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**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE DIVISION, GRAHAMSTOWN)**

**Not Reportable**

Case no: 06/2022

In the matter between:

**THE STATE**

And

**THANDOMZI NORMAN**

**Accused**

**SENTENCE**

**Govindjee J**

[1] Mr Norman returned from work at W[...] Farm, C[...], on 30 April 2021. He found his girlfriend, A[...] M[...] ('the deceased') in the company of a male farm resident. The man had fled, and the deceased was found naked under a blanket. At Mr Norman's insistence, he and the deceased proceeded to report what had happened to the man's wife. That evening, after Mr Norman consumed alcohol at a tavern, he argued with the deceased and his sister. Overwhelmed by anger, and despite his sister's attempts to intervene, he assaulted the deceased with his fist and a stick and kicked her with a booted foot. She managed to escape his attack by exiting through a window.

[2] Mr Norman awoke the following day and returned to the tavern to consume

alcohol. He refused to see the deceased when she arrived there to speak to him. They argued later that day at his home. Mr Norman enquired about the deceased's whereabouts after she had fled the previous evening. He then assaulted her again, using his fist, a stick and his booted foot. The deceased fell on the floor and Mr Norman went to sleep. He awoke around midnight and heard the deceased snoring. He asked her if an ambulance should be called, and she indicated that she was fine. Mr Norman found her lying dead in that position on the floor the following morning. He called his sister and community members to his house. They confirmed that the deceased had passed away. The farm owner, ambulance and police were called and Mr Norman was arrested.

[3] Mr Norman pleaded guilty to charges of assault with intent to do grievous bodily harm and murder. He made various admissions in terms of s 220 of the Criminal Procedure Act, 1977.<sup>1</sup> In particular, he admitted that due to the severity and duration of the assault he foresaw the possibility that his girlfriend would not survive. He reconciled himself with that possibility and persisted. He was convicted on both counts by this court on 28 February 2022, the State having conceded that the accepted facts were not reflective of a murder that was planned or premeditated.

[4] It is convenient to first deal with the sentence for the murder conviction. Section 51 of the Criminal Law Amendment Act, 1997<sup>2</sup> provides for discretionary minimum sentences for certain serious offences. A High Court shall, in terms of s 51(2)(a) sentence a first offender who has been convicted of an offence referred to in Part II of Schedule 2 to imprisonment for a period not less than 15 years. Any murder perpetrated by a first offender not falling within the scope of Part I of Schedule 2 triggers this minimum sentence unless a court is satisfied that substantial and compelling circumstances exist to justify the imposition of a lesser sentence.<sup>3</sup>

[5] Courts are enjoined to moderate the punishments they impose with a measure of mercy and attempt to achieve a balanced outcome, serving the public interest by

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<sup>1</sup> Act 51 of 1977 ('the Act').

<sup>2</sup> Act 105 of 1997 ('the Minimum Sentences Act').

<sup>3</sup> S 51(3)(a) of the Minimum Sentences Act. S 276 of the Act provides for the sentences which courts can impose. The general purpose of imposing a sentence is fourfold: retributive and preventative, rehabilitative (reformatory) and to act as a general deterrent: *S v Rabie* 1975 (4) SA 855 (A) at 862G- H. Courts are obliged to impose minimum sentences unless there are truly convincing reasons for departing from them: *S v Matyityi* 2011 (1) SACR 40 (SCA) para 23.

approaching their task in an even-handed manner.<sup>4</sup> The triad of factors to be considered consists of the crime, the offender and the interests of society and these factors must be applied to consider whether substantial and compelling circumstances exist to deviate from the prescribed minimum sentence.<sup>5</sup> If such circumstances do not exist, the court is also enjoined to consider an appropriate sentence, bearing in mind that the Minimum Sentences Act provides only for a minimum sentence in these circumstances, and a court must exercise a reasoned discretion in determining an appropriate sentence.

