


**REPUBLIC OF SOUTH AFRICA**



**IN THE HIGH COURT OF SOUTH AFRICA  
MPUMALANGA DIVISION,  
MIDDELBURG  
(LOCAL SEAT)**

(1)	REPORTABLE: YES
(2)	OF INTEREST TO OTHER JUDGES: YES
(3)	REVISED.
<u>29/01/24</u> DATE	 SIGNATURE

CASE NO: **CC25/23**

**THE STATE**

And

**MONGEZI CEDRIC MKHWEBANE**

**ACCUSED**

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**JUDGMENT**

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**MSIBI AJ**

## INTRODUCTION

- [1] The accused, Mr Mongezi Cedric Mkhwebane is indicted before this court on a charge of murder read with the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997 as amended, in that on 8 September 2022 at Bethal in Mpumalanga province, the accused unlawfully and intentionally killed Nomakhosi Maria Skhosana by stabbing her with a knife. The alternative to the main count being that the accused contravened the provisions of section 1(1) the General Law Amendment Act 1 of 1988 (following upon a commission of murder).

## LITIGATION HISTORY

- [2] The accused was legally represented by Advocate M.C Mavasa from the legal Aid Board while Advocate R Molokoane appeared for the State. On 23 January 2023, after the charges were put to him, the accused pleaded not guilty to the main charge of murder. He pleaded guilty to the alternative count of contravening section 1(1) of Act 1 of 1988, as amended.
- [3] The accused's written plea statement in terms of section 112(2) of the Criminal Procedure Act 51 of 1977 ("the Act"), which was signed by the accused, was read into the record as follows:

*"I the undersigned, **MONGEZI CEDRIC MKHWEBANE**, do hereby state that:*

1

*I am an adult male accused in this matter and I have been informed that I am being indicted on one count of murder, read with the provisions of section 51 (1) of the Criminal Law Amendment Act 1 of 1988( following upon commission of murder)*

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*My legal representative of record advised me of my constitutional rights, more in particular my rights to remain silent, rights not to give self-incriminating evidence and rights to be presumed innocent unless otherwise proven so by a competent court of law.*

3

*Having so understood my rights as aforesaid, I elect to make this statement freely and voluntarily, in my sound and sober senses and without being unduly influenced thereto:*

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*I understand the charge preferred against me by the State and I plead to the charge as follows:*

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**Count1: Murder-** *I plead NOT GUILTY to murder, but I do plead GUILTY to an alternative count of contravention of the provisions of the General Law Amendment Act 1 of 1988(following upon commission of murder referred to in the main count) The basis of my defence on the main count is that I deny that I had the necessary intention to kill the deceased but I did so without realising what I was doing as I lacked the capacity to appreciate the wrongfulness of my conduct.*

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*In amplification of my plea of NOT guilty to the main count and GUILTY to an alternative count, I wish to state the facts upon which my pleas are based are based and make the formal admissions in terms of section 220 of Act 51 of 1977, as amended:*

1. *I admit that the deceased was my grandmother, Nomkhosi Maria Skhosana(a female person) and she was at all material times staying at eMzinoni, Mpumalanga.*
2. *I was with the deceased on the date of the incident and I admit that I killed her.*
3. *For a proper context for the benefit of the Honourable Court to have an overview of the circumstances leading to the killing of the deceased, it is important that I briefly tell the Honourable Court what happened, as it has contributed and played a significant role in my conduct on the day in question.*
4. *Briefly, the circumstances leading to the death of the deceased are as follows:*
  - a. *On the date of the incident and the prior night, I had consumed a lot of alcohol and used a drug known as Ntash, commonly known as KAT. The substance is fully described by Prof E Weiss on page 5 of Exhibit "H"*
  - b. *The deceased was staying alone at her house where the incident took place.*
  - c. *I was very much close to the deceased and we had a parent-child relationship and she would send from time to time request me to assist her with her errands which would include, amongst others, buying her groceries, electricity, paying her accounts and taking her to pension pay points.*
  - d. *During the day of the incident the deceased called me on my cell phone and she requested me to fetch her at her sister's place where she had paid a visit. She had wanted me to take her home.*
  - e. *I drove to where she was and I fetched her. I drove her to her house and she alighted and got to her house. I then drove off.*
  - f. *Some 10- 15 minutes after I had left her and whilst still driving, the deceased called me and she told me that she had forgotten her luggage in the car and*

