REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA) 26/2/16

CASE NO: A544/2015

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: YES
(3) REVISED

26 FEBRUARY 2016 **FHD VAN OOSTEN**

In the matter between

KENNETH JABULANI MATHUNJWA **APPELLANT**

and

THE STATE **RESPONDENT**

J U D G M E N T

VAN OOSTEN J:

[1] The appellant was charged with and convicted by this court (Matojane J) of murder. He was sentenced to 25 years' imprisonment. The learned judge a quo granted leave to appeal against the sentence.

[2] The appellant pleaded guilty to the charge. Except for the appellant's statement in terms of s 112 (2) of the Criminal Procedure Act 51 of 1977 (the statement), which was confirmed by the appellant and placed before the court a quo, no evidence was

led either on the merits or sentence. The facts and circumstances that led to the murder, as set out by the appellant in the statement, constitutes the factual matrix of this matter (*S v Jansen* 1999 (2) WSACR 368 (C)) and are the following. The deceased was the appellant's girlfriend and they resided together in a house, in Wesselton, Ermelo. On the 2 November 2017, at approximately 06h30, the appellant prepared to go to work. The deceased requested money from him to go to Secunda. He had R200 with him and he offered to give it to her. The events that occurred thereafter are described in the statement as follows:

'Sy het met my baklei en my beskuldig dat ek geld met ander meisies gaan spandeer as sy weg is. Ek het kwaad geword en die oorledene aan haar keel gegryp en haar gewurg en na 'n rukkie haar agtertoe gestamp dat sy op die bed beland het. Ek het werk toe gegaan'.

After work, later that afternoon, the appellant returned home and discovered that the deceased had died. He left her like that and went to his parents' house in Dunonald. He kept the incident secret. Five days later he returned home only to find that the deceased's body was still on the bed and in a advanced state of decomposition. He then proceeded to bury the body in a hole of one metre deep he had dug under the bed. The deceased's family repeatedly enquired as to her whereabouts but he simply informed them that the deceased had gone to Secunda.

[3] The appellant was arrested on 20 December 2007 and on the same day made a confession before a magistrate which was referred to and confirmed by the appellant in his statement. The confession however, is significantly at variance with the version of the appellant proffered in the statement. In the confession he stated as follows:

'Ek het Sipiwe doodgemaak. Ek het baie van haar gehou. Die ding wat my baie kwaad gemaak het, is toe ek haar soek, kon ek haar nie kry nie. Dit was 2 November 2007, op 'n Vrydag oggend, ek het haar toe gekry, ons het nie 'n rusie gehad nie, ek het haar net gewurg. Sy sou die betrokke Vrydag na Secunda gaan om die kind se klere by haar suster te kry. Ek het gedink as sy soontoe gaan, sal sy nie terugkom nie, dit is hoekom ek haar wurg. Ek het haar toe begrawe. Dit is my storie.'

[4] On 21 December 2007 the appellant pointed out the house where the incident had occurred as well the grave in which he had buried the body of the deceased resulting in the discovery of the body of the deceased.

[5] The offence, it hardly bears mentioning, is most serious. The trial court duly took cognisance thereof as well as the appellant's personal circumstances. He was 29 years old at the time of the offence and 33 years old when sentence was passed. He was married and no dependants. He left school at standard 5 and thereafter was employed as a gardener. He had a clean record.

[6] On appeal counsel for the appellant was confined to rely on the personal circumstances of the appellant, which I have already referred to, for the submission that the sentence was 'shockingly heavy and inappropriate'. The appellant's personal circumstances were duly considered by the court a quo.

[7] It is trite that sentencing remains pre-eminently within the discretion of the sentencing court. In *Mokela v The State* 2012 (1) SACR 431 (SCA) para [9], Bosielo JA put it thus:

'This salutary principle implies that the appeal court does not enjoy carte blanche to interfere with sentences which have been properly imposed by a sentencing court. In my view, this includes the terms and conditions imposed by a sentencing court on how or when the sentence is to be served. The limited circumstances under which an appeal court can interfere with the sentence imposed by a sentencing court have been distilled and set out in many judgments of this Court. See *S v Pieters* 1987 (3) SA 717 (A) at 727F-H; *S v Malgas* 2001 (1) SACR 469 (SCA) para 12; *Director of Public Prosecutions v Mngoma* 2010 (1) SACR 427 (SCA) para 11; and *S v Le Roux & others* 2010 (2) SACR 11 (SCA) at 26b-d.'

[8] This is a serious case of murder. The appellant proffered conflicting versions as to the reasons for his conduct. I am unable to reconcile the versions. At best for the appellant the vague and feeble reason for strangling the deceased, referred to in his statement, if accepted, did not at all justify his actions. I am driven to conclude that the appellant has not revealed the true reason for the killing of the deceased and that there was, in any event, little or no provocation or emotional disturbance. This of course also brings to the fore reservations as to the genuineness of his remorse in pleading guilty. The manner in which the appellant killed the deceased was most gruesome: death by strangulation takes time to occur from which it can be inferred that the deceased must have suffered immense stress and agony. The appellant's indifference to the consequences of his conduct is demonstrated in him leaving the

body of the deceased unattended for 5 days and thereafter burying it in a shallow hole under his bed.

[9] I am unable to find any misdirections in the sentence imposed. By strangling and killing the deceased the appellant acted in a manner that is unacceptable in any civilised society that ought to be committed to the protection of the rights of all persons, including women. Intimate partner violence remains alarmingly prevalent as a serious social problem in our society and deterrent sentences are called for (see *Jimmy Sebone Seemela v The State* (20508/14) [2015] ZASCA 41 (26 March 2015); *Kekana v The State* (629/2013) [2014] ZASCA 158 (1 October 2014)). Against this background such mitigating factors as may exist in this case, pale into insignificance when viewed against the objective gravity of the offence (*S v Vilakazi* 2012 (6) SA 353 (SCA) para [58]). I am of the view that the sentence imposed is appropriate, fair and proportionate to the offence the appellant has been convicted of.

[10] In the result the appeal is dismissed.

FHD VAN OOSTEN
JUDGE OF THE HIGH COURT

I agree.

HJ DE VOS
JUDGE OF THE HIGH COURT

I agree.

DS MOLEFE
JUDGE OF THE HIGH COURT

COUNSEL FOR APPELLANT	***ADV K MOGALE***
COUNSEL FOR RESPONDENT	***ADV AJ FOURIE***
DATE OF HEARING	***26 FEBRUARY 2016***
DATE OF JUDGMENT	***26 FEBRUARY 2016***