

SOUTH AFRICA / JUDGMENT

S v Selani (Sentence) (CC13/2023)

[2024] ZAGPPHC 724 (29 July 2024)

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COURT

North Gauteng High Court, Pretoria

BEFORE

Mosopa

CASE / FILE NUMBER

CC13/2023

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: CC13/2023

DATE: 24-06-2024

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

DATE: 29/07/2024

SIGNATURE

In the matter between

THE STATE

and

PAMELA NCUMISA SELANI

Accused

SENTENCE

MOSOPA, J: On 3 June 2024, this Court convicted the accused on three counts of Murder read with the provisions of Section 51(1) of Act 105 of 1997 and one count of defeating the administration of justice. Two of the murder charges that the accused was convicted of relates to her intimate partners and the third murder relates to her own child, A[...] who was 18 years old at that time in 2018.

The murders were witnessed by the accused's son, S[...] J[...] who was 14 years old at the time of the first murder and was 16 years old when his brother, A[...] was killed by the accused.

The last murder was also witnessed by the other child of the accused, N[...] who was five years old at the time. I must pause here and mention that S[...] was initially an accused in this matter and had already spent approximately 3 years in custody when charges against him were withdrawn by the State.

The murders were committed over a period of three years from 2016 to 2018. There were allegations made that S[...] was suffering from a mental illness, but after consulting with the specialists, they concluded that this was not the case, Thereafter, S[...] was taken to a traditional healer for treatment and that is when the knowledge about these murders came to the fore.

Section 11 of the Constitution of the Republic of South Africa which enshrines an absolute right to life to every person in the Republic makes the following provision:

“Everyone has the right to life.”

Despite the accused arbitrarily ending the right to life of all the three deceased in this matter, she still enjoys the right to life and this right cannot be arbitrarily taken away from her, even by the government.

Closely akin to the right to life is a constitutionally enshrined right to human dignity in Section 10 of the Constitution which provides that:

“Everyone has inherent dignity and a right to have their dignity respected and protected.”

All the deceased in this matter were not treated with dignity by the accused, even in their death. They were buried by the accused in what can be described as shallow graves in the yard in where she stayed.

The accused continued to live a normal life as if nothing gruesome occurred in her yard. In passing sentence, it is trite that the Court has to take into account various considerations in mitigation and aggravation of sentence.

These considerations, as stated in *S v Zinn* 1969 (2) 537 (A), finds application as this Court has to take into account the personal circumstances of the accused, the gravity of the crimes and the interest of society.

The Court should always endeavour to exercise a measure of mercy; however, sight should not be lost on the purpose and objects of punishment.

In S v Rabie 1975

(4) SA 855 (A) at 854g-h the Court held 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.”

The accused testified in mitigation of sentence and her testimony can be summarised as follows;

1. That she was born on 11 April 1977 and she is currently 47 years old, This means that at the time of the commission of the first murder she was 39 years old and when she committed the last murder in 2018, she was 41 years old.
2. The highest level of education achieved by accused is grade 11 as she failed grade 12.
3. She was married and two children namely A[...], who is the deceased mentioned in count 3 of the indictment and S[...] were born from the marriage, Her husband was killed in 2008 in Port Elizabeth by his girlfriend.

She has another child, N[...] who was born in 2013. The child is currently in the Eastern Cape in the care of the accused's

mother. The father of her child only saw the child after her birth and has not seen her since. He is also not responsible

for the maintenance of the child as N[...] is currently on government child support grant.

4. Accused's last employment was in 2012, when she went to maternity leave in 2013 she lost her job and she could not find full time employment. She survived mainly on part time work as a domestic worker where she was paid on a daily basis.
5. Accused's mother is currently 67 years old and if it happens that she passes away, there is no one who can take care of the child as the father of her child and the paternal side of the family is not traceable.
6. The business of selling liquor which she conducted together with the deceased mentioned in count 1 ceased to operate after the death of the deceased.
7. At the time of her arrest, she had one tenant as the other two tenants who were renting at her place had left. She would charge the tenants R250 or R350 per month for renting a room.
8. She is on chronic medication and she is also receiving treatment at Kalafong Hospital for the problem she has with her ear.

