



Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

**IN THE HIGH COURT OF SOUTH AFRICA
GARIEP DIVISION, UPINGTON**

Case No: K/S18/2022
Heard on: 31/7/ 2023- 01/08/2023
Delivered on: 03/08/2023

In the matter between:

THE STATE

and

REUBEN PHAKISO MOTSIE

Accused

JUDGMENT

MAMOSEBO J

[1] The accused appeared on one charge of murder read with s 51(1) of Act 105 of 1997. Before pleading to the charges and in his guilty plea the accused confirmed that his legal representative, Adv OL Maroke, had explained to him the provisions of the Criminal Law Amendment Act (the CLAA). He was further advised that in the event of a conviction, the

State intended to invoke the provisions of s 51(1) of the CLAA. This Court also explained the provisions of s 51(1) to the accused making the distinction between s 51(1) and 51(2). It will serve a useful purpose for practitioners litigating in matters where the CLAA is applicable to be mindful of the remarks made by Makgoka JA in *Kekana v S* 2019 (1) SACR 1 (SCA) at paras 18 and 19.

- [2] The accused pleaded guilty in terms of s 112(2) of the Criminal Procedure Act, 51 of 1977 (CPA) marked Exh “A”. The state accepted the plea as tendered by the accused and confirmed that it accords with the facts at the state’s disposal. I was satisfied that all the elements of the offence were met. The accused was found guilty of murder read with s 51(1) having had the criminal intent in a form of *dolus directus*.
- [3] The State submitted the following documents in substantiation of its case, which evidence was admitted by consent:
- 3.1 The report on a medico-legal post-mortem examination compiled by Dr Adin Don Surtie marked exh “B”;
 - 3.2 Identification of the body of Ms Aldine Godeverdien Titus under DR 185/19 marked exh “C”;
 - 3.3 The police report accompanying body DR 185/19 to the mortuary marked exh “D”;
 - 3.4 The body details of DR 185/19 as identified by the Forensic Pathology Officer, Solomon Kruger, marked exh “E”;
 - 3.5 Sworn statement, key to photographs and photographs by Cst Bazil Humphrey Eilers attached to the Upington Local Criminal Record Centre (LCRC), exh “F”; and
 - 3.5 The SAP 69 marked exh “G”

[4] In order to determine whether the accused dealt adequately with the facts in his written plea in order to impose the ordained sentence of life imprisonment in the absence of substantial and compelling circumstances, or to deviate therefrom it is vital to capture what he said led, in particular, to the brutal killing of his live-in lover, Ms Aldine Godeverdien Titus.

[5] The accused states, *inter alia*, as follows:

“I, the accused, Reuben Phakiso Motsie, an adult black male, plead guilty to the charge of murder.

1. *I plead to the charge as set out in the indictment freely, voluntarily and without any undue influence on the count of murder in that on or about the period between 22 and 23 June 2019 and at or near Gawie Steyn Boerdery, Kanoneiland, in the district of ZF Mgcawu, I Reuben Phakiso Motsie unlawfully and intentionally killed Aldine Godeverdien Titus, an adult female person.*
2. *I admit the offence was committed within the jurisdiction of this Honourable Court.*
3. *I, the accused, confirm my legal representative, Adv Maroke, explained the minimum sentence as provided in Act 105 of 1997 to me as amended. I confirm I am fully aware of the minimum sentence.*
4. *On 22 to 23 June 2019 Aldine Godeverdien Titus, (herein referred to as the deceased) and I was in a [love] relationship, and we were living together at Gawie Steyn Boerdery in one room. I was employed [as a] general worker living on the farm. The deceased was not employed at the farm.*

5. *Earlier that day the deceased and I [were] at the tavern, and we consumed alcohol. Later that evening we went back to our home where we consumed alcohol with our neighbours. We then went to our room.*
6. *I had a good relationship with the deceased prior to this unfortunate night. I had an altercation with the deceased over money.*
7. *I confronted her about her behaviour of demanding money when I get paid whenever she is under [the] influence of alcohol. It is not her money as she does not work. This behaviour infuriated me because I did not understand why she demands the money when there was no money left and, without thinking straight and out of anger I assaulted the deceased by hitting her with various objects, including a broom stick, cylindrical iron rod objects, as well as a fork like object and a metal wire object.*
8. *I cannot say how many times I assaulted her with the different objects that [were] in our room at the time. I was stabbing and hitting her until she was unconscious and bleeding. I then placed her [on] the bed and covered her with a blanket and left her and went to another tavern to drink. This was in the early hours of 23 June 2019.*
9. *The deceased was not in possession of any weapon neither was she posing any danger to me or my life during the time [when] I attacked her.*
10. *On the morning of the 23 June 2019 one of the neighbours found her and contacted the police and [an] ambulance.*
11. *I heard the police [were] looking for me then I fled the scene by going to Welkom as I knew I was the last person with the deceased and I left her unconscious and bleeding.*