[6] The contents of the post-mortem examination report were accepted by Mr Norman. That report confirms that the deceased suffered bilateral periorbital, haematoma, blood in the nostrils, extensive scalp haematoma and massive subdural haemorrhage. She passed away because of the head injuries she suffered at Mr Norman's hands and sustained multiple bruises on the arms, thighs, and legs.

[7] The deceased's mother testified in aggravation of sentence. She confirmed that the deceased was 17 years of age when she passed away. She worked on the farm and had been staying there with Mr Norman for some time. He had advised her to stop going to school. The deceased had occasionally supported her mother with grocery money. She had also reported abuse caused by Mr Norman on a previous occasion, and the deceased had been fetched and brought to the farm where the deceased's mother worked during 2021. She had returned to live with Mr Norman after a month. He had not offered any apology after her murder and failed to contribute to her burial. The deceased's mother had experienced great sorrow because of her child's death. She accepted Mr Norman's apology when his counsel explained the details of this, and his situation, to her

[8] Mr Norman was 21 years of age at the time of the incident. He had been educated up to the level of grade eight and had left school due to his family's financial constraints and to look for a job. He had four siblings. His father was an amputee, unable to work and dependent on a social grant, and his mother was unemployed. Mr Norman earned R4100 per month as a general farm worker. Counsel for Mr Norman highlighted that he was a youthful first offender who had offered some assistance to the deceased when he woke up on the night of her death. He had also not attempted to hide the truth of the matter and had contacted his sister and community members. He

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<sup>4</sup> See *S v Khulu* 1975 (2) SA 518 (N) at 521-522.

<sup>5</sup> *Malgas v S* 2001 (1) SACR 469 (SCA); *Radebe v The State* [2019] ZAGPPHC 406 para 12.

was remorseful and had pleaded guilty to the charges, taking the court into his confidence. While the offence was serious and involved gender-based domestic violence, the circumstances reflected an element of provocation, fuelled by alcohol. It may be accepted that there had been no direct intention and that the conviction was based on *dolus eventualis*.

[9] Society demands that stern sentences be meted out in cases where a person's life is extinguished through the conduct of another. As counsel for the state argued, gender-based domestic violence is a serious matter that plagues society. Sadly, many women, including children, live in constant fear of precisely this type of occurrence, and the supposed provocation, possibly driven by alcohol, is of minimal benefit to the accused.<sup>6</sup> Mr Norman's conduct violated various rights of the deceased, including her rights as a person under the age of 18 years, her rights to bodily integrity and freedom and security of the person. She was murdered in the place she resided by the accused, a person she would have trusted and who should have offered her protection instead of harm.<sup>7</sup>

[10] Given the circumstances, a sentence of direct imprisonment is unquestionably warranted.<sup>8</sup> I have considered that the prescribed minimum sentence regime is a point of departure, and that courts should not hesitate to depart from this where it is appropriate to do so. This requires proper weighing of all the traditional sentencing considerations to determine whether the minimum sentence is proportional to the crime.<sup>9</sup> In this case, Mr Norman is a youthful first offender who foresaw that his conduct might result in his girlfriend's death, and who persisted with that conduct despite protestations from his sister. He has indicated and demonstrated remorse for his conduct by pleading guilty, disclosing the facts that led to the deceased's passing and offering an apology to the victim's mother. I also accept that he offered some limited assistance to his victim on the night of the incident and have noted his socio- economic circumstances and limited level of education. Mr Norman's actual conduct, however, cannot be underplayed. Not only did he assault the deceased at his home on 30 April 2021, when it might be said that he acted in the heat of the moment, he repeated that conduct even after he had time to contemplate his actions, after his sister had tried to

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<sup>6</sup> See, for example, *Marota v The State* [2015] ZASCA 130 at para 19. Also see *S v Chapman* [1997] ZASCA 45; 1997 (3) SA 341 (SCA) at 345A-B.

<sup>7</sup> *S v Van Stade* [2017] ZANHC 21 para 14.