In cross-examination it was put to her by Mr Sihlangu on behalf of the State that; what she told the probation officer in her pre-sentence report was not the same as what was put by her counsel to the State witnesses in cross-examination.

Further, that the reason why there is a difference in what was put on her behalf and what she told the probation officer is the fact that she did not tell the probation officer the truth.

After this Court found the accused guilty of the murders of the deceased in this matter, a request was made for a pre-sentence report to be compiled and used in mitigation of sentence.

The pre-sentence report was admitted into evidence and marked as EXHIBIT P. The pre-sentence report confirms the age of the accused, her background and her children.

It is mentioned in the pre-sentence report that the families of the deceased mentioned in counts 1 and 2 are not traceable and it can be inferred from the statement that their respective families were not informed about their death and they did not have the opportunity to bury the remains of their loved ones.

Another disturbing aspect mentioned in the pre-sentence report is that it is alleged that the accused murdered two people in the Eastern Cape before she relocated to Pretoria and one of the people, she allegedly murdered was her grandmother.

The accused was never charged nor convicted of such alleged murders, and she enjoys her right to innocence in regard to those allegations.

Accused refused to take responsibility of the murders and she repeated that in her oral evidence when she said that:

“It pains her to be convicted of killing people that she did not kill.”

She blames her own child, S[...] and Mr Tshuma for killing the deceased. Accused in her report repeated what was put to S[...] even though it was denied by S[...] that all the deceased disappeared, that the deceased in count 1 went to live in Eastern Cape. The deceased in count 2 went to reside in Atteridgeville with another woman and that the deceased in count 3 went to stay in Cape Town.

The probation officer in the report found no compelling circumstances for the Court to deviate from the prescribed minimum sentence.

Further, that the information gathered from the docket and what the accused disclosed to the probation officer was not the same and that she was deliberately giving the probation officer wrong information to favour her own recommendation.

The probation officer states that based on the outcome of the investigation, it is evident that the accused is a danger to her own family, relatives and broader society as her gruesome actions were inhumane.

Accused's husband died violently in 2008 at the hands of his girlfriend when her two children were still very young. It is not clear as to whether the killer of her husband was convicted and sentenced for his killing.

When accused relocated to Olievenhoutbosch from Eastern Cape she resided at a particular property until she and her children were invited by the deceased in count 1 to stay in his property.

It is unfortunate to mention that at that stage the accused already was in another relationship with the deceased mentioned in count 2 who assisted the accused to kill the deceased mentioned in count 1.

Accused maintains that it is the deceased mentioned in count 1 who infected her with a chronic disease, but such is a subject of doubt as accused had another partner in her life, who was the deceased in count 2. After the death of the deceased in count 1, accused agreed with the deceased in count 2 that they can reside together at the deceased in count 1's property.

The deceased in count 2 died because the deceased in count 3 did not appreciate the way he was treating the accused. The deceased in count 3 died because he was always demanding money from the accused and threatening to report her to the police if she did not agree to such a request.

After the death of the accused's husband, the accused had to maintain her children single-handedly and was to some extent assisted by the state through the child support grant. It is not clear whether the deceased mentioned in count 3, was working or attending school at the time of his death. What we know is that he was a substance abuser. The accused also relied on the money she received from her tenants to survive.

All the deceased died a painful death, they died in a degrading, callous and heinous manner. The deceased in count 1 was assaulted with a hammer until he died. The deceased in count 2 was poisoned and his head was put inside a dustbin which was full of water before he died, the deceased mentioned in count 3 was assaulted with a brick until he died.

After their deaths, they were all buried in the yard. It was only in August 2020 following the arrest of the accused and S[...] that their remains were discovered. Liquor was sold in the yard and their patrons were accommodated inside the shack where the remains of the deceased were buried in.

The state and the probation officer could not consult with the relatives and families of the deceased in count 1 and 2 as they are not traceable. It is for this reason that no victim impact statements could be obtained. This court does not have information as to how the families of the deceased have been impacted by the deaths of the deceased. The probation officer opined that the family might be deeply hurt and eager to know the whereabouts of the deceased.