12. *I was arrested in Welkom about a month after the deceased's death.*
13. *I admit that when I was assaulting the deceased, I did not have any grounds of justification to do so and I knew that there was a possibility that the deceased could die from such assault, and I recklessly proceeded with my actions. I thus admit my intention was in the form of dolus eventualis.*
14. *I admit even though I consumed alcohol prior to commissioning of the offence, I admit the alcohol I consumed did not affect me to such an extent that I did not know what I was doing.*
15. *I admit that when [I] acted as set out above I appreciated the wrongfulness of my actions and I further admit that I was capable of acting in accordance with that appreciation.*
16. *The body of the deceased was correctly identified as Aldine Titus, an adult female and that the deceased's body did not sustain any further injuries from the time that her body was removed from the scene up until the post-mortem examination was conducted by Dr Adin Don Surtie on the 26 June 2019.*
17. *I admit the post-mortem examination was conducted on 26 June 2019 by Dr Adin Don Surtie, a medical officer in forensic pathology and employed by the Northern Cape Department of Health, indicating the cause of death to be consistent with head injuries as well as additional injuries sustained as reflected in the additional report to the post-mortem to be [a] true and correct cause of her death.*
18. *I admit that my actions directly caused the death of the deceased and I knew my actions were wrongful and punishable. I have no defence to the charge against me.*
19. *I am remorseful for my actions”*

[6] What should be distilled from this guilty plea explanation, the factual situation, is the following:

- 6.1 The accused and the deceased were living together as husband and wife or at least as a couple.
- 6.2 The accused knew that the deceased was unemployed.
- 6.3 He felt burdened and bothered by the deceased asking for his money from him and explains it as a recurring demand for his money especially when the deceased had consumed alcohol.
- 6.4 The accused used different types of objects to assault the deceased indiscriminately. The assault was prolonged despite the fact that firstly, the deceased was screaming for help and begging him to stop, and secondly, the deceased was unarmed and did not pose any threat to him. His mere admission that he confronted the deceased excludes the defences of provocation or self-defence.
- 6.5 The accused's action cannot be regarded as "*acting in the heat of the moment*" and lacking the intention to kill her, because the assault was prolonged and the types of objects used in the assault do not support his contention that he thought she was thereafter unconscious when he placed her on the bed and covered her with a blanket and left for the tavern. He failed to summon the police and an ambulance.
- 6.6 When he heard that the police were looking for him he fled to Welkom in the Free State Province. These are not the actions of a remorseful lover. Hence, he was convicted of murder with *dolus directus* as the form of intent. In other words, there was direct intent to murder.
- 6.7 He says they had been drinking intoxicating liquor with the deceased earlier at the tavern and later with the neighbours next to

their home before the ruthless assault took place. He does not say what type of liquor they consumed, the quantity consumed or even how long they had been drinking. It is therefore not possible to make out whether the liquor had any inhibiting effect on his mind save to note that he says the consumed alcohol did not affect him to an extent of not knowing what he was doing. This has to do with the capacity to restrain himself.

6.8 The accused pleaded guilty and in his 19-paragraph statement expressed remorse once at para 19 where he says “*I am remorseful for my actions*”.