*she requested me to bring it to her. I then drove back to her place.*

- g. I have to state that from that point I do not know what happened, but I found myself fully naked at my place the following day and my car was not there. My aunt came to my place and she asked me what I had done but I did not have any recollection of what I had done or what she was talking about. She then explained and told me that I had killed my grandmother (the deceased) by stabbing her multiple times on her body with a knife and that I had poured her blood in a bowl and drank it in front of people whilst fully naked.*
- h. I did not believe what she was telling me until my legal representative read out some of the statements of the eye witnesses who witnessed the whole incident and showed me some pictures. For the benefit of the Honourable Court, the said statements are attached hereunder as exhibits under section 220 admissions.*
- i. I admit that at the time of the commission of the offence I had consumed a lot of alcohol and drug substances and I knew that same has an effect of diminishing or impairing one's faculties and the offence was committed whilst my faculties were so impaired.*
- j. As stated above, I had neither premeditated nor pre-planned to kill the deceased.*
- k. I admit that my actions in respect of the alternative count were intentional, wrongful, unlawful and punishable by law and I do not have a valid defence in law for my actions".*

## **FORMAL ADMISSIONS**

- [4] The following were recorded as formal admissions in terms of section 220 of the Act in which the accused admitted the following:

- 4.1 That the deceased is the person mentioned in count 1 of the indictment namely Nomkhosi Maria Skhosana;
- 4.2 That the deceased in count 1 of the indictment died on 6 September 2022 at Emzinoni;
- 4.3 That Sphiwe Lucky Maseko transported the body of the deceased from the scene to Bethal Forensic Pathology Facility for custody according to his statement I Exhibit B;
- 4.4 That on the 8<sup>th</sup> of September 2022, Mr Simphiwe Lucky Maseko pointed out the body of the deceased to Dr Simbarashe Kumurai Chikava at Bethal Forensic Pathology Facility without any further injuries whilst under his care;
- 4.5 That Dr Simbarashe Kumurai Chikava conducted a post-mortem examination on the body of the deceased on 8 September 2022 and recorded his findings in his report which is marked, by agreement as **Exhibit C**;
- 4.6 That the facts and findings recorded in the post mortem report Exhibit C are correct;
- 4.7 That the cause of death of the deceased is correctly recorded in Exhibit C as “stab chest”;
- 4.8 That the correctness and authenticity of the following statements is not in dispute and the following statements are handed in by agreement as exhibits. I find it necessary to mention the contents of the following statements due to the fact that they give a detailed account of what happened before, during and after the commission of the offence by the

accused.

- 4.9 **Exhibit D** being a photo album accompanied by an affidavit and key thereto compiled by Sergeant Mdiniso; depicting photograph number 1 - 48 taken at the crime scene.
- 4.10 **Exhibit E** being a sworn statement of Siyanda Sipho Ngemntu (an eyewitness.) who states that on 6 September 2022 he heard the deceased his neighbour screaming saying "Mongezi killed me!". Upon his arrival at her home he found the accused sat on top of the deceased stabbing her with a knife, refusing to let her go. He stopped stabbing her after Mr Mkhonza had fired warning shots. The accused took a bowl filled it with the deceased's blood and drank it while in the process of pulling her body back into her house. The witness further added that the accused was very respectful to every person especially his grandmother.
- 4.11 **Exhibit F** being a sworn statement of Mkhawuleni Joshua Mkhonza (an eyewitness) in which he states that on 6 September 2022 at about 17:20 he saw the accused assaulting the deceased with fists and stabbing her with a knife. She screamed saying "Mongezi you are killing me, please help me!" He got hold of his firearm, fired warning shots while threatening the accused and telling him to stop what he was doing. Together with the other neighbour they shouted at him and were surprised to see that the accused was not moved by the gunshots, as if he could not hear them. The accused used a plastic container to collect blood from the deceased's wounds and drank it right in front of them. When he realised that the deceased had already passed on he went to report the incident to the police.
- 4.12 **Exhibit G** being a sworn statement of Nompumelelo Patricia Skhosana, who states that she responded to a report that the deceased who was

