
SOUTH AFRICA / JUDGMENT

S v Rohde (CC43/2017) [2019] ZAWCHC 18 (27 February 2019) [2019] ZAWCHC 18

COURT

Western Cape High Court, Cape Town

BEFORE

Salie-Hlophe

CASE / FILE NUMBER

CC43/2017

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IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

REPORTABLE

Case No.: CC43/2017

In the matter between:

THE STATE

and

MR JASON THOMAS ROHDE Accused

CORAM: SALIE-HLOPHE, J

DATE OF HEARING: 9 OCTOBER 2017

DELIVERED: 27 FEBRUARY 2019

COUNSEL FOR THE STATE: Advocate L Van Niekerk

COUNSEL FOR ACCUSED: Advocate G Van Der Spuy

ATTORNEYS FOR ACCUSED: A L Mostert & Company Inc.

JUDGMENT ON SENTENCE DELIVERED ON 27 FEBRUARY 2019

SALIE-HLOPHE, J:

- [1] Mr. Rohde, on the 8th of November 2018, this Court found you guilty of the murder of your wife with the direct intention to kill her as well as defeating the ends of justice by staging her body and the crime scene so as to appear that she had committed suicide and supplying false information to the police in order to mislead the investigation as to the true method of her death and that you had murdered her.
- [2] Now is the time for me to meet out an appropriate sentence to you for the crimes of which you had been convicted. The

determination

of a suitable sentence does not entail a mechanical process in which predetermined sentences are imposed for specific crimes. In each case the sentencing court has to take into account all relevant factors, afford the appropriate weight thereto and strike a balance between the various interests to consider. In determining a sentence which is just and fair, I have regard to the triad of factors that have to be considered as set out in the case of *S v Zinn* 1969 (2) SA 537 (A). The Court must therefore take into account your personal circumstances as the accused and the person convicted of the crimes,

the nature of the crimes including the gravity and extent thereof and the interests of the community. In determining such a sentence the Court must tinge the sentence with a measure of mercy and strive to meet the objectives of punishment being retribution, prevention, deterrence and rehabilitation.

- [3] The general rule as held by the Appellate Division in *S v Rabie* 1975 (4) SA 855 (AD) at 862 G-H is that:

“...punishment should fit the criminal as well as the crime, be fair to society and be blended with a measure of mercy according to the circumstances.”

- [4] In mitigation of sentence, your counsel led witnesses and had also placed factors before me which I should take into account in order to impose a lesser sentence to you in respect of the crimes of which you had been convicted other than that as prescribed by the law. Counsel for the State on the other hand led evidence and made submissions which in his mind are aggravating and warranting of the imposition of a harsher punishment.
- [5] The legislature otherwise known as the lawmakers have recognized that certain serious crimes must be met with a minimum sentence. You have been convicted of murder, falling under Part II of Schedule 2 and as a first offender of this type of crime, you should be sentenced by the Court to a minimum sentence of 15 years imprisonment in terms of Section 51(2)(a) of the Criminal Law Amendment Act 105 of 1997 commonly referred to as the minimum sentence legislation. The Court do, however, have the discretion in terms of Section 51(3) to impose a sentence lesser than the prescribed minimum if it is satisfied that substantial and compelling circumstances exist which, viewed cumulatively, justify the imposition of a lesser sentence. Whilst I am empowered to deviate from the imposition of

the prescribed 15 years, I cannot do so for flimsy reasons nor depart from same lightly. As set out

in *S v Malgas* 2001 SACR 496 (SCA), I need to be satisfied that the imposition of such a sentence would not be disproportionate in the circumstances and I must likewise be satisfied that the factors warranting a lesser sentence is of such a nature that it is substantial and compelling in its justification to depart from the prescribed sentence. In other words, the 15 year sentence is to be regarded as generally appropriate for the crime of murder of which you had been convicted and should not be departed from without “weighty” justification for doing so. (See *S v Fatyi* 2001 (1) SACR 485 (SCA). The Court is also empowered to impose a sentence in excess of the prescribed minimum if the circumstances and applicable factors of the case warrant same.

[6] I had at the start of closing submissions ventilated with your counsel and counsel for the state that an appropriate sentence could possibly in the circumstances warrant of this Court to exceed the prescribed minimum sentence, taking into account the aggravating

features of the murder in respect of which you had been convicted. Both counsel were given an opportunity to address me on this aspect and the matter stood down for a period so as to afford each an opportunity to take adequate instructions and they had each addressed me on their submissions in that regard.