6.9 The accused did not submit any pre-sentence report.

[7] The mere fact that the accused raised the consumption of alcohol as a factor that required to be taken into account when considering the extent of his moral blameworthiness, leads me to start from this premise. I have already pointed out that the information relating to the type of alcohol consumed, the quantity and over what period was not divulged by the accused or his counsel and it is unclear whether it was withheld deliberately or not. The remarks by Holmes JA in *S v Ndhlovu* 1965 (4) SA 692 at 695C-E are pertinent when he said:

“Intoxication is one of humanity's age-old frailties, which may, depending on the circumstances, reduce the moral blameworthiness of a crime, and may even evoke a touch of compassion through the perceptive understanding that man, seeking solace or pleasure in liquor, may easily over-indulge and thereby do the things which sober he would not do. On the other hand intoxication may, again depending on the circumstances, aggravate the aspect of blameworthiness as, for example, when a man deliberately fortifies himself with liquor to enable him insensitively to

carry out a fell design. In the result, in seeking a basic principle in regard to intoxication and extenuation in murder cases, it is neither necessary nor desirable to say more than that the Court has a discretion, to be exercised judicially upon a consideration of the facts of each case, and in essence one is weighing the frailties of the individual with the evil of his deed.”

- [8] As much as I take note that the accused’s faculties may have been impaired to a certain extent, no evidence was presented of the extent of his intoxication. SS Terblanche in the Guide to Sentencing in South Africa, 2nd Edition, LexisNexis 7.3.9 at p200 wrote the following under the head “*Liquor and Drugs*”:

“The intake of alcohol and drugs is not necessarily a mitigating factor; the circumstances of the case will determine whether it is. Generally, however, once the court is satisfied that the offender was intoxicated, his intoxication will be a mitigating factor. The reason for this is that ‘[liquor] can arouse senses and inhibits sensibilities’, which may diminish the responsibility of the offender. However, it has to be shown that the intoxication actually impaired the mental faculties of the offender; only then can his blameworthiness be regarded as diminished.”

I am not persuaded that the accused’s mental faculties were diminished because of the consumption of alcohol.

- [9] The post-mortem report (exh “B”) and the photographs by Cst Eilers (Exh “F”) are helpful in the determination of the appropriate sentence. In his chief autopsy findings, Dr Surtie even ran out of the letters of the alphabet to describe the three-paged injuries starting from a-z; aa -zz, aaa – zzz; aaaa – zzzz; and aaaaa – ccccc. The doctor even took pains to reflect the injuries on the diagrams attached to the report. The first three

pages of the diagrams focus on the injuries to the deceased's head while the last two pages displaying the full body diagrams also do not sketch a comforting scene as the entire body was covered with multiple bruises, abrasions, lacerations and incisions. The doctor even mentions in his report that there were photographs taken.

- [10] The said photographs tell a story. The deceased's blood was splattered all over the walls of the room where the senseless killing took place as depicted on photos 9 – 11 of exh "F". Photos 20 – 29 show injuries on the deceased's body after the blanket was removed and she was lying on the bottom bed of what seems to be a single bed double-bunker. On photos 21 and 22 one can observe a pool of blood from the pillow on which her head is placed and the sheet where her body is lying facing upwards. Photo 23 is a close-up photo showing the multiple injuries on her face. The photographs of the deceased are too ghastly to see. Photos 52 – 55 show the possible murder weapons used with blood on them. Photo 53 is an iron rod with blood on it which is tied to what seems to be an opening of a window closed by a brown solid material with the said iron rod held by wires across the opening. Photo 54 shows what seems like a chain of a padlock; and photo 55 shows an iron bar rugged on the one side and an eating fork with a white handle depicted on photos 63 and 64; some of the injuries as explained by Dr Surtie were caused by a hollow sharp/semi sharp pointed tubular object e.g a broken aluminium broom. Photos 56 – 59 show the steel iron bar with blood on it. Photos 155 – 156 shows the extent of the injuries on the deceased's shaved skull or scalp which led to Dr Surtie concluding that the cause of death was consistent with head injuries.

[11] On the issue of remorse Ponnar JA made this enunciation in *S v Matyityi* 2011(1) SACR 40 (SCA) at 46 para 13:

“(13) There is, moreover, a chasm between regret and remorse. Many accused persons might well regret their conduct, but does not without more translate to genuine remorse. Remorse is a gnawing pain of conscience for the plight of another. Thus genuine contrition can only come from an appreciation and acknowledgement of the extent of one’s error. Whether the offender is sincerely remorseful, and not simply feeling sorry for himself or herself at having been caught, is a factual question. It is to the surrounding actions of the accused, rather than what he says in court, that one should rather look.”

In my view all that the accused did was to obfuscate. I am not convinced that his actions show remorse.

