

**IN THE HIGH COURT OF SOUTH AFRICA
(BOPHUTHATSWANA PROVINCIAL DIVISION)**

CC 35/05

In the matter between:

THE STATE

AND

MZWANDILE M RAMOCWANE

MMABATHO

MONAMA AJ

JUDGMENT

MONAMA AJ:

[1] The accused who is 37 years old is convicted of two counts, one of murder and another of assault with intent to do grievous bodily harm. The offences occurred on or during 23 May 2004 in a township of Tlhabologang in the district of Coligny.

[2] During the trial the accused was represented by Adv S Senatle and Adv Khumalo appeared for the State. The accused pleaded guilty to the charges and his counsel submitted a plea explanation in which the accused admitted all the elements of the crime. The Court also questioned the accused and I am satisfied that all the elements of the crimes have been satisfied to sustain a conviction. The accused was accordingly convicted on the two

counts.

[3] Notwithstanding the plea of guilty the accused must be severely punished. What constitute an appropriate sentence will always occasion some difficulty. However, the offences for which the accused has been convicted of are serious and fall within the ambit of the Criminal Law Amendment Act 105 of 1997 which prescribes certain sentences. It has been held, in s... of the decisions of the Courts that the said Act had not taken the judicial discretion away *S v Malgas* 2001 (1) SACR 469 (SCA); *S v Blaauw* 1999 (2) SACR 295 (W). The judicial discretion has to take the following consideration into account, namely:

- The crime;
- The criminal; and
- The interest of the society.

In addition to the factors every sentence must be blended with mercy *S v Rabie* 1975 (4) SA 855 (A) at 869 C-D. The mercy approach should not be equated with maudlin sympathy. The Court should not hesitate to impose a robust sentence for mercy's sake. The sentence must fit the crime after the evaluation of all the considerations. (See *S v Malan en n ander* 2004 (1) SACR 264 (T).

[4] The accused has demonstrated a sense of remorse. The State attempted to question the sincerity of the persistence

of the accused. The accused's remorse cannot be doubted. He demonstrated his remorse at the first available opportunity and is the factor for serious consideration S v Seeglers 1970 (2) SA 506 (A) at 511 G-H. The accused took this Court into his confidence.

[5] On the other hand the murder was brutal. The society is tired of the burgeoning crime rate. The Courts have to impose sentences which reflects, the repugnance the society feels towards these crimes which are prevalent. The rehabilitation factor is also important consideration. The accused is 37 years old and has a clean record.

[6] I have considered all the personal circumstances of the accused. I gave consideration to his counsel submission and am of the view that a sentence of 20 years imprisonment 5 years thereof is suspended for a period of five years in respect of count 1 and 5 years in respect of count 2 which sentence should run concurrently with the sentence in respect of count 1. The accused is accordingly so sentenced.

R E MONAMA
ACTING JUDGE OF THE HIGH COURT

COUNSEL FOR THE STATE	:	ADV
KHUMALO		
COUNSEL FOR THE DEFENCE	:	ADV
SENATLE		

DATE OF HEARING 2005	:	22 MARCH
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