

**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT**

Case no: 849/12

Not reportable

In the matter between:

Vincent Olebogang Magano

Appellant

and

The State

Respondent

Neutral citation: *Magano v S (849/12)*[10\3] ZASCA 192 (19 November 2013)

Coram: MAYA, TSHIQI, MAJIEDT, WALLIS and PILLAY JJA.

Heard: 12 November 2013

Delivered: 29 November 2013

Summary: Criminal law - sentenc

eORDER

On appeal from: North West High Court (Khumalo J sitting as court of first instance):

The appeal is upheld and the sentence of life imprisonment imposed on the appellant is set aside and replaced by a sentence of 20 years imprisonment, antedated to 26 May 1999.

JUDGMENT

WALLIS JA (MAYA, TSHIQI, MAJIEDT and PILLAY JJA concurring)

[1] On 1 February 1999 Mr Magano shot and killed Ms Refilwe Selau after she had terminated their relationship of three years standing, a relationship that he had expected would lead to marriage later that year. The shooting took place in his motor car whilst it was parked at Victoria Hospital in the district of Molopo. Immediately after the shooting he drove away towards a place called Signal Hill. Whilst en route he stopped the car and in a bid to commit suicide turned the gun on himself. After several unsuccessful attempts to shoot himself through the temple, he shot himself in the forehead. This caused him to pass out, but he survived with significant injuries.

[2] Mr Magano was charged with the murder of Ms Selau in the former Bophuthatswana Provincial Division of the High Court (now the North West High Court). The trial was heard by Khumalo J. Mr Magano pleaded guilty and was convicted. Khumalo J found that there were no substantial and compelling circumstances justifying a departure from the minimum sentence prescribed under s 51(1) of the Criminal Procedure Amendment Act 105 of

1997, and sentenced him to life imprisonment. It is unnecessary to trace the various steps taken by Mr Magano over the intervening years to challenge both his conviction and sentence. What is before us in this appeal is an appeal against sentence alone, leave having been granted by Sithole AJ.

[3] As already mentioned Khumalo J dealt with the case on the footing that the provisions of the minimum sentencing legislation applied. Although the record is incomplete and we do not have a copy of the indictment before us we were informed by counsel for the State that it did not refer to s 51(1) and that Mr Magano was at no stage warned that the legislation might be invoked against him when it came to sentence. In a series of judgments of this and other courts subsequent to his trial it has been held that such a warning, either by way of a reference to the section in the indictment or by some other means, such as an explanation by the presiding judicial officer, is required before the provisions of the minimum sentencing legislation may be invoked against an accused. There was accordingly an irregularity in the learned judge invoking those provisions in this case. For that reason alone the sentence he imposed must be set aside and replaced.

[4] The facts placed before the trial court were restricted to the contents of Mr Magano's plea explanation and some evidence from his brother. From that it emerged that the relationship between him and Ms Selau had been experiencing problems that came to a head on the day she was killed. Apparently she had told Mr Magano that the relationship was over and he tried to dissuade her from taking that step. According to him she turned her back on him and tried to run away. As she did so she tripped and fell and injured her hand. Mr Magano's brother amplified upon this and said that he heard screaming and that Ms Selau fled into the house in considerable distress.

She was bleeding from her hand and holding her left hand with her right hand. She alleged that Mr Magano had assaulted her that day and that she had broken off the relationship because he assaulted her on a regular basis. While she was saying this, the appellant was crying.

[5] After the intervention of the appellant's uncle, the two brothers and their mother took Ms Selau to Victoria Hospital for treatment for her injuries. Apparently her arm was broken and was placed in a cast. When they emerged from the hospital Mr Magano got into the car and opened the rear door to let Ms Selau in. Once she had got in he locked the car doors, produced a gun from the cubbyhole and proceeded to shoot and kill Ms Selau. While he did this, his mother and brother were trying to get into the car. He then drove off. What followed was the unsuccessful suicide attempt.

[6] The killing of Ms Selau was, as the trial judge found, a very serious crime involving, as all too many such cases do, the unlawful use of firearms. He rightly said that Mr Magano had taken the life of this young woman for the simple reason that she had jilted him. Whilst the termination of their relationship may have caused him some distress, compounded by the fact that he was upset at the time because he had been told by the school principal at his place of employment that he was to be redeployed elsewhere, it provides no excuse and little mitigation for his offence. I agree with the trial judge that it was a cowardly act to trap this young woman in his car and then shoot her five times.

[7] There are a few factors that count in Mr Magano's favour. He was relatively young, a first offender and in stable employment. He is obviously not without intelligence. Those are all factors that point in favour of possible

rehabilitation. In addition he professed remorse and his plea was accepted on the footing that this remorse was genuine. That too points towards a reasonable possibility of rehabilitation. Whilst his injuries were self-inflicted, they have left him with serious handicaps. These are all matters to be taken into account in assessing an appropriate sentence.

[8] A lengthy prison sentence was necessary and inevitable in this case. I do not think that it is necessary to impose life imprisonment although, if the minimum sentencing legislation had been applicable, it would have been difficult to fault the trial judge's decision in that regard. In my view a sentence of 20 years imprisonment is appropriate in this case. Accordingly the appeal is upheld and the sentence of life imprisonment is set aside and replaced by a sentence of 20 years imprisonment, antedated to 26 May 1999.

M J D WALLIS
JUDGE OF APPEAL

Appearances

For appellant:	P I SHAPIRO
	Instructed by:
	S Shapiro Attorneys, Johannesburg
For respondent:	Ms A Mogoeng
	Instructed by:

National Director of Public Prosecutions,
Bloemfontein.