[12] Mr Maroke, counsel for the accused, urged this Court to find that because the accused pleaded guilty and did not, in his contention, waste the Court’s time, this should weigh in his favour as one of the factors when the Court considers the existence of substantial and compelling circumstances. I do not agree. In *S v Barnard* 2004 (1) SACR 191 at 197h, Marais JA, having concurred in the judgment by Mlambo AJA wrote additional paragraphs, *inter alia*, emphasising that the plea of guilty in the face of an open and shut case against the accused is a neutral fact.

[13] The accused elected not to testify and no evidence was led on his behalf in mitigation. Mr Maroke placed the following on record from the bar: the accused is 31 years of age and resides with his mother and two

siblings in Welkom in the Free State Province. His father passed away in 2017. His mother is unemployed and does not receive any pension or grant. He attended school until Grade 8 at Bofitlha Primary School and dropped out due to financial difficulties. He then had to earn an income to assist the family. He has one daughter aged 7 years who resides with her unemployed mother. He is therefore not his daughter's primary caregiver. Before he was incarcerated he performed casual work averaging an income of between R700.00 and R800.00 per week but at times the pittance was lower.

- [14] Adv. Maroke made these further submissions on behalf of the accused. That the accused has been found guilty of a serious and prevalent offence; the deceased has lost her life and her family is aggrieved. Although the age of the deceased's daughter is unknown to the accused the accused is aware that she has lost a mother and must be raised and cared for by relatives. This case has been on the roll since 2019 and "*due to unforeseen circumstances*" it could not be finalised. I cannot help but get the urge to comment on this last submission by the defence by emphasising that the accused has contributed significantly to the delay in having this matter finalised by evading trial. The court has had to even resort to keeping him in custody to secure his attendance ensuring that the matter gets finalised.

- [15] The following remarks by Ponnar JA in *Matyityi* at 48b pertaining to the age of the accused are relevant:

"At the age of 27 the respondent could hardly be described as a callow youth. At best for him, his chronological age was a neutral factor. Nothing in it served, without more, to reduce his moral blameworthiness."

[16] Mr Maroke contended that the offence with which the accused has been convicted of is serious and asked the Court to consider deterrent and rehabilitative forms of punishment. Counsel further urged the Court to deviate from the ordained prescribed sentence as the below-mentioned cumulatively constitute substantial and compelling circumstances:

16.1 This case has been on the roll since 2019;

16.2 The accused is HIV positive and sometimes struggles to receive his treatment and the prison environment is not conducive for HIV positive patients;

16.3 the accused's age (31 years);

16.4 he has a child and family to maintain;

16.5 imposing a custodial sentence of life imprisonment has the potential of turning the accused into a hardened criminal; and

16.6 he pleaded guilty and did not waste the court's time.

[17] Adv Pillay, appearing for the State, handed in two reports by consent, first, the Victim Impact Statement dated 20 July 2023 by Margrieta Titus, the deceased's sister, describing the impact her sister's death has had on her and the rest of the family, marked exh "H". The other is the Victim Impact Report dated 16 January 2023 compiled by Ms Salome Mentoor, a Social Worker employed by the Department of Social Development, Upington, exh "I".

[18] Briefly, exhibits "H" and "I" explain the following: that the deceased and her sister, Margrieta Titus, were predeceased by both parents from a very young age and understandably found comfort and solace in each other as siblings. The deceased has passed, leaving behind her now four-year old

daughter. The surviving sister avers that she and her children have not been coping well since the loss of her sister. She went to the extent of having nightmares, suffered from loss of appetite and had a mild depression as recorded by the social worker. She will have to, as a single parent, raise her 4-year old niece together with her own children. The condition in which she and her aunt saw the deceased when they were called to identify her body left them devastated. They ask for an appropriate sentence from the court.

[19] The following are illuminating remarks by Ponnau JA in *Matyityi* at para 17:

“[17] By accommodating the victim during the sentencing process the court will be better informed before sentencing about the after-effects of the crime. The court will thus have at its disposal information pertaining to both the accused and victim, and in that way hopefully a more balanced approach to sentencing can be achieved. Absent evidence from the victim, the court will only have half of the information necessary to properly exercise its sentencing discretion. It is thus important that information pertaining not just to the objective gravity of the offence, but also the impact of the crime on the victim, be placed before the court. That in turn will contribute to the achievement of the right sense of balance and in the ultimate analysis will enhance proportionality, rather than harshness.”