[7] I will now turn to the triad factors, starting with your personal circumstances as had been highlighted by your counsel and through the witnesses which had been called to testify in mitigation.

PERSONAL CIRCUMSTANCES:

[8] You are 50 years old and were 47 at the time of the commission of the offences. Three daughters are born between yourself and the deceased, aged 20 (turning 21 in June) and twins who had recently celebrated their 19th birthdays. The twins had matriculated in last year and are attending their first year at university. Physical care and support

is provided by your parents with additional support (including financial assistance) by the family of your late wife to the extent

as may be necessary for all three daughters.

[9] Through your counsel and witnesses in mitigation the Court has heard that you are the former CEO of Lew Geffen Sotheby’s”

International Realty and have been a successful businessman in the realty world, you presently have a 25% shareholding in a realty

business which you also managed until your incarceration in November 2018 and which you co-own with your mother and two other shareholders. You have been incarcerated for a period of just over 3 months, whilst awaiting sentencing. You have no previous convictions and appear before this Court as a first offender.

- [10] Your two friends, Mr. David Livingston and Mr. Craig Fleisher as well as your mother, Mrs. Brenda Rohde, testified that she know you had a happy and balanced childhood and they know you to be a good, kind and caring person. They echoed each other's sentiments through their testimonies that you contributed positively to society, that they know you to be a good, caring and supportive father to your three daughters and that similarly you are kind and helpful to your family and friends alike. They do not know you to be disloyal, to have an aggressive nature, they had never seen you display physical violence however they did they know that you had an extra-marital affair during the last 11 months of your marriage.
- [11] Dr. Stoloff, a registered specialist psychiatrist, testified in mitigation that you had been under his care post the death of your wife, more specifically from September 2016. He testified in December 2018 that during his last assessment of yourself at Pollsmoor Prison, you did not present symptoms of severe depression at the time. He testified that from your history and his personal clinical observations, you are an ambitious and successful person, modest about your achievements, kind, even-tempered and that you do not display characteristics of being controlling or present violent behaviour.
- [12] So much about your personal circumstances. I turn now to the second factor to be considered, that being the crimes of which you had been convicted, the manner of execution thereof as well as the nature, seriousness and impact thereof.

THE OFFENCES:

- [13] The victim of these offences was none other than your wife with whom you had been married for 22 years. The murder of your wife was callous, brutal and shocking. Susan died a painful and gruesome death. She did not die instantly, it took her a while to die. She suffered in the last moments of her life eventually succumbing to her death. The degree of violence which you meted out at your wife was egregious, excessive and exhibits horrifying aggression. You executed successive blows and fatal force in the taking of her life and completely disregarded her bodily integrity. It is a significant feature of this crime that you did not hesitate in the commission thereof, for you did not call for medical assistance, instead you left her to die and you waited for her to die. I will deal with more of these aspects later.
- [14] The Court heard throughout this trial and sentencing proceedings about the big loves in your life: from marrying your childhood

sweetheart, to the relationship with your mistress Jolene Alterskye then to the platonic love for your daughters, your parents and sister, the realty business in which you had been so successful, your friends, the care for your domestic employee, the community and sport. Yet, during the commission of these crimes, one big love story trumped all others. That is the story of malignant self-love. The love for yourself. In the course of murdering your wife and setting the scene that she had taken her own life, no other interests, desires and care mattered than that of your own. You did not just take her life, you completely disregarded the sanctity thereof and what her life meant to herself and to those who loved her and whom she loved, most of all your own

daughters. Susan would have looked to you as her husband and the father of her children for protection and security. Her guard and defences would have been down being in the sanctity of your private space and in the comfort of her husband.

