

SOUTH AFRICA / JUDGMENT

S v Praise (Sentence) (SS 57/2023)

[2024] ZAGPJHC 775 (15 August 2024)

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COURT

South Gauteng High Court, Johannesburg

BEFORE

Coertse C J

CASE / FILE NUMBER

SS 57/2023

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION; JOHANNESBURG

BEFORE THE HONOURABLE ACTING JUDGE COERTSE C.J.

COURT

CASE NO: SS 57/2023

Boksburg

- (1) REPORTABLE: YES/NO
- (2) OF INTEREST TO OTHER JUDGES: YES/NO
- (3) REVISED

DATE: 15/8/2024

SIGNATURE:

STATE

Versus

MAGWAZA BONGIWE PRAISE

The Accused

JUDGEMENT:

THE SENTENCE

COERTSE CJ AJ

1. On 1 July 2024, this court found the accused guilty on the following charges:
 - 1.1. The murder of Kgopotso Ntsana, the deceased.
 - 1.2. being in possession of a parabellum calibre model Z288 semi-automatic pistol with serial number Q[...] without holding a licence, permit or authorisation issued in terms of the relevant act;
 - 1.3. being in possession of 15 9mm parabellum calibre cartridges without being the holder of a license in respect of a firearm capable of discharging that ammunition or a permit to possess ammunition and lastly
 - 1.4. that she put the said fire-arm between the deceased's legs with the intention to distort the truth as to the circumstances surrounding the death of the deceased and that she threw the scissors she used to stab the deceased away and therefor is guilty of the crime of defeating the ends of justice
2. The court does not intend to repeat the facts and circumstances that led to the commission of these crimes. These were carefully considered and rehearsed when I gave judgment and I stand by my judgment that was delivered on 1 July 2024 and will refer to some of the facts and circumstances where necessary.
3. She, Bongiwe Praise Magwaza, was the only witness in her own defence. She never once showed any signs of remorse; it is also noteworthy that not even her two counsel informed the court that she showed any signs of remorse or expressed remorse at all.
4. She killed a human being and her lover at that. The deceased was a son and a brother of his siblings and a colleague and a friend. He will be missed for ever and this heinous act will be in the minds of all the people that I have just mentioned till they in turn pass away, hopefully not in such a tragic way as Kgopotso Ntsana.
5. The court is now called upon to pass sentence and I hold various factors, circumstances and principles in mind. I want to state that in summary the following role players have a stake in the court passing a fair and balanced sentence to this young woman: the deceased and his family and friends, then his erstwhile employer and his colleagues there, the interests of the State and lastly the broader community starting with the community where the treacherous acts were committed.

6. The fight that eventually led to the killing of her so-called lover, was about the fridge that was broken and she was not present when the handyman who was supposed to fix it, arrived. Deceased got aggressive and started cutting her braids because he paid for it and therefor it belonged to him – according to the accused under oath.
7. She tells exactly how she found the fire-arm and how she approached the deceased and then how she shot him through his head. She immediately conceived of the idea to put the gun between his legs to create the idea of suicide; in her own words written in Exhibit G she said: “I wanted people to think that KG killed himself.” KG is the deceased.
8. She was covered with blood. Her ex-boy-friend picked her up the night of the incident and he testified under oath that he saw her full of blood and she told him of the fight. He saw her wiping herself with wet-wipes and then she threw the soiled wet-wipes out of his vehicle. She also threw the scissors, which she used to stab the deceased, from his vehicle’s windows while they were driving. She testified that she threw the scissors away so that the police would not be able to find it.
9. “The drawing of an inference requires properly established objective facts.” – this was stated by Southwood BR in his ESSENTIAL JUDICIAL REASONING[1]. The learned author, wrote this “... as a retired judge with vast and varied knowledge of the judicial office on the High Court and, in an acting capacity, on the Supreme Court of Appeal”[2], and he referred to specific case law such as *S v Mtsweni* 1985 [1] SA 590 [A] at page 593E - G: “Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. In some cases, the other facts can be inferred with as much practical certainty as if they had been actually observed. In other cases, the inference does not go beyond reasonable probability. But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture” [the court’s emphasis]. This is a quote from *S v ESSACK AND ANOTHER* 1974 (1) SA 1 (A) on page 16 D is obviously with approval. As an aside I would add that the court is of the view that the case against the accused is strong enough to convict her of murder without her statement Exhibit G; the seamless interaction between the facts and opinions expressed by the state’s experts and the reconstruction of the crime scene is extremely powerful and above reproach.
10. The type of gunshot is crucial in understanding whether the murderer had *dolus directus* or *indirectus*. The SAPS expert on gunshots gave evidence. He is qualified to give evidence of such a nature and there was no evidence led by the accused of contrary nature. It is clear to the court that the type of gunshot wound reminds one of a brutal execution which translates it being fired by *dolus directus*.
11. The security officer who attended the crime scene was of the view that deceased was “... kneeling as if he was praying ...” The court took careful notes about his say-so and these were his actual description.