her aunt had been stabbed by the accused. On arrival at the scene she saw the accused coming out of the deceased's house walking being stark naked walking towards his car. She walked into the house she found the deceased also naked, injured and lying in a pool of blood.

- 4.13 **Exhibit H** Psychiatric report in respect of the accused compiled by a panel of psychiatrists in terms of sections 77, 78, and 79 of Act 51 of 1977. At page 4 of his report the panel states as follows:

Information from 5 interviews with the accused

*“He says the days before the incident he was at home since he had a long weekend.*

*-On the day following the incident he was supposed to go back to work.*

*-He was drinking alcohol heavily –and using Ntash-a powderdrug (KAT) and he was ‘hyper” (see detailed alcohol and drug use prior to the alleged offence)*

*-Ntash is wat he was using, which appears to be the street name for KAT. KAT is a stimulant (an Amphetamine with similar effects to cocaine and Tik, the powdered form is methcathinone which is a more potent than the leafy forms as used in many African countries. You sniff the powder.*

He had been hiding the drug use – which started in 2021

*-Before this he was only drinking – and when his friends were doing it he started.*

Preceding the alleged offence

*-It was a long weekend for him.*

*-Friday, he was drinking alcohol with friends—Savannahs and Gin, he got drunk – went to bed at 2 am.*



*Saturday was at home **drinking the whole day –got drunk.***

*- **Sunday started smoking Kat, \$ bags (R200 Rand until midnight) and drinking and going to town and back – with a friend.***

*- **Got a little drunk and slept, and finished the rest of the alcohol***

*-**The last Kat he took just before the fetched the grandmother.***

*- As he got into the gate, **he had a sort of a “blackout”***

*[confusion, disorientation, aggression, increased energy are associated with KAT it can last for 4—6 hours]*

## **Summary**

-there is a direct relationship between KAT and the alleged offence indicating acute intoxication-with acute onset and a wearing off period, during which he ran away.

-He is able to give an account of the period following the alleged offence with no indication that he manifested psychotic behaviour during that period.

## **He is fit to stand trial**

*--He did not have the capacity to appreciate the wrongfulness of his actions at the time of the alleged offence, but his ability was to act accordingly was impaired by the intoxication and **not by mental illness or defect.**”*

**Dr M P Pitjeng independently assessed the accused on 15 .2. 2023 and 17.4.2023 at Emerlo Hospital.**

**Dr E Weiss independently assessed the accused on**

**15.3.2023, 15.3.2023 and 17. 4.2023 at Emerlo Hospital**

- [5] I thereafter put certain questions to the accused in order to satisfy myself whether he understood, confirmed and appreciated the nature and import of the plea statement, including the facts contained therein, which he confirmed.
- [6] With regard to his formal admissions, I inquired what he meant at paragraph 4(i) when he stated that that the drug had an effect of diminishing or impairing one's faculties. In his reply he stated that he actually meant the black out that he experienced on the date in question. He further stated that he had blacked out previously while driving his motor vehicle and found himself seated in the vehicle which was now parked outside the road. He had no recollection of what happened in between. He also witnessed his own friends experience black outs.
- [7] The State accepted the accused's plea and confirmed that it was indeed in accordance with the state's case and on that basis the State accepted the plea on the alternative count.
- [8] From the contents of the accused's written plea statement and his formal admissions, I am satisfied that the accused intended to plead guilty to the alternative count. His plea statement is admitted as **Exhibit A**
- [9] After assessing the evidence contained in **Exhibit E, F.G and H** which are accounts of the three eye witnesses and the unanimous psychiatric report; I am satisfied that the accused's lack of criminal capacity has been established beyond reasonable doubt as laid down in **S v September**<sup>1</sup>.
- [10] The accused is therefore acquitted on the main count and found guilty as

