (sic) along as we were going to my girlfriend's place. Upon arrival at my girlfriend's place Sanna and Tammie decided to go and sleep, Jessica, myself and the deceased went to buy more beers.

3.2

When we returned from buying more beers, we found the house locked. I left the deceased and Jessica knocking on the door and went to a nearby house to buy cigarettes. On my return I found Jessica my girlfriend sitting on the deceased laps (sic) facing each other. I asked them what was going on the deceased responded by saying that Jessica was his girlfriend.

3.4[2]

I lost it, I started to hit the deceased with fists and he fought back we wrestled until we fell down. When I was on top of the deceased, I took out a kitchen knife from my pocket which I had been using to cut the lemons we were using when mixing gin shots and use it to stab the deceased a number of times on his body I was stabbing randomly.

3.5

I stood up when the realization hit me of what I had done and I ran to the police station to report that I had stab (sic) a person. That is how I was arrested. I knew that stabbing a person with a knife a number of times on his body, he will sustain serious injuries which might cause his death. It did not matter to me at that moment as I was consumed by that fit of anger towards the deceased.

4.4[3]

I make the following admissions in terms of Section 220 of Act 51 of 1977

Ø I admit the identity of the deceased to be Robin Collins Boikanyo an adult male 29 years old as identified by Irene Jacqueline Davis;

Ø I admit the postmortem report marked KDR300/23 refers to the postmortem of Robin Collins Boikanyo as completed by Doctor Lemaine Fouche indicating the cause of death to be stab chest;

Ø I further admit the conveyancing statement of the body of the deceased that his body sustains no further injuries from the time his body was removed until the post-mortem examination was conducted by Dr Fouche;

Ø I further admit the photo album as compiled by Warrant Officer NP Xwazi as the true depiction of the crime scene as well as the body of the deceased when it was found, such can be handed in as exhibit in Court;

5.

I knew that my actions of stabbing the deceased as he was not posing any eminent danger to my life were unlawful and that they caused of his death and further that I have no defence to the charge of Murder against me.

THUS DONE AND SIGNED AT KIMBERLEY ON THIS 15th DAY OF APRIL 2024

CLIENT'S SIGNATURE

LEGAL REPRESENTATIVE"

[9] Section 112 (2) of the CPA, expressly empowers this Court to convict and sentence an accused who or his legal advisor has handed up a written statement into Court, in which the accused sets out the facts

which he admits and on which he has pleaded guilty, on the strength of such statement; if the Court is satisfied that the accused is guilty of the offence to which he has pleaded guilty.

[10] This Court having satisfied itself on the strength of the said statement that the accused is guilty of the offence to which he has pleaded guilty; on 15 April 2024, found the accused guilty of murder, read with Section 51(2) of Act 105 of 1997.

POST-MORTEM EXAMINATION REPORT IN TERMS OF SECTION 212(4)(a) OF THE CPA:[4]

[11] This Report, which is unsworn but fortunately common cause, is a result of an examination of the body of the deceased conducted by one Dr Lemaine Fouche, a Principal Pathologist in the employ of the Department of Health, Northern Cape. The examination was conducted on 03 August 2023, being the day the body was found. According to

the said report, which has been admitted and marked Exhibit B in these proceedings, the external appearance and condition of the body and limbs of the deceased were, inter alia, to wit:

“4. External appearance of the body and condition of the limbs:

4.2 Two incised wounds, 1 cm each on the front of the right upper chest.

4.3 A point incised wound on the lateral aspect of the right chest.

4.3 An incised wound, 1,5 cm long on the level of the right nipple and 2cm right of the midline of the chest.

4.4 5 point incised wounds over the upper abdomen.

4.5 A cut wound, 3 cm long on the front of the right upper leg.

4.6 A point incised wound on the front of the left shoulder

4.7 An incised wound, 1,5 cm long on the medial aspect of the left nipple and 2 cm left of the midline of the chest.

4.8 An incised wound, 1cm long on the lateral aspect of the left chest.

4.9 An incised wound, 1 cm long over the left flank.

4.10 A point incised wound, on the left side of the back.

4.11 An incised wound, 1 cm long, 5cm left of the spinal column.

4.12 A superficial cut wound on the back of the left upper arm.

4.13 An incised wound, 1 cm long on the lateral aspect of the left side of the back, just above the left buttock.

4.14 An incised wound, 1,5cm 2 cm left of the spinal column above the left buttock.

4.15 An incised wound, 1,5 cm just right of the spinal column.

- 4.16 An incised wound, 1,5cm long 2cm right of the spinal column.
- 4.17 10 incised wound, 1cm long on the back of the right upper and lower arm.
- 4.18 A superficial incised wound, 1,5 cm long on the back of the right buttock.
- 4.19 A superficial incised wound, 2 cm long on the back of the right upper leg.”