12. Constable Humbulani Pleasure Mufumadi, with many years' experiences of attending murder scenes, told the court that the deceased was kneeling down in an apologetic position and shot directly from the top of the head, It was evident to him that there was struggle.
13. Accused gave evidence under oath and said she is at liberty to tell anything because nobody believes her. The court is of the view that her statement contained in Exhibit G is the closest that we can get to the truth of what actually happened that fateful night when she shot the deceased the way she described in that statement. It is a most spine-chilling document to read: her graphic descriptions of how she went about and how she "escaped" the dwelling and eventually returning to it. The court believe Captain Ramaite unreservedly when he testified that she told him that there were things about the incident that worried her. It was too brutal to ignore. Her new counsel Adv. Musekwa, after him having had the opportunity to read the entire record, and after he informed the court that he is thoroughly acquainted with the contents of the record and that he is in a position to continue the argument, told the court that he is of the view that the accused's case is full of holes. The court disagreed with him and told him that there is only one hole in her case and that is the one hole thru the head of the deceased. She states that she wishes that the court would be lenient on her.
14. The court rejected the version of the accused that the deceased committed suicide and finds that she brutally and with dolus directus killed the deceased by shooting him one shot in the head as is evidenced by the state pathologist and as analysed by the expert witnesses for the state. I also accept the evidence by the state witnesses as being truthful, authentic and crisp and to the point. This is underpinned by the accused own statement contained in Exhibit G.
15. The approach to adopt at this stage of the sentencing proceedings is to get on record as much factual material as is possible regarding the accused's personal circumstances.
16. Where an accused pleads guilty and is convicted without evidence having been tendered there is often very little information regarding the accused or other essentials upon which to determine sentence. In the instant matter there is a fair amount of information on the accused some of which I obtained by discussing her situation in open court with the State Advocate as well as her second advocate. These discussions were recorded by the stenographer and are on record. It was obvious to the court that from the very first appearance before me, she was standing all alone. She informed me that she is from Hammarsdale, KZN and her parents are deceased, she grew up with an aunt, it was not entirely clear whether this aunty of hers is aware of the trial and it was subsequently made clear that she is indeed aware of the trial. Her sister is working in the Kempton Park area. She did not attend the trial. Does she have other friends whom could come to court to show some support? There were none. So, it transpired that she was very lonely during the entire trial. She appeared to me as being a pathetic young woman who left her home base where she grew up and entered this area where she committed the crime of murder: the ultimate crime.

17. The defence submitted a probation report compiled and written by Mr. Andile Buthelezi and it was handed in as Exhibit “K”.

There are various aspects in this report that is clear and I refer to it as follows:

17.1. Her upbringing by her maternal aunt was a sound upbringing with Christian values and morality and this maternal aunt stretched her financial budget to the limit to care for the accused and other family members. Her budget was obviously not a rich woman’s’ budget. What was the accused response to this? In layman’s terms, she kicked her maternal aunt in her face and turned her back on it.