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<sup>1</sup> 1996 (1) SACR (A)

charged on the alternative count of contravening section 1(1) of Act 1 of 1988 (following upon the commission of murder referred to in the main count)

## SENTENCE

- [11] In assessing an appropriate sentence which is just and fair, the court considered the triad of factors that have been set out in **S v Banda and Others**<sup>2</sup>:

*“The elements of the triad contain an equilibrium and a tension. A court should, when determining sentence, strive to accomplish and arrive at a judicious counterbalance between these elements in order to ensure that one element is not unduly accentuated at the expense of and to the exclusion of the other. This is not merely a formula, nor a judicial incantation, the mere stating whereof satisfies the requirements. What is necessary is that the Court shall consider, and try to balance evenly, the nature and circumstances of the offence, the characteristics of the offender and his circumstances and the impact of the crime on the community, its welfare and concern”*

- [12] This court is also duty bound to take into consideration the objectives of punishment, namely deterrence, prevention, reformation and retribution.

- [13] The general rule as held by the Appellate Division in **State v Rabie**<sup>3</sup> 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”*

- [14] In an attempt to bring before the court as much information as possible regarding the accused, the circumstances surrounding the commission of the offence and the impact of the offence on the family of the deceased; Advocate Mavasa addressed the court regarding the accused’s personal circumstances

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<sup>2</sup> 1991(2) SA 352(B) at 355 A-C

<sup>3</sup> 1975 (4) SA) 855 (AD) at 862G-H

and led the evidence of two witnesses.

## **PERSONAL CIRCUMSTANCES**

- [16] Counsel submitted the accused's personal circumstances as follows: that accused is 36 years old, he was 34 years old during the commission of the offence. He is not married. He has a 6 years old son who lives with his mother who is not employed. At the time of his arrest the accused was working as a truck assistant, earning R9000.00 per month. His highest standard of education is grade 12. He has a previous conviction of possession of ammunition for which he was convicted and sentenced in 2010.
- [17] It was submitted that the accused is remorseful for his deeds, which is demonstrated by his plea of guilty on the first available opportunity. His remorse is aggravated by the fact that he was very close to his grandmother, the deceased. Counsel referred this court to the matter in **S v Matyityi**<sup>4</sup> wherein the question of remorse was discussed in detail, adding that the extent of the accused's remorse indicates good prospects of rehabilitation.
- [18] He is not of good health, as mentioned at page 4 of the psychiatric report, he is on chronic medication. The use of alcohol and drugs played a significant role in the commission of the offence. It was further submitted on his behalf that the accused has not touched alcohol or drugs since his incarceration, more than a year ago.
- [19] Counsel conceded to the fact that the accused has been convicted on a serious offence. The killing of the deceased directly impacted the accused and his immediate family more than the community at large. The deceased's own children have forgiven the accused, they appreciate the unusual circumstances

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<sup>4</sup> 2011 (1) 40 (SCA)

under which the deceased was killed.