<sup>8</sup> See *Seedat v S* [2016] ZASCA 153 para 38 *et seq*, on the efficacy of restorative justice as an inappropriate sentencing option in cases involving serious offences.

<sup>9</sup> See, in general, *Malgas v S* 2001 (1) SACR 469 (SCA); 2001 (2) SA 1222 (SCA), *S v Vilakazi* 2009 (1) SACR 552 (SCA), *S v Matyityi* 2011 (1) SACR 40 (SCA) and *S v PB* 2011 (1) SACR 448 (SCA) para 21.

intervene and after the deceased had approached him of her own volition. He nevertheless proceeded to beat and kick her, a girl of 17, to death later that evening. By doing so, he violated various rights of the deceased and committed an appalling act of gender-based violence. While various ordinary mitigating circumstances do exist in this case, most notably the perpetrator's age and that he is a first offender, these are not, in my view, substantial and compelling and do not justify a deviation from the prescribed minimum sentence.

[11] It must be noted that s 51(2) of the Minimum Sentences Act, dealing with Part II of Schedule 2 offences, already builds in a graded set of punishments for convictions depending upon whether a perpetrator is a first offender, second offender or a third or subsequent offender. Mr Norman benefits from this gradation and the mitigating factors identified stand to his benefit. While there are no substantial and compelling circumstances to justify a reduction of the prescribed minimum sentence, that minimum appears to me to be proportionate to the offence, the offender's personal circumstances and the interests of society in this instance. Any increase is unwarranted given the circumstances.<sup>10</sup>

[12] In convicting Mr Norman on the count of assault with intent to cause grievous bodily harm, I was satisfied that he committed two offences approximately 24 hours apart and that this does not amount to a duplication of convictions.<sup>11</sup> As to the conviction for assault with intent to cause grievous bodily harm, and bearing in mind all the circumstances previously outlined, I am of the view that a sentence of two years' imprisonment is justified.<sup>12</sup> Considering the cumulative effect of both sentences, it is appropriate for these sentences to run concurrently.<sup>13</sup> A sentence of fifteen years' imprisonment, over and above the relatively short period already spent in custody, is effective and failure to order the sentences to run concurrently would result in an aggregate penalty that is too severe.<sup>14</sup> It is also appropriate that Mr Norman is considered to be unfit to possess a firearm, having been convicted of offences involving violence for which he will be sentenced to periods of imprisonment.<sup>15</sup>

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<sup>10</sup> See *S v Muller* 2012 (2) SACR 545 (SCA) para 9, with reference to *Rabie* op cit fn 3 at 866B-C, confirming that while judicial officers must not hesitate to be firm when necessary, they should approach their task with humane and compassionate understanding of human frailties and the pressures of society which contribute to criminality. Also see *S v Mulaudzi* 2014 JDR 0594 (SCA).

<sup>11</sup> *S v Whitehead and Others* 2008 (1) SACR 431 (SCA) para 35. Also see s 280 of the Act.

<sup>12</sup> For a comparable illustration, see *S v Mulaudzi* op cit fn 10 para 10.

<sup>13</sup> S 280(2) of the Act.

<sup>14</sup> *S v Muller* ibid para 9. *S v Dlamini* 2012 (2) SACR 1 (SCA) para 43.

<sup>15</sup> S 103(1)(g) of the Firearms Control Act No. 60 of 2000.

**Order**

[13] The following order will issue:

- a) On Count 1 – Assault with the intent to do grievous bodily harm –  
The accused is sentenced to 2 years' imprisonment.
- b) On Count 2 – Murder – The accused is sentenced to 15  
years' imprisonment.
- c) In terms of section 280(2) of the Criminal Procedure Act, 51 of 1977,  
the sentence on Count 1 is to run concurrently with the sentence on  
Count 2.

**A. GOVINDJEE  
JUDGE OF THE HIGH COURT**

**Heard: 28 February 2022**

**Delivered: 11 March 2022**

Appearances:

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