17.2. She sold her body for financial gains and she led a life of immorality and succumbed to the false lure of drugs and dagga. She tried her utmost to make the court believe her when she told the court thru the intermediary of the probation officer that she and the deceased had a two-month life together experiencing love and care and they never had physical altercations – it was all love and bliss. The obvious question then is what triggered her to get so violent for her to kill the deceased execution style? It must be remembered that the probation report is clear in that it sketches a young happy go lucky girl, having a blissful life with the

deceased and a woman who does not get aggressive when she is under the influence of liquor, and suddenly on 2nd of December 2022 she put the official fire arm of the deceased against his head and killed him instantly.

17.3. She dropped out of school and she “financed” her lifestyle with what I will refer loosely as prostitution, she lured elderly men into traps for financial gain.

17.4. She tried her utmost to convince the court that her upbringing in Hammarsdale, also known as Mpumalanga, was carefree and in a stable crime free environment. I will deal with this aspect of Hammarsdale and her say so later in this judgment.

17.5. My views of the picture she tried to portray thru the probation officer of her upbringing and her lived in experience as bliss and care is taken with more than the proverbial pinch of salt. I am of the view that she was close to the truth when she disclosed her maternal aunt’s influence on her life and how she just turned her back on that upbringing. If only she would have followed her maternal aunt’s wisdom, she would not have been in this court at all.

17.6. She testified under oath in mitigation of her sentence and told the court categorically that if she had been charged with killing him by stabbing him with the scissors, she would have had remorse. In other words, now that she denies shooting him, she has no remorse. She tells the court that her lifestyle was not violent.

17.7. The court asked her where did the police get the detailed information contained in her “confession” [Exhibit G] from. She said she gave it to the Police to write down. I just refer to some of the details in Exhibit G: the great detail of how she ran up the staircase and going to the room and taking the gun from the stove. She also gave the information to the Police of how

exactly she shot him and yet she denies shooting him,

18. The court was informed by the probation officer of her work record, her standard of education, her family circumstances and background. She is completely and utterly uprooted and disenfranchised from her familial and social well-known base. Having said this, I am mindful of the tragic background of her home base Hammarsdale in KZN which is an area fraught with most brutal killings, rape, robberies and other violent crimes and murderous gangs roaming the streets of Hammarsdale. I read on the internet that Mpumalanga, also widely known as Hammarsdale, is a Township in eThekweni, in the KwaZulu-Natal Province. Crime, unemployment, taxi disputes and poverty are challenges that impact the community. According to the website SA HISTORY [the link: <https://www.sahistory.org.za/place/hammarsdale-kzn>] Hammarsdale KZN, have seen bloodshed between political rivals wherein some 20 000 people were killed. It seems further that there are hardly a family that escaped any kind of violent crime during the 1980's and 1990's which is still having an adverse effect on the surviving families and communities. Her advocate with the consent of the State, informs me that I can take judicial notice of these facts I just stated.
19. The psychiatric report from Sterkfontein refers to alcohol and substance abuse. It is silent on the effects on her or the severity thereof.
20. What do I say to the family of the deceased? And what do I say to the community at large? I will address this problem by referring to the Victim Impact Statement Exhibit "M."
21. The deceased's mother provided the court with her Victim Impact Statement and informed the court that he was the breadwinner and since his passing she is really suffering immense financial burdens. He left her with two of his children, a girl child 10 years old and a baby boy one year and ten months old. This means that the baby boy was born more or less two months prior to his father being murdered. While the accused gave evidence in mitigation of her sentence the deceased's mother was crying in the back of the court and people had to comfort her. She was also too stressed to give this evidence. Advocate Kau read it into the record and that was with the consent of the accused's counsel Advocate Musekwa.
22. At the start of sentencing proceedings this morning, Adv Kau on behalf of the State applied to re-open her case in respect of aggravating

circumstances. There was no opposition from the accused's side and I granted the application. Adv Kau led the evidence of the deceased sister, Ms Lesego Ntsana, who is older than him. She was very emotional during her testimony and she elected to proceed with her evidence and she recomposed herself. They were the only two children of their mother and she confirmed that he was the