- [20] It was further submitted that the offence accused who was committed without planning or pre-meditation. The accused was never convicted of a violent crime before. He is suffering emotionally and psychologically with the rest of his family and most unlikely to repeat the act again referring to **S v Shapiro**<sup>5</sup>
- [21] The accused's aunt, Queeneth Zodwa Mavimbela testified on behalf of the accused, stating that the deceased was her mother, while the accused's mother was her sister. The deceased lived alone at her home. They used to care for her and carried out errands on her behalf. The accused was mostly available to assist her since he they had a parent and child relationship and he was still single. The accused has always been a respectful and reliable child to his parents, the deceased and the entire family. Even on this fateful day, he was running errands for the deceased.
- [22] The accused was loved by the community and had many friends, as if she knew it, the deceased was not happy with him having many friends. His father has developed sugar diabetes since he has been adversely affected by the incident and incarceration of his son. His mother cannot sleep at night and was too weak to testify in this proceedings. The accused's mother is currently taking care of his son's financial needs.
- [23] Nonhlanhla Gwendolene Skhosana is a child of the deceased's sister. She is one of the eye witnesses that rushed to the scene after the first report. They are a close knit, supportive family. They had a meeting where they decided to forgive the accused, mindful of the fact he was not himself when he committed this offence. The family is mourning the loss of the deceased; at the same time they suffer the continuously due the accused's incarceration. His mother is

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<sup>5</sup> 1994 (1) SACR 112(A).

heartbroken and cannot cope with the thought of losing him too. The family has asked her to plead for a noncustodial sentence. They will take upon themselves to commit the accused to a drug rehabilitation facility, and surround him with family love and support.

- [24] The issue of remorse came before the Supreme Court of Appeal in **S v Matyityi**<sup>6</sup> *supra* where Ponnar JA differentiated between regret and remorse when he said:

*“There is moreover, a chasm between regret and remorse. Many accused persons might regret their conduct, but that 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 acknowledgment of the extent of one’s error”*

I am convinced that the accused is genuinely remorseful for his conduct.

- [25] Counsel applied for a non-custodial sentence, referring the court to several cases decided by the Supreme Court of appeal in similar cases<sup>7</sup>.

## THE OFFENCE

- [26] Any crime that results in the loss of human life is regarded as the most grievous of all offences. In **S v Makwanyane**<sup>8</sup>, O'Regan J stated as follows:

*“the right to life was included in the Constitution, not simply to enshrine the right to existence. It is not as mere organic matter that the constitution cherishes, but the right to human life, to live as a human being, to be part of a broader*

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<sup>6</sup> Note 4 *supra*

<sup>7</sup> See *S v Blank* 1995 (1) SACR 62(A), *S v Sparks* 1972 (SA) 396 (SCA), *S v R* 1993 (1) SACR 209 (A), *S v Ingrams* 1995(1) (A)

<sup>8</sup> [1995] ZACC 3; 1995 (3) 391(CC)

*community, to share in the experience of humanity. This concept of human life is at the centre of our constitutional values”*

- [27] The accused brutally killed an unsuspecting old woman who not only depended on him but also trusted him with her life. According to the unanimous Psychiatric report he voluntarily consumed intoxicating substances from Friday to Monday, before committing the offence.
- [28] In **S v Chretien**<sup>9</sup> the court held that such offenders cannot be punished. The legislature saw the injustice that would flood our criminal justice system if this shortcoming was not addressed.
- [29] As Counsel for the State argued, section 1 (1) of Act 1 of 1988 was then promulgated in order to prevent persons who commit such serious offences when heavily under the influence of alcohol or intoxicating substances from escaping criminal liability.
- [30] The state submitted that although the faculties of the accused were impaired at the time of the commission of the offence and he pleaded guilty to the alternative charge, that does not exonerate him from a harsh sentence.
- [31] However in a similar matter of **S v Kat**<sup>10</sup> the court stressed that the serious consequences of the accused's actions have to be taken into account. The state called for a similar approach in this matter against Mr Mkhwebane, adding that the court should zoom into the interests of society which should prevail above the interests of an individual.