[20] The State proved two previous convictions, one of assault with intent to cause grievous bodily harm (assault GBH) for which he was convicted on 12 May 2017 and sentenced to 6 months imprisonment wholly suspended

with specified conditions. The second conviction on 21 November 2022 was failure by the accused to appear in court or to remain in attendance after an adjournment on 14 November 2022. He was sentenced to R200 or 2 months imprisonment suspended for 12 months on condition that the accused attend his trial on 16 and 17 January 2023 in Upington, until he is excused from such attendance. The assault GBH previous conviction shows that the accused has an element of violence against others. The failure to attend court dispels his foul cry that he has been awaiting trial over a prolonged period because he has had to be apprehended on about three occasions by the police and on each instance leaving with the undertaking to return to court.

[21] The accused and the deceased were in a love relationship and living together as a couple. What sticks out is that the deceased was killed by a person who had a duty to protect and care for her. This case adds to statistics on Gender Based Violence between two people in a purported love relationship. It is a case where the deceased's right to life was snatched from her without any justification. The photos and the post-mortem report depicted her as a victim whose right to dignity was not observed at all because she experienced a senseless killing by being viciously assaulted with multiple objects. Sadly, the deceased's 4-year old daughter will grow up not knowing her motherly love. The State counsel, Ms Pillay, asked the Court to find no substantial and compelling circumstances and to impose the sentence of life imprisonment.

[22] There is no gainsaying that murder is one of the most serious offences in South Africa. Hence Marais JA made this pronouncement in *S v Malgas* 2001 (1) SACR 469 (SCA) at 481 h –i:

- “B. Courts are required to approach the imposition of sentence conscious that the Legislature has ordained life imprisonment (or the particular prescribed period of imprisonment) as the sentence that should ordinarily and in the absence of weighty justification be imposed for the listed crimes in the specified circumstances.*
- D. The specified sentences are not to be departed from lightly and for flimsy reasons.”*

[23] The accused is not a primary caregiver. What was placed before this Court by his counsel as substantial and compelling circumstances are ordinary mitigating circumstances. Consequently, I find no basis to deviate from the prescribed ultimate sentence as doing so would be for flimsy reasons.

[24] A further aspect I need to deal with pertains to the accused’s health condition being his HIV positive status. It is contended on his behalf that prison environment is not conducive for him. The Department of Correctional Services is, in my view, equipped to provide the required medical attention, which includes treatment and care in the medical facility. I therefore find that the accused’s illness is not a bar to a custodial sentence.

[25] In the unreported judgment by Mathopo AJA, then, *S v Mudau 2010 JDR 0641 (SCA); (547/13) [2014] ZASCA 43 (31 March 2014) para 6* made the following remarks:

“Domestic violence has become a scourge in our society and should not be treated lightly, but deplored and also severely punished. Hardly a day

passes without a report in the media of a woman or child being beaten, raped or even killed in this country. Many women and children live in constant fear. This is in some respects a negation of many of their fundamental rights such as equality, human dignity and bodily integrity.”

[26] Regard being had to the accused’s personal circumstances, the seriousness of the offence and the interests of society. This is typically a case where the personal circumstances of the accused will recede to the background. As Nugent JA remarked in *S v Swart* 2004 (2) SACR 370 (SCA) para 12:

[I]n our law retribution and deterrence are proper purposes of punishment and they must be accorded due weight in any sentence that is imposed. Each of the elements of punishment is not required to be accorded equal weight, but instead proper weight must be accorded to each according to the circumstances. Serious crimes will usually require that retribution and deterrence should come to the fore and that the rehabilitation of the offender will consequently play a relatively smaller role.”

On a conspectus of all the evidence, the submissions and authorities considered, there is no reason to deviate from the prescribed minimum sentence as the only appropriate sentence in the circumstances.

[27] In the result, the following sentence is imposed:

In respect of Murder r/w s 51(1) of Act 105 of 1997, with the form of intent as *dolus directus*, the accused is sentenced to life imprisonment.

MAMOSEBO J

JUDGE OF THE HIGH COURT

NORTHERN CAPE DIVISION

For the State
Instructed by

Adv L Pillay
The Director Public Prosecutions

For the Accused:
Instructed by:

Adv OL Maroke
Justice Centre, Kimberley (*Judicare*)