- [15] You did not testify in mitigation of sentence and did not display remorse for the murder of your wife. Had you done so it would have been taken into account as a mitigating factor. That you elected not to do so, will however not be viewed as an aggravating factor.
- [16] Your counsel invited me to consider the personal circumstances as had been led during the trial in addition to that which was presented during proceedings in mitigation of sentence. Accordingly, I revisited your testimony during the trial. At the conclusion of your evidence in chief on 30 May 2018 (almost 2 years to the death of your wife), you elected to make a statement to this Court. In response I asked you the following question: “What does the absence of Susan mean to you?” (See record page 2426 / line 12 until 2427 line 5) Your reply in answer was essentially that you have not had the time to grieve her death as you are fighting for your life. This is illustrative in my view to be contrary to the deep and caring manner of which your witnesses in mitigation of sentence testified to. The death of your wife, is glaringly a loss to your children, her family and friends, the community circles in which she assisted with reading and maths lessons for underprivileged children, the Hearts of Hope orphanage and voluntary counselling of crime victims to mention but a few. It is further clear from the evidence that Susan loved life, her family, her friends and her community. She was passionate about her hobbies, running, gyming, her love for horses and contributing to the underprivileged. Her death means that she is no longer able to do these things and that she is missed for the roles she played in the lives of others. Instead, to you, her death means that you have to fight for your life. This is by all accounts a very selfish and self-serving manner of perceiving the death of your wife.
- [17] The victim impact report prepared by Probation Officer, Mr. Rian Perry, whom interviewed your daughters reported the absolute loss which they feel following their mother’s death. (See: Exhibit MMMM, page 14) Your eldest daughter verbalised that when she wakes up in the morning she realises anew that her mother is not there anymore, causing her to experience a sinking feeling in her stomach, followed by her feeling ill and empty. Her mother’s death has affected every aspect of her life. She longs for the closeness of her mother and the emotional support her that she had provided. She described her mother as having been a source of stability in her life, someone she would fall back on and someone who did everything for them. Your children lives in fear of their future well-being, they suffer the conflict of mourning the death of their mother and supporting you as their father, which in turns creates ongoing confusion and distrust. Whilst it is undeniably a difficult position for your children, the Court had also heard that they are incredibly strong young women, that they are well loved and cared for and that their reasonable financial needs until they become self-supporting would be met by the deceased estate of their mother

and the children's maternal grandparents. Submissions had not been made on your behalf as to what your financial contributions

would be to their future financial needs, however, it is common cause that you hold a 25% shareholding in a realty business and that notwithstanding your incarceration you have an obligation to maintain to your children until they become self-supporting.

[18] On the topic of your financial position, I pause to add that your counsel also argued that the life of luxury to which you are accustomed to and your economic wealth ought to be considered as a mitigating factor to impose a lesser sentence. Imprisonment he argued would be devastating to the liberties and privileges which you are accustomed to. This is a proposterous and a non-sensical submission to which I cannot disagree more. It is a constitutional and fundamental principle of our law and our democracy that we are all equal before the law. The guiding principle that the punishment must fit the accused, the crime and the interests of the community, simply does not mean that the privileged and wealthy sectors of our community ought to get favourable sentences given their fortunate economic background. A similar argument was made on behalf of tennis icon, known as Bob Hewitt. When the wheels of justice caught up with him, and he stood to be sentenced for his crimes, much was made by his counsel that his standing as a tennis icon who successfully represented his country internationally makes imprisonment of such an individual improper because his fall from grace (and the pain of the trial) was, in itself, punishing. This submission on behalf of Mr. Hewitt was dismissed by the trial court as well as the appeal court in that it overlooks the basic tenets of our Constitution which enshrines that we are all equal before the law. Similarly, your life of luxury and wealth cannot be a factor to be considered in determining sentence of imprisonment (See *Hewitt v S* 2017 (1) SACR 309 SCA @ 315 par. 14).

INTERESTS OF THE COMMUNITY:

[19] With regard to the interests of society it is undeniable that we are experiencing high levels of violent crime and in particular with reference to this case, violent crime against women. Dr. Naeemah Abrahams, Acting Director of the Gender & Health Research Unit of the South African Medical Research Council, testified in aggravation of sentence. She testified on national and international studies that she did as well as research on female murders and intimate femicides. Intimate partner violence is the most common form of violence women experience in this country. Femicide, she testified, is the killing of women and in particular her studies related to intimate femicide which is the killing of women by their intimate partners being husbands and boyfriends. Dr. Abrahams set out in her report handed in as Exhibit LLLL and testified that a study that looked at women killed globally in 2013 revealed the following statistics. The data from 66 countries found globally that 39% of homicides of women are committed by an intimate partner. When comparing the global data of South Africa, the proportion of intimate homicides in our country stands at 57%. We have become the femicide capital of the world. This is clearly an epidemic and an enormous social problem.