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<sup>9</sup> 1981 (1) SA 1097 (A)

<sup>10</sup> 2010 (2) SACR 444(ECG) at paragraph (9-10)

## INTERESTS OF THE COMMUNITY

- [32] The State further argued that the act of killing another human being while the perpetrator is in his sober senses is sanctioned with the harsh sentence. Society would also expect perpetrator who voluntarily consumes intoxicating substances and commits a similar offence to receive the same punishment.
- [33] As stated in *Banda and Others supra*, the court is expected to balance evenly the nature of the offence, the characteristics of the offender and the impact of the crime on the community, its welfare and concern. The court is also mindful that in enacting Section 1 of Act 1 of 1988 the legislature did so addressing the same interest and welfare of society.
- [34] In **State v Matyityi** *supra* the Court further held that restorative justice seeks to emphasise that a crime is more than the breaking of the law or offending against the State. It's an injury or wrong done to another person. The Service Charter for Victims of Crime in South Africa seeks to accommodate victims more effectively in the criminal justice system. As in any true participatory democracy its underlying philosophy is to give meaningful content to the rights of all citizens, particularly victims of sexual abuse, by reaffirming one of our founding democratic values, namely human dignity.
- [35] It was the state's submission that the child who is in his mother's care will continue receiving the care that he is receiving, which includes the State child grant. The witnesses who testified in mitigation of his sentence failed to identify and restrain the accused from driving a motor vehicle exposing him to the vulnerable old victim. This shows that they had no control over the accused. Counsel further submitted that mitigating factors of the accused are far outweighed by the aggravating factors in that, the use of intoxicating substances has become a nuisance country wide. This has caused gruesome violence against law abiding citizens. As a result the state applied for a



custodial sentence.

[36] In **S v Lourens**<sup>11</sup> stated as follows:

*“[15] imposing a sentence is an action that requires the court to work purposefully at finding the most appropriate sentence in a manner which accords with an accused’s fair trial right entrenched in s 35 of the Constitution. Our courts have emphasised repeatedly that a sentence imposed must always be individualised, considered and passed dispassionately, objectively and upon a careful consideration of all relevant factors on the basis that retribution and revenge alone do not drive sentencing.”*

[37] Section 1(1) of Act 1 of 1988 reads as follows:

*“1(1) Any person who consumes or uses any substance which impairs his faculties to appreciate the wrongfulness of his act or to act in accordance with that appreciation, while knowing that such substance has that effect and who, while such faculties are thus impaired, commits any act prohibited by law under any penalty, but is not criminally liable because his faculties were impaired as aforesaid, shall be guilty of an offence and shall be liable on conviction to the penalty, except the death penalty, which may be imposed in respect of the commission of that act.*

*1(2) If in any prosecution for any offence it is found that the accused is not criminally liable for the offence charged on account of the fact that his faculties referred to in subsection (1) were impaired by the consumption or use of any substance, such accused may be found guilty of contravention of section (1), if the evidence proves the commission of such contravention.*

[38] The very fact that parliament intervened after the Chretien case indicates that the legislature sought to address the legal convictions of society. In his article

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<sup>11</sup> 2016(2) SACR (WC)

on the General Principles of Criminal Liability and Specific Offences<sup>12</sup> states as follows:

*“It is not entirely uncommon for parliament to intervene in a decision by a court, by promulgating a provision which reinstates in broad outline the law as it was before the court changed it.”*