Accused's aunt, T[...] S[...] informed the probation officer that she is afraid of the accused, and she believes that she will be a first target to be killed by the accused as she believes that the accused is a killer.

F[...] S[...], a cousin to S[...], informed the probation officer that, she believes that S[...] was being troubled by the spirits of the people who were buried in his presence in the yard, further that when the remains of the all the deceased were exhumed, the accused confirmed to her that the deceased in count 3, was one of the people who were buried in the yard, however he was killed by S[...], whom she referred to as Tingo in the pre-sentence report.

The conduct of the accused in murdering the all the deceased left the community of Olievenhoutbosch were the incidents occurred up in arms. The pointing out by the accused did not take place because of the presence of the angry community members who gathered at the scene. The accused herself, before such pointing out indicated to the police officer in charge of the pointing out that she needs police protection against the members of the community because of what she did.

This clearly shows how the conduct of the accused has impacted the lives of the community of Olievenhoutbosch. This matter also attracted a large number of members of the community on daily basis since the commencement of the trial matter.

This matter is a clear indication that the communities are tired of violent crimes perpetrated against the people of South Africa. These kinds of crimes do not only affect the people of Olievenhoutbosch but also the people of South Africa as a whole. Gender Based Violence is the order of the day and people are frequently killed by their partners.

However, the object of sentencing is not to satisfy public opinion but to serve public interest. A sentencing policy that caters predominantly or exclusively for public opinion is inherently flawed. (see *S v Mhlakaza* 1997(1) SACR 515 (SCA)).

In *R v Karg* 1961

- (1) SA 231 (A) it was said that it is acceptable for the court to take account of public feelings. Although there are current high levels of violence and serious crimes in the country, when imposing sentence for such crimes emphasis should be on retribution and deterrence.

At verdict stage, this court made a pronouncement that murders in this matter were planned and reasons were advanced for such findings. It is because of such pronouncement that the murders in casu fall squarely within the purview of section 51(1) of Act 105 of 1997, which attracts a sentence of life imprisonment. Section 51(3) provides for the deviation from the imposition of the prescribed minimum sentence in the event there is existence of substantial and compelling circumstances.

There is no onus on an accused to prove the presence of substantial and compelling circumstances, it must be so that an accused who intends to persuade a court to impose a sentence less than that prescribed should pertinently raise such circumstances for consideration. (see *S v Roslee*

[2006] ZASCA 14; 2006 (1) SACR 537 (SCA) at par 33).

The concept “compelling and substantial circumstances” is not statutorily defined, and in *Malgas* it was said that the legislature deliberately left the concept to be developed by the courts. Courts are enjoined to regard the prescribed sentences as being generally appropriate for crimes of the kind specified and not to depart from them unless they are satisfied that there is weighty justification for doing so. (see *S v Malgas* 2001 (1) SACR 469 (SCA))

The essence of *Malgas* can be separated into four different aspects namely;

1. The prescribed sentences are the point of departure;
2. If a departure is called for the court should not hesitate to depart;
3. Court should weigh all the traditional sentencing consideration, and
4. Depart when the prescribed sentence will be unjust.

In the matter of *S v Dodo* 2001(1) SACR 594 (CC), the Constitutional Court emphasised the importance of proportionality, by stating that disproportionate sentences should not be imposed, that courts are not vehicles for injustice and a court is not compelled to perpetuate injustice by imposing a sentence that is disproportionate to the particular offence.

Ms Mampuru on behalf of the accused in argument, contended that the court ought to deviate from imposition of the prescribed minimum sentence for the following reasons;

1. That the deceased in count 1 infected the accused with a life-threatening disease, and
2. That the accused suffered abuse at the hands of the deceased.

Mr Sihlangu contended that the court need not deviate from the imposition of the prescribed minimum sentence as accused lacks remorse and, the callousness in which she killed the deceased in this matter.

I have already stated elsewhere in this judgment that this court is in doubt pertaining to the allegation made by the accused that the deceased mentioned in count 1 was the who infected the accused with a life-threatening disease. The accused had a husband who unfortunately died before the commission of the offences and was in an adulterous relationship with another woman who ended his life.