[12] Even though the learned Doctor ultimately concluded that the cause of the death of the deceased is a stab in the chest, it is significant here to highlight the chief post- mortem findings made on the deceased’s body; if only to contextualise the brutality of the injuries inflicted by the accused on the deceased. The Doctor’s

findings are, inter alia, to wit:

“...multiple stab wounds to the front and back of the chest. There are incised wounds through the 2nd and 7th intercostal spaces right posterior. There is an incised wound through the 5th rib left anterior. There is an incised wound through the 8th intercostal space left lateral. There is blood in both thoracic cavities. There is an incised wound through the right ventricle of the heart with blood in the pericardial sac. The brain is macroscopically swollen with flattening of the gyri. There are bilateral tonsillar herniations noted. Both lungs are grey in colour. The right lung has a collapsed appearance. Both kidneys are pale in colour. Both kidneys are swollen on cut Section.”

[13] The crime scene was officially photographed by SAPS and attached to the sworn statement of its official photographer and draughtsman, dated 29 August 2023. The scene was photographed on 03 August 2023 at 06h05, and the photographs thereof have been admitted in these proceedings and marked Exhibit “C”.

BRIEF OVERVIEW OF THE VICTIM IMPACT REPORT:

- [14] This report, dated 15 April 2024, was admitted in these proceedings and marked Exhibit “E”. It was compiled by one Ms Nozuko Vika, a registered Gender Based Violence Social Worker currently on internship with the Department of Social Development. The report pertains to the impact the demise of the deceased has on his 12-year-old daughter and three siblings, all of whom are secondary victim of the convict’s crime.
- [15] The deceased is one of five siblings who all grew up together in a closely knit family brought up by both parents. Only three of these siblings remain alive; to wit: Ms Irene Davis; Ms Ellen Boikanyo and Mr Leonard Boikanyo. The deceased was predeceased by their third born sister. The deceased’s 12-year-old daughter, who is currently living with her mother, did not take the death of her father well, even though the deceased was not very close to her. It can however not be disputed that his daughter is negatively affected by his death.
- [16] Ms Davis described the feeling of losing her brother in the manner and circumstances described above as painful, unexpected, gruesome and heart breaking. Ms Boikanyo, who was very close to her brother, stated that it took her time to come to terms with his passing away. Mr Boikanyo, who had a good relationship with the deceased, said that he was hurt to find his brother in such a horrific state at someone else’s house. That the deceased was a

very good and protective uncle to his children with whom the deceased had a good relationship with. His children continue to miss their uncle. His wish is for justice to take its course because they have been robbed of their brother and his niece is left without a father.

- [17] In sum, the deceased's next-of-kin are still grieving the demise of the deceased and are still horrified by the facts and circumstances under which they have lost him.

PERSONAL CIRCUMSTANCES OF THE CONVICT:

- [18] The following is common cause with regard to the personal circumstances of the convict; to wit: He is a 37-year-old single, unemployed, childless and a first time offender. He reported himself immediately to the Police and handed himself over after committing the offence and pleaded guilty, which evinces some remorse on his part. He took full responsibility for the offence and took the Court into his confidence without any waste of time.
- [19] In aggravation of sentence, the State vide Ms L Pillay in sum, inter alia, not only highlighted that the sum total of the wounds inflicted by the accused on the deceased are 19, but that same evince the force and violence used by the accused to murder the deceased. It was submitted for the State that regard being had to the facts and circumstances of this case, there are no compelling circumstances warranting a departure from the statutory minimum sentence. In the premise, the State enjoined this Court to sentence the convict to 15 years' imprisonment, which is the statutory minimum sentence.
- [20] For the convict, vide Mr Biyela, it was submitted, inter alia as follows, in mitigation of sentence: That regard being had to the personal circumstances of the accused; his age; the peculiar facts of this case looked at cumulatively, do amount to substantial and compelling circumstances and as such the Court should depart from imposing the minimum sentence. That

our Courts have consistently held that where death occurs because of jealousy or anger as between lovers, same constitutes a crime of passion due to the emotive conditions in which the guilty party find himself/herself. That depending on the facts of each case, such conflict situation gives rise to a mitigating factor- S v Meyer 1981(3) SA 11 (A) at 16G.

- [21] In Mnisi, the appellant had pleaded guilty after he shot and killed his wife's lover, when he found him embracing with his wife. This is after there were a number of attempts to resolve the marital challenges between the accused and his wife over her adulterous relationship with the deceased. The accused claimed that he acted with diminished responsibility. The court accepted that there was a reasonable possibility that the appellant was not completely rational when he shot the deceased and his actions were the product of emotional stress brought about by the conduct of the deceased and the appellant's wife. The sentence imposed by the magistrate was set aside and replaced with a sentence of 5 years' imprisonment. [5]

[22] Whilst conceding that *S v Mnisi* is not *pari materia in casu*, Mr Biyela nevertheless submitted that the trigger in both cases seems to be the same. That it so to the extent that the accused was overwhelmed by anger and did not think things through and acted irrationally. That the convict must have felt humiliated and betrayed by the deceased and Jessica especially when the deceased said that Jessica was his girlfriend and more so when one takes into account that the convict had been buying liquor for them.