breadwinner as she was not financially in a position to make regular contributions. She, as the elder sister is very protective of her younger brother and as such, she painted a very rosy coloured picture of a near perfect man. He was not violent, yet he cut accused's braids which is

violent. He was living apart from the mother of their baby boy that was born about two to three months prior to his death. I requested her response to my views and she sort of agreed to it. Counsel, as an academically qualified gentleman, for the accused, tested her evidence in respect of the deceased's academic qualifications. He, according to Ms Ntsana, was outspoken on the fact that he wanted to attain his doctoral degree. At best her evidence in respect of this aspect of her brother's life was vague and not satisfying. The court accepts that she found it extremely hard to cope with the death of her brother and told the court she wishes, as does the mother that accused should "rot" in jail. The court prompted her to explain this expression and she was not too clear on it. The court is of the view that it is her and her mother's way of asking the court to give the accused a very long sentence. She very bravely said to the court that she thinks there is a possibility of the accused to be rehabilitated in jail. It was not easy for Ms Ntsana to come to this conclusion and I am of the view that this is an adult view of life: give this young woman accused a chance in life. And I am prepared to give her a chance.

23. The court observed that since the proceedings started this morning, she sat in the dock with a hood covering almost her entire head and she did not look up at all.
24. Is there any sign of remorse? Even remote signs? Does she know what remorse is? How does she feel inside when she sleeps and wakes up at night? Or during the day time? Her life has changed radically ever since she pulled that trigger. She cannot change that or recall it – it is irreversible. Even for the family, friends and colleagues of the deceased.
25. Life is not fair – so people often say. And I agree. I venture to state that if you ask any victim of such serious crimes such as rape, assault gbh and murder they will all say to you in a choir: it is not fair what happened to me. It is not fair that I was shot – that is what I am certain of the deceased will say to me: "It is not fair that Bongiwe shot me." And his family members will echo that. And his colleagues will echo that. And the community where they lived will echo that: "It was very unfair."
26. Hence, in the assessment of the appropriate punishment to impose, especially retributive and the deterrent elements must inevitably be the predominant consideration. Does this apply to Magwaza? I think so. Murder is the ultimate crime and it was disastrous and irreversible that ended his life with only one bullet.
27. Hammarsdale, like many urban and peri-urban areas in South Africa, faces various criminal challenges. The crime rates and types of criminal activities can vary over time, but common issues often include:
 - 27.1. Property Crimes: Theft, burglary, and vandalism are relatively common in industrial areas, targeting both residential and commercial properties.
 - 27.2. Violent Crimes: Assaults, robberies, and, in some cases, more severe violent crimes can occur. These incidents are often linked to socio-economic challenges.

27.3. Drug-related Crimes: Drug trafficking and substance abuse can be significant issues, contributing to other criminal activities.

27.4. Gang Activities: Some areas may experience problems with gangs, which can lead to violence and organized crime.

27.5. Public Order Crimes: This includes crimes like looting, especially during periods of unrest or protests.

28. This is her background. I take that into account as well.

29. The accused led evidence in mitigating of sentence and the State led evidence in aggravating circumstances of sentence.

30. In *S v Maxaku* 1973 (4) SA 248 (C) Steyn J stated:

"The authorities indicate that our Courts do consider that the sentencing process is as distinct and vital a factual inquiry as the determination of the guilt of the accused" and "It must be remembered that its sanctions which ultimately sustain the system of criminal justice. It little avails the court to determine the guilt or innocence in accordance with long established principles of fairness and then to leave the assessment of penalty to a hazardous guess based on no or inadequate information."