According to the pre-sentence report, accused was in a relationship with the deceased in count 2 before she met the deceased in count 1, she reconciled with the deceased in count 2 and rekindled their love relationship. There was also the existence of another boyfriend called Gava, who gave them shelter after the deceased in count 3 chased them away from their house.

Based on the above, I doubt the truthfulness of the accused’s version and also taking into account that accused failed to testify in her defence before conviction.

The accused informed the court that she is currently receiving medication in prison for her medical condition. This court's observation is that accused despite her medical condition looks like a healthy person.

On the issue concerning the abuse that the accused experienced, it is my considered view that the accused was left with two options, firstly to report such abuse to the police and obtain an interdict in terms of the Family Violence Act and secondly, to terminate the relationship she had with the deceased more in particular the deceased in count 1 and 2. This aspect to me does not serve as compelling and substantial circumstances which can entitle the court to deviate in imposing a prescribed minimum sentence.

Despite the overwhelming evidence and this court's findings against charges levelled against the accused, she still maintains her innocence. This to me amounts to aggravating factors and lack of remorse.

What complicates the whole scenario is that one of the deceased was her own child, who at one stage assisted her with planning and killing of the deceased mentioned in count 2.

Therefore, I find it difficult to accept that the accused, regardless of her unblemished criminal record, is a suitable candidate for rehabilitation. The Probation officer confirmed my difficulty, as she made no mention of the accused being a suitable candidate for rehabilitation in her report.

Ms Mampuru made no mention of the period spent in custody by the accused pending the finalisation of this matter as the accused was arrested in August 2020 and was denied bail. No circumstances were placed before me as to why she was denied bail, but I am of the view that it is because for the seriousness of the offences she was arrested of. Nothing was placed before me as to what delayed the matter to commence after her arrest. It is trite that the period awaiting trial on its own cannot amount to compelling and substantial circumstances.

S[...] was also scared of the accused as he believed that the accused wanted to kill him as well. Accused blames everyone except for herself for the violent killing of the all the deceased. I am alive to the fact that no amount of sentence can bring all the deceased back to life. I am also alive to the fact that life imprisonment is the ultimate penalty that this court can impose.

The court must always strive to impose a sentence which is just and fair to both the victim and the accused having regard to the manner in which the crime was committed. The court in *S v Rabie* cautions courts not to approach sentencing in a spirit of anger and vengeance.

Considering the gravity of the commission of the offences, which were perpetrated in a barbaric manner with total disregard for human life, this court deems it fit that you should be sentenced to imprisonment for a very lengthy period.

The accused is not a primary care giver of her child as the child is currently in the care of her grandmother and she is adequately cared for in terms of the pre-sentence report. This court views the accused as an evil person, I find it completely strange that there can be a person who kills her two partners and her own child in such an easy manner and she continues to live a normal life, pretending as if nothing happened. S[...] was fortunate as he was not killed by the accused because the accused blamed him for the killing his brother, A[...].

The sentence that this court is going to impose on you, I want it to be a sentence which will serve the objects of punishment being retribution and deterrence. I want this sentence to deter any person who wants to emulate you and behave in the same manner as you did when killing he deceased, to immediately reconsider his or her decision and refrain from doing so.

I want the sentence to make you a better person, a person who will respect the human life, dignity and security of a person. A sentence which will teach you to protect the people you love and care for instead of killing them. It is unfortunate that, at your age, you were supposed to be nurturing your children, instead of serving a prison sentence but unfortunately, this is the kind of life that you chose for yourself.

It is unfortunate that S[...] had to drop out of school in Grade 10 because of the gruesome things that you exposed him to, and I doubt that S[...] will be able to live a normal life without counselling.

The concurrent running of the sentences is not considered in view of the sentence that this court intends to impose, further, the concurrent running of sentences is not considered as the commission of the offences is not connected to time, location and intent.

It is for the above that I have to sentence you as follows;

1. Count 1: Murder of Tshangisa, you are sentenced to life imprisonment;
2. Count 2: Murder of Gift, you are sentenced to life imprisonment;
3. Count 3: Murder of A[...], you are sentenced to life imprisonment;
4. Count 4: Defeating the administration of justice; you are sentenced to 5 years imprisonment.

MOSOPA, J

JUDGE OF THE HIGH COURT

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