[23] That though the facts in *casu* may not be similar to the abovementioned case, this Court should nevertheless consider as mitigating factor the emotionally charged

condition the convict found himself under at time of the commission of the crime. In the premise, this Court was urged to refrain from imposing the statutory minimum sentence and instead impose lesser sentence, part of which should be conditionally suspended.

[24] This Court however found *Mnisi* distinguishable; inter-alia to wit: the couple was married; the wife was involved in a protracted extramarital affair with the deceased; the deceased was murdered

after numerous attempts by the appellant and family to end the extramarital affair; when the appellant found his wife in the embrace

of the deceased all the hurt and pain he suffered throughout the adulterous affair flooded his mind and provoked him to the extent

that he momentarily lost control of his inhibitions and he shot the deceased; the appellant had young children and a grandmother

dependent on him for support; and he was remorseful. Needless to state, none of the said factors are extant in *casu*.

[25] The following was also submitted for the convict, without dispute on the part of the State; to wit: He only went as far as Grade 12 with his schooling. He was gainfully employed prior to his arrest at Romans Pizza as a chef

earning R4 800.00 per month. He gave a detailed account of what caused him to commit the offence. He did not try to come up with excuses for his actions, he co-operated with the Police, and handed over the knife which he used to stab the deceased. There are no indications that he has a propensity to commit crimes, he had been living a normal life until the unfortunate night of this incident. He is thus deserving of a second chance. There is no evidence to suggest that he is a violent person, as he has no history of violence. He was overwhelmed by the anger which resulted in him committing this offence.[6]

BRIEF EXPOSITION OF THE LAW:

- [26] Murder is a serious offence and a veritable pandemic in this country. It is indeed a crime which leaves irreparable damage, since loved ones are lost and families are ripped apart. Whilst no sentence can bring back the victims of these offences to life, it is imperative for our communities to be protected from heinous offences such as the one Mr Mathebula has been convicted of.
- [27] It is so that mitigating factors must be juxtaposed against the aggravating circumstances of the relevant offence and the expectations of society. The interests of society are not best served by too harsh a sentence; but equally so they are not properly served by one that is too lenient. One must always strive for a proper balance. In doing so due regard must be had to the objects of punishment. The fact that the death of the deceased ensued from multiple stab wounds on his body is a factor this Court considers as aggravating.
- [28] This Court also considered the following aggravating factors: There was no evidence led that at all material times hereto, the deceased attacked the convict or that he was armed. The fact that the convict was intoxicated, in the mind of this Court is a neutral factor. It is so because there is no evidence before this Court that, at all material times hereto, the convict was senselessly intoxicated. The assault on the deceased can however not be said to have been planned or premeditated.
- [29] It is trite in our law that when it comes to sentencing, the Court has to take into account the triad consisting of the crime, the offence, and interest of society, as expounded in *S v Zinn* 1969
- (2) SA 537 (A) at 540G-H. The corollary of this is that punishment should not only fit the criminal as well the crime, but must be fair to society, whilst being blended with a measure of mercy according to the facts and circumstances of each case.[7]
- [30] In the *S v Gardener and Another*[8] it was aptly stated as follows that:

“True justice can only be meted by one who is properly informed and objective. Members of the community, no matter how closely involved

with the crime, the victim or the criminal, will never possess either sufficient comprehension of or insight into what is relevant

or the objectivity to analyse and reconcile them, as fair sentencing requires. That is why public or private indignation can be no more than one factor in the equation which adds up to a proper sentence and why a Court, in loco parentis for society, is

responsible for working out the answer.”

- [31] This Court is of the well-considered view that an appropriate sentence in the circumstances should be one which reflects the interests of society, which viewed the conduct of the convict in a very serious light and the need for deterrent sentences. In *S v WV* 2013

- (1) SACR 204 (GNP) that Court held the following, which is very apposite in these sentencing proceedings:

“It is the kind of sentence which we impose that will drive the ordinary members of our society either to have confidence or to lose

confidence in the judicial system. The sentences that our Courts impose when offences of this nature are committed should strive to ensure that people are not driven to take the law into their hands but rather to scare away would be offenders.”[9]

- [32] Having admitted murdering the deceased, it is trite that the convict ought to have shown that substantial and compelling circumstances existed which justified the imposition of a lesser sentence in terms of Section 51(3)(a) of the Act. The approach of this Court is that where a prescribed sentence is imposed, the pertinent question of course is whether the facts and circumstances of the convict are indeed substantial and compelling or not.[10]

- [33] In *S v Vilakazi* 2012 (6) SA (SCA) at paragraph 58 of its judgment, the penultimate Court said the following:

“In cases of serious crime the personal circumstances of the offender by themselves will necessarily recede into the background. Once it becomes clear that the crime is deserving of a substantial period of imprisonment the questions whether the accused is married or single, whether he has two children or three children, whether or not he is in employment are in themselves largely immaterial to what that period should be.”[11]

- [34] That Court went on to lament that: “Those seem to be the kind of flimsy grounds that Malgas said should be avoided.”