According to a study set out in an article titled: “Female homicidal strangulation in urban South Africa”, by authors Suffia, Van Niekerk and Arendse, state at the conclusion of their article:

“The prevention of female homicidal strangulation in South Africa will ultimately be strengthened by the creation of a social milieu that promotes equity, safety, health, human rights and justice.”

[20] It is thus important and the duty of the Courts to contribute in our role as the justice system to impose appropriate sentences,

particularly where women are murdered in the context of their marriages, their relationships and homes. Whilst it is so that

you, as the accused, cannot be sacrificed at the alter of deterrence for other would-be offenders, nor can it impose punishment in anger, the interests of the community must be satisfied that offenders of serious crimes such as these be punished accordingly. If offenders are punished too lightly for serious offences, society would lose confidence in our Courts and so too would law and order be undermined. Serious crimes of this nature therefore compel that the objectives of retribution and deterrence weigh more than the objectives of rehabilitation of the offender and accordingly the interests of the accused would recede to the background.

[21] In the matter of S v Van Staden (KS21/2016)[2017] ZANHC 21 the Court states at paragraph 14 thereof, the sentiments expressed therein equally to the facts of this matter:

“[14] Murder committed by a man on a woman should not be treated lightly. It becomes worse where the perpetrator, as in this instance, was the deceased’s partner, who had the duty and the responsibility to protect her and not to harm her. It is killings like the one committed by the accused which necessitate the imposition of sentence to serve not only as a deterrent but also to have a retributive effect. Violence against women is rife and the community expects the Courts to protect women against the commission of such crimes.”

[22] In conclusion of this factor of the triad, it is pertinent to note that it is 20 years or more since the Supreme Court of Appeal so articulately stated in S v Chapman [1997] ZASCA 45; 1997 (3) SA 341 SCA at 345 A-B that:

“Women in this country have a legitimate claim to walk peacefully on the streets, to enjoy their shopping and their entertainment, to go and come from work and to enjoy the peace and tranquillity of their homes without the fear, the apprehension and the insecurity which constantly diminishes their quality and enjoyment of their lives.”

AGGRAVATING FEATURES:

[23] The aggravating features of the murder of your wife are significant and startling. I will set them out briefly as follows:

[24] You murdered Susan with the direct intention to kill her. She looked to you for protection and would have trusted you to care and protect her, instead you breached this trust, attacked and murdered her in your private space. Your counsel argued on your behalf that the

murder was not for financial gain but was a crime of passion which ought to be viewed as mitigatory. Susan he argued pursued your infidelity with proactiveness and with interrogation. The suggestion is that your wife ought to have been more subservient and accepting of your infidelity and ought to have restrained her objections and interrogations. That she did not do this, resulted in the perfect storm of your quarrel and that it was in the exigencies of these events that the offences happened. She got killed, and you ought to therefor get a lesser sentence. I cannot disagree more. This is a patriarchal and antiquated viewpoint, which undermines a woman and in the context of intimate femicide a wife's or girlfriend's right to dignity and equality before the law. Intimate femicide clearly cannot be viewed as being conduct which is less morally reprehensible. You were her husband, the father of her children and you were required to protect her, rather than to inflict harm upon her.

- [25] The injuries which you inflicted on your wife were successive and incremental until it was fatal. During this time and in the progress of killing her, you would have had time to reflect and desist from your unlawful conduct. However, you carried on regardless. The extent of the force which you used was so excessive that the injuries to her neck shows clear grab and scratch marks and bruises on the surface of her skin in that area with deep haemorrhages in the underlying tissue layers caused by your thumb on the right side of her neck and the remaining fingers on the other side of her neck.
- [26] Her ribcage had various fractures illustrating how you had applied substantial force on her chest (most likely with your knee), whilst you manually strangled your wife and incapacitating her in the process. So severe was this force that she suffered a contusion to her lung, resulting in internal bleeding, coughing blood and ingesting it.
- [27] The pillow which you used to smother Susan with was done with repeated action, illustrated by the seepage of blood from the abrasion you caused on her left upper eyelid (by an earlier fist punch) which had come off on to pillow twice as you pushed down on her face repeatedly. With your force pressing down on her face, you deviated her nose to the right and caused her teeth to cut into the inside of her lower lip.
- [28] It is significant and disturbing a fact that throughout this ordeal you did not call for medical assistance. When you ultimately did call for help you limited it to a handyman purely for the purpose of furthering the commission of your offences. At no stage do you question, hesitate or become ambivalent about murdering your wife. You forged ahead, unfettered nor restrained by conscience or reflection.
- [29] These aggravating features are so extreme and shocking that in my judgment it far outweighs your personal circumstances and other mitigatory factors to such extent that it warrants a sentence in excess of the prescribed period of 15 years. I will deal with that further in