31. *Rex v Swanepoel* 1945 AD 444 and 454 – 455 Davis A.J.A said the following: "The ends of criminal justice are four in number, and in respect of the purposes served by it, punishment may be distinguished as (1) Deterrent, (2) Preventive,

(3) Reformative, and (4) Retributive. Of these aspects the first is the essential and all important one, the others being merely accessory. Punishment is before all things deterrent, and the chief end of the law of crime is to make the evildoer an example and a warning to all that are like-minded with him. This statement may well be an over-simplification of a most difficult problem: see Kenny CRIM. LAW [Chapters 2 and 32]; but that author also refers to the prevention of crime as "this paramount, and universally admitted object of punishment." It would seem, therefor, that in great measure it is not in the principles – so far at least as they are understood even today – but in their application, that any noticeable change is to be found; what the future may bring in this regard I cannot forecast." [italics in the original] [the court underlines]. I venture to say that the future the learned Davis A.J.A. referred to, has arrived. Having regard to the criminal statistics specifically in reference to violent crime, deterrence had little or no effect on criminals. Having said that, that is why the lawgiver intervened with the minimum sentencing regime. It is a recurrent theme from Karl Kemp's book "WHY WE KILL Mob Justice and the New Vigilantism in South Africa" published in 2024, that the public are fed up and are accusing the courts to be too lenient on criminals of vicious and violent crimes. They take to the streets and what we have is the public take the law into their own hands.

32. See *S v Whitehead* 1970(4) SA 424(A) at 439 it is reported: “It is not irrelevant to bear in mind that if sentences for serious crimes are too lenient, the administration of justice may fall into disrepute and injured persons may incline to take the law into their own hands”.
33. It is therefore not surprising that in *R v Karg* 1961 (1) SA 231 (A) at 236A Schreiner JA observed that, “While the deterrent effect of punishment has remained as important as ever, it is, I think, correct to say that the retributive aspect has tended to yield ground to the aspect of prevention and correction. That is no doubt a good thing. But the element of retribution, historically important, is by no means absent from the modern approach. It is not wrong that the natural indignation of interested persons and of the community at large should receive some recognition in the sentences that the Courts impose and it is not irrelevant to bear in mind that if sentences for serious crimes are too lenient, the administration of justice may fall into disrepute and injured persons may incline to take the law into their own hands. Naturally righteous anger should not becloud judgment.” [underlining by the court]. Schreiner JA said this November 1961, 63 years ago. We have moved on and crime in our SA society is rampantly on the move and people are being killed daily in our beautiful country. I am of the view that retribution should take its rightful place amongst the fourfold aim of sentencing.
34. Retribution and deterrence should take its rightful place in sentencing and should not be diminished or played down by saying that in modern times it takes a back seat. I am of the view that in the age and times we are living now, it calls for the revival of the retributive aspect. Our country is covered by the blood of humans that were brutally killed.
35. Holmes JA in *S v Rabie* 1975(4) 855 at 862 A - B:
- "The main purposes of punishment are deterrent, preventive, reformatory and retributive: See *R v Swanepoel* 1945 AD 444 at 445. As pointed out in Gordon, *CRIMINAL LAW of SCOTLAND* (1976) at p. 50: “The retributive theory finds the justification in a past act, a wrong which requires punishment or expiation ... The other theories, reformatory, preventive and deterrent, all find their justification in the future, in the good that will be produced as a result of the punishment.”
36. The learned judge Holmes J.A. further said at page 862: “It remains only to add that, while fair punishment may sometimes have to be robust, an insensitively censorious attitude is to be avoided in sentencing a fellow mortal, lest the weighing in the scales be tilted by incompleteness ... To sum up, with particular reference to the concept of mercy: (i) it is a balanced and humane state of thought; (ii) it tempers one’s approach to the factors to be considered in arriving at an appropriate sentence, (iii) it has nothing in common with maudlin sympathy for the accused (iv) it recognises that fair punishment may sometimes have to be robust (v) it eschews insensitive censoriousness in sentencing a fellow mortal, and avoids severity in anger, (vi) the measure of the scope of mercy depends upon the circumstances of each case.” [emphasis by the court]. I am still impressed by the learned Judge Holmes by his sensitivity to a fellow human being and to remind judges that we should tread lightly in this world by referencing Judge Jeffreys.