- [39] The following are a number of cases decided by various courts after the legislature had addressed the injustice or vacuum in our law and promulgating Section 1 of Act 1 of 1988.
- [40] In **S v Ingram**<sup>13</sup> the appellant had been convicted in terms of section 1 of the above Act after it was found that he lacked capacity, by reason of the combined effects of cocaine and alcohol, to be found guilty of murder and malicious damage to property as charged. He had killed the deceased by stabbing him once with a knife on his chest. Cloete J held that while the section had been introduced to satisfy public indignation, that sentiment did not require the imposition of the same sentence that would have been imposed for the offence charged. The appellant’s moral reprehensibility lay solely in knowingly taking substances that resulted in him killing another whilst not in control of his faculties. The court concluded that the accused needed rehabilitation and deterrence, The magistrate’s sentence of 5 years direct imprisonment was replaced with the provision that the same term of imprisonment was to run in terms of section 276(1) (i) of the Criminal Procedure Act, so as to allow conversion to correctional supervision.
- [41] In **State v Pietersen**<sup>14</sup>, the accused who was serving a 19 years jail term, strangled his fellow inmate while under the influence of alcohol. He was charged with murder. He pleaded guilty to contravening section 1(1) of Act 1

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<sup>12</sup> C. R Snyman at page

<sup>13</sup> 1999 (2) SACR127 (W)

<sup>14</sup> 1994 (2) SACR 434(C)

of 1988. The court having found that he lacked criminal responsibility or intention when he committed the offence sentenced him to seven years imprisonment, of which two years were suspended for three years conditionally.

- [42] In **S v Ingram**<sup>15</sup> the appellant who had shot and killed his wife was sentenced to eight years imprisonment half of which was conditionally suspended. On appeal the sentence was set aside. The matter was remitted back to the trial court to consider correctional supervision.
- [43] It was argued on behalf of the accused that the court a suspended or partially suspended sentence would be appropriate in the light of the totality of the evidence. Especially when one considers that the culmination of events and the fact that they are unlikely to occur again.
- [44] Counsel also submitted that Correctional Supervision in terms of section 276 (1) (h) or 276(1) (i) would also an appropriate sentence in the circumstances.
- [45] As it was pointed out in **S v R**<sup>16</sup> the legislature by introducing this option has sought to distinguish between two types of offenders; those who ought to be removed from society and imprisoned and those who, though deserving of punishment should not be removed from society.
- [46] The question that comes to the mind of the court is whether the accused is a danger to society? Whether he is a suitable candidate for rehabilitation? The evidence tendered does not suggest that the accused is a danger to society or has a propensity to committing violent crimes. On contrary there is evidence to the effect that he is loved in his community. As case law demonstrates our courts have been imposing correctional supervision in similar cases instead of

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<sup>15</sup> 1995(1) SACR 1 (A)

<sup>16</sup> 1993(1) SACR 209 A

long term imprisonment. The main objective of correctional supervision being rehabilitation of the offender. The accused's plea statement and the evidence on record point to the fact that accused is a candidate for rehabilitation. There was no call for retribution from the deceased's family whom the state intended to call in aggravation of sentence, to the contrary they cried for mercy

[47] Though deserving of punishment, the circumstances do not warrant the removal of the accused from society for a long time. In an act of striking a balance between the need to deter the accused and other potential offenders as far as voluntary intoxication is concerned the court will impose a sentence which clothes Commissioner of Correctional Services with the responsibility of enrolling the accused into correctional supervision. There was no call for retribution from the deceased's family whom the state intended to call in aggravation of sentence to the contrary they cried for mercy.

[48] After taking all relevant considerations into account, the accused is sentenced as follows:

1. 5 years imprisonment in terms of section 276(1) (i) of the Act 51 of 1977.
2. A further 8 years imprisonment is wholly suspended for 5 years on condition that the accused is not convicted on contravening section 1(1) of Act 1 of 1988 following a charge of murder or an offence involving violence to any person for which he would be sentenced to direct imprisonment without the option of a fine.
3. In terms of section 103 (2) of Act 60 of 2000 the accused is declared unfit to possess a firearm.



MSIBI SM-AJ

ACTING JUDGE OF THE HIGH COURT

Appearances

Date heard 22-25 January 2024

Judgment delivered: 29 January 2024

For the State: Adv. R. Molokoane

Instructed by: DPP Middelburg

For the accused: Adv. M.C.Mavasa

Instructed by: Legal-Aid Board of SA