

SOUTH AFRICA / JUDGMENT

## S v Phaliso (CC51/2016) [2016] ZAECGHC 120 (25 October 2016)

[2016] ZAECGHC 120

COURT

Eastern Cape High Court, Grahamstown

BEFORE

C Plasket

CASE / FILE NUMBER

CC51/2016

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, GRAHAMSTOWN

Case no. CC51/2016

Date heard: 24/10/16

Date delivered: 25/10/16

Not reportable

In the matter between:

THE STATE

and

THOMAS ZUKILE PHALISO

### JUDGMENT:

SENTENCE

PLASKET, J:

- [1] The accused was charged with the murder of his girlfriend, Nomvuyo Qika. He pleaded guilty to the charge, the State accepted his plea and I, having satisfied myself that he had, in his plea explanation, admitted every element of the offence, convicted him as charged. It is now my task to impose an appropriate sentence.

- [2] In determining sentence I shall consider the nature and seriousness of the offence; the personal circumstances of the accused; and the interests of society. I shall endeavour to balance these interests and thereby determine a sentence that is fair to the accused and protects the interests of society.
- [3] The accused and the deceased were together on the farm on which the accused lived and worked in the Dordrecht district on Saturday 26 September 2015. The other farm workers were in Dordrecht attending a funeral.
- [4] The accused and the deceased were drinking alcohol. At about 16h00, the accused received a message on his cellphone from an ex-girlfriend in Cape Town. The deceased was unhappy about the accused receiving a message from his ex-girlfriend and began to shout and swear at the accused. Her anger rose. She took a knife and stabbed the accused's left shoulder, inflicting two wounds that the accused described as 'fairly deep' wounds.
- [5] The accused ran to an adjoining room, took a stick that he kept there and returned to use it to disarm the deceased. Once he had disarmed her, however, he 'continued to assault her with the stick on her upper body, but not on her head'. He is unable to say how long the assault endured. He said that he was 'angry and lost control of his emotions'.
- [6] He eventually stopped beating the deceased when he saw that, as he put it, 'she was losing power'. She asked him to help her to bed, which he did. He continued to drink for a while after she had gone to bed, but went to bed at about 21h00.
- [7] He awoke at about 01h00 on Sunday 27 September 2015. He tried to wake the deceased but realised that she was dead. He was, he said, 'afraid and confused' and he 'did not know what to do'. He carried the deceased's body to nearby bushes and hid her body there.
- [8] He did not tell anyone what had happened. On the following Thursday, he received his salary. He took a taxi from the farm and fled to Cape Town. The deceased's body was apparently found. According to the summary of substantial facts, it was in an advanced state of decomposition. The accused was arrested in Cape Town on 23 October

2015. He has been in custody since then.

- [9] I was informed from the bar of certain other relevant facts. Immediately after his arrest, the accused made a confession and a pointing-out. Although it was not possible for the pathologist to determine the cause of the deceased's death, it was common

cause that the post-mortem report indicated that there were no fractures of bones. In the accused's plea explanation, he

admitted to intention in the form of *dolus eventualis*, rather than direct intention. It is clear from the facts placed before me that the assault upon the deceased was commenced on the spur of the moment, in the sense that it was not planned in advance, that there was a large measure of provocation involved on the part of the deceased and that the accused was very angry.

- [10] I turn now to the personal circumstances of the accused. He was 33 years old at the time of the commission of the offence. He is single and is the father of a 15 year old son who lives in Cape Town with his mother.
- [11] The accused was born and raised in the Dordrecht district. His parents sent him to school in Cape Town where he passed grade
11. He sought in vain for a job in Cape Town and then returned to Dordrecht. He was unemployed for a period after his return but then found employment as a herder on the farm where the murder occurred. He had held that job for about three years when he left for Cape Town in the wake of the murder of the deceased. His salary was R1 183 per month.
- [12] The accused is a first offender.
- [13] The offence of which the accused has been convicted is, self-evidently, an extremely serious one: the assault and murder of
- women and children is particularly prevalent in this country. The death of the deceased was caused by a sustained assault with a stick. Furthermore, the accused concealed what he had done by hiding the deceased's body and fleeing as soon as he could. These are aggravating factors.
- [14] At the same time, however, the fact that the deceased provoked the accused by first swearing and shouting at him and then stabbing him twice cannot be ignored. It seems to me that when the accused's personal circumstances are taken into account along with his expression of remorse, his confession and pointing-out soon after his arrest and his plea of guilty, he is a person who is a good candidate for rehabilitation.
- [15] Mr Renaud, who appeared for the accused referred me to two judgments as guides to sentencing in circumstances similar to this case. It must be borne in mind, however, that the facts of no two cases are identical. I have considered the judgments in *S v Roberts* 2000 (1) SACR 522 (SCA) and *National Director of Public Prosecutions v Mngoma* 2010 (1) SACR 427 (SCA), both of which concerned men killing their partners in circumstances of provocation and stress, and the concealment or attempted concealment of their crimes. In the former case, a sentence of seven years imprisonment was imposed. In the latter case, a sentence of 12 years imprisonment was considered to be appropriate but a sentence of ten years imprisonment was imposed to take into account the time already spent in prison.
- [16] In my view, the personal circumstances of the accused, his expression of remorse coupled with his actions that amount to making a clean breast of matters and the provocation inherent in him being sworn at and stabbed constitute substantial and compelling circumstances that justify a departure from the minimum sentence of 15 years imprisonment. Taking all of the factors listed in this judgment into account, I am of the view that a sentence of 12 years imprisonment is appropriate.
- [17] The accused is sentenced to 12 years imprisonment.

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C Plasket

Judge of the High Court

#### APPEARANCES

For the State: N Henning of the office of the Director of Public Prosecutions, Grahamstown

For the accused: C Renaud instructed by the Grahamstown Justice Centre

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