- [35] In *S v Malgas*, the following was said:[12]

“...those circumstances had to be substantial and compelling. Whatever nuances of meaning may lurk in those words, their central thrust seems obvious. The specified sentences were not to be departed from lightly and for flimsy reasons which could not withstand scrutiny. Speculative

hypotheses favourable to the offender, maudlin sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy implicit in the amending legislation, and like considerations were equally obviously not intended to qualify as substantial and compelling circumstances...”[13]

- [36] The fact remains that Mr Mathebula has been convicted of a very gruesome murder, falling under Part II of Schedule 2 of the CPA. The mere fact that he has admitted same does not reduce the gravity and heinousness of the crime. Though he is a first offender of this type of crime, it is so that the minimum sentence applicable in this matter is a period not less than 15 years’ imprisonment in terms of Section 51(2)(a) of the CRIMINAL LAW AMENDMENT ACT 105 of 1997.

- [37] This matter calls for a sentence cognisant of the convict's personal circumstances, but which takes account of the seriousness of the offence and the need for appropriate severity and deterrence. This latter element is at the core of the community interest in how courts should deal with violent crime. This Court has taken the personal circumstances of the accused into full consideration, vis-à-vis the seriousness of the crime. In the circumstances, the convict's personal circumstances are outweighed by society's need for a retributive and deterrent sentence.
- [38] Regard being had to the seriousness of this crime, this Court is of the well-considered opinion that the personal circumstances of the convict by themselves necessarily recede into the background. They seem to be the kind of flimsy grounds that Malgas said should be avoided. They are because it is clear that the crime is deserving of a substantial period of imprisonment.
- [39] This Court is also of the well-considered opinion that regard being had to the facts and circumstances of this case, there are no substantial and compelling circumstances prevailing for it to depart from the minimum sentence as contemplated in Section 51 (2)(a) of the CRIMINAL AMENDMENT LAW ACT 105 of 1997.
- [40] It is critical to send out a clear message to society at large that resort to violence cannot be tolerated. The courts can convey that message effectively only in the sentences that they impose in cases of this nature. The possibility of rehabilitation of the convict as a first offender and the improbability of a repeat offence, strenuously argued on his behalf, certainly do not mean that a short term of imprisonment or correctional supervision are the only appropriate sentences even when other relevant factors indicate a substantial term of imprisonment.[14]
- [41] Just as the interests of society are not properly served by too harsh a sentence, neither are they served by one that is too lenient such as the one proposed for the convict, which in this Court's view, fails to adequately reflect the gravity of the offence in question.
- [42] In the premise, the convict is sentenced as follows:

A) ON THE CHARGE OF MURDER, READ WITH SECTION 51 (2) OF ACT 105 OF 1997, THE CONVICT IS SENTENCED TO 16 (SIXTEEN) YEARS IMPRISONMENT.

B) THE CONVICT IS HEREBY DECLARED UNFIT TO POSSESS A FIREARM IN TERMS OF SECTION 103(1) OF THE FIREARMS CONTROL ACT 60 OF 2000.

JUDGE APS NXUMALO

HIGH COURT OF SOUTH AFRICA

NORTHERN CAPE DIVISION

KIMBERLEY

Edited:

YES/NO Revised:

YES/NO Checked: YES/NO Date: 19 April 2024

For The State:

ADV L PILLAY On instruction of:

Department of Public Prosecutions For the Accused:

MR K BIYELA On instruction of:

Legal Aid South Africa, Kimberley

[1] The Criminal Law Amendment Act.

[3] The numbering is obviously wrong.

[4] Criminal Procedure Act 51 of 1977.

[5] 2009

(2) SACR 227 (SCA).

[6] See Exhibit D.

[7] S v Rabie 1975(4) SA 855 (A).

[8] 2011(1) SACR 570 (SCA).

[9] Emphasis supplied.

[10] S v PB 2013 (2) SACR 533(SCA) at 539F-G.

[11] Emphasis supplied.

[12] 2001(1) SACR 496(SCA) at para 25.

[13] Emphasis supplied.

[14] S v Khumalo

[1984] ZASCA 30; 1984

(3) SA 327 (A) at 333F.

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