conclusion.**COUNT 2:**

- [30] With reference to the conviction of defeating the ends of justice, the features are indeed also aggravating and remarkable. The Court has heard that you are a business engineer of note in the property and realty industry. Marketing and selling of property is your strength. Posing and pitching the sale of a concept is the golden thread of the realty world. Showing property for sale as showhouses is a skill which determines the success of a sale. "You get one chance to make an impression and preparation is key", is the rule as expressed by Rosie Mulvany who sells properties across Ireland. The Sotheby's Lew Geffen real estate website states the exact sentiments. Staging is a key element in selling property.
- [31] Gleaning from the crime scene photos and other evidence, you used your wife's body as a showhouse to sell the concept that she had taken her own life. You methodically and clinically went about in an attempt to create the indelible impression that Susan had done this to herself. Preparation was clearly key and you had one chance to make the impression you wanted.
- [32] I carefully searched through the forensic images of the scene, her body naked and exposed on the floor, with the indentation mark which you inflicted around her neck to create the impression that she hanged herself and I could not find an acknowledgment in the product of your great efforts that she was your wife, the mother of your children, a woman or even simply a human being.
- [33] So keen was the desire to ensure your liberty and to escape the consequences of your murderous conduct, that she was nothing but an object used in the course to market and sell the concept you wanted others to buy in to, that being, that Susan is to blame, she did this to herself. Naked and stripped of her dignity you dragged her from the bedroom, over the sisal rug, inflicting therewith more injuries to her body and undignifiedly dragged her through her faeces, leaving faecal drag marks on the floor in front of the bathroom.
- [34] You posed her for your alibi to see and to be shocked by her nakedness. In that way, it is clear, you ensured that the

handyman you called would follow your instructions, aghast by the scene and the nakedness of this woman and exit the bathroom without

further ado or inspection, maximising the prospects that he would buy into the suicide image you had sought to create. So did Mr. William Lee, a fellow hotel guest, who shortly thereafter arrived and stood at the bathroom door. Once he saw that Susan was naked and exposed he casted his gaze away out of respect and refrained from looking into the scene any further. This was exactly your staging plan, for others to be left with an image of a woman who killed herself. Through the act of staging, you were marketing and selling the suicide brand you had prepared for and quite frankly grotesquely went beyond the pale.

[35] The death and loss of such a remarkable person, a mother, a daughter, a sister and friend is in itself a traumatic and grieving experience. By blaming her for her demise in circumstances where you had murdered her added insult to injury. You sought to tarnish her legacy and by simulating her death as suicide, you left her loved ones to further suffer in their grief and speculate with anguish as to what motivated Susan in the taking of her own life, how it could be that she did not consider her love for her children and other loved ones and in turn their love for her, when she chose to end her life and naturally they would torment in the quest as to how and if they had failed her. You showcased her regardless of the obligation you owed her to protect her body, her dignity and her legacy and committed this offence in cruel and selfish pursuit to escape the letter of the law and defeat the ends of justice.

CONCLUSION:

[36] In conclusion, I have considered various sentencing options. For the reasons set out above, I am satisfied that a sentence of long term direct imprisonment is called for in these circumstances and that the punishment meted out to you should exceed the minimum prescribed sentence of 15 years which will meet all the objectives of sentencing and will be manifestly fair and just.

[37] Accordingly, on Count 1 you are sentenced to 18 years direct imprisonment. Turning to Count 2, which is also a serious crime, you are sentenced to 5 years direct imprisonment.

[38] It is ordered that in terms of Section 280 of the Criminal Procedure Act, that 3 years of the sentence imposed on count 2 shall run concurrently with that imposed on count 1.

[39] Mr. Rohde, you are herewith sentenced effectively to a term of 20 years direct imprisonment.

[40] You are further declared to be unfit to possess a firearm.

SALIE-HLOPHE, J

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