37. The victim was a law enforcement officer but during the incident, he was neither on duty nor was he performing any official duties at all. I am satisfied that substantial and compelling circumstances exist to justify me not to impose the minimum sentence on the accused in respect of murder.
38. In light of what Holmes JA said: "... it eschews insensitive censoriousness in sentencing a fellow mortal, and avoids severity in anger, (vi) the measure of the scope of mercy depends upon the circumstances of each case ..." I find somewhere deep inside the accused she expressed some remorse when she told Captain Ramaite that there are things that hinder her and she wanted to talk to someone about it. He listened carefully and the route he decided on, was, with hindsight the better route, and she then made a relatively clean breast of what hindered her and it was reduced to writing as is expressed in Annexure G. I further find that when she concluded her evidence in chief, she said that she asks the court to have mercy. It was also argued that she is young and does not know how fire arms work. It is so sad to say that she found that out the moment that fatal shot was fired; that was the time she realised what an awful thing she did and therefor she wanted to speak to someone. On the face of it, some may argue that this is not true remorse. I am, however, of the view that it is perhaps lopsided and unrefined which is in keeping with her being an unrefined person that hails from KZN and was completely out of her depth in Johannesburg. These are my reasons why I find that there are compelling reasons not to sentence her to the minimum sentences but to take it into consideration for extenuating circumstances.
39. The Supreme Court of Appeal in *S v Malgas* (117/2000) [2001] ZASCA 30; [2001] 3 All SA 220 (A) (19 March 2001) addressed the question of the remorse of the accused in respect of the crime he or she committed. This was in relation to the minimum sentencing regime introduced by Statute in terms of which the accused was warned. The court is obliged to sentence the accused to the minimum sentence and in this matter to life imprisonment. If the court finds that there are compelling and substantial circumstances, not to impose the minimum sentence, the court is then at liberty to deviate from the minimum sentence.
40. I gave due attention to the enormity of the crime, the accused's personal circumstances and of course her relative youth. It was stressed by the National Prosecuting Authority that she is an adult, which is undoubtedly correct, but I hasten to add, that she is a young adult and a first offender. I gave due attention to the Victim Impact Statement and the mother's pleas to the court. I consider that her seeking someone to speak to, to tell of the crime which she committed and her asking the court for mercy are compelling and substantial circumstances not to impose the maximum sentence of life imprisonment. I also appreciate deceased's doting sister, Ms Ntsana's views, that the accused, being a young adult, might be rehabilitated in jail and I cannot ignore this attitude.

ASK HER IF THERE IS ANYTHING ELSE THAT SHE WOULD LIKE TO SAY BEFORE I SENTENCE HER: She just nodded her head indicating nothing to say.

41. Sentence is as follows:

41.1. Count one: Murder: 20 years imprisonment.

41.2. Count two: possession of a parabellum calibre model Z288 semi-automatic pistol without holding a licence, permit or authorisation issued in terms of the relevant act: 7 years imprisonment.

41.3. Count three: possession of 15 9mm parabellum calibre cartridges without being the holder of a license in respect of a firearm capable of discharging that ammunition or a permit to possess ammunition: 5 years imprisonment.

41.4. And lastly count four: defeating the ends of justice: 7 years imprisonment.

41.5. I further order that the sentences in respect of counts 2, 3 & 4 run concurrently with the sentence in respect of the murder sentence.

41.6. I further order that she is declared unfit to have a fire-arm licence in the future.

C. J COERTSE

ACTING JUDGE OF THE HIGH COURT

Legal Representatives:

For the State: Advocate Kau on behalf of the DPP Johannesburg

For the accused: Advocate Charles Mqushulu Legal Aid replaced by Adv Musekwa

[1] ESSENTIAL JUDICIAL REASONING in Practice and Procedure and the Assessment of Evidence; B.R. Southwood, LexisNexis, 2015, at page 51.

[2] The Foreword to this book was written by Laurie Ackermann, himself an experienced and well respected judge of the Constitutional Court on page vii.

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