

**IN THE HIGH COURT OF SOUTH AFRICA**  
**(WESTERN CAPE HIGH COURT, CAPE TOWN)**

**CASE NUMBER:**

A211/2012

**DATE:**

10 AUGUST 2012

5 In the matter between:

**SIPHAMANDLA MDINGI**

Appellant

and

**THE STATE**

Respondent

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**J U D G M E N T**

**BLIGNAUT, J**

In this matter the appellant was convicted on 30 October 2000  
15 on a count of murder in the Regional Court at Athlone. He was  
sentenced to 15 years imprisonment.

Appellant appeals against his sentence. Leave to appeal  
against his conviction was refused.

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The facts of the matter appear from the judgment of the  
magistrate. There were three witnesses for the state and the  
appellant testified on behalf of the defence.

25 The magistrate's summing up of the evidence appears at page  
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138 to 141 of the record. In short, a Ms Ntsizakalo knew the accused well. He often spent overnight at the shack of the deceased which was nearby. On the morning in question she heard her sister, that is the deceased, screaming twice. It was the scream of somebody in pain and she heard the person say: Siphomandla, Siphomandla you are killing me. She decided to go to the shack of the deceased and asked him to open the door. The door was not opened and about 30 minutes later she saw the accused leaving the shack of the deceased.

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McLeod Mdingi's testimony corroborated the version of Ntsizakalo on material points. The appellant was the boyfriend of the deceased. She confirmed that from the window of Ms Ntsizakalo one has a view of the shack of the deceased. She also testified that she had heard from MsNtsizakalo that the deceased was screaming and she later saw the accused leaving the shack of the deceased.

Ms Hili corroborated the versions of the two witnesses. She also saw the accused coming from the shack on the day that the alleged incident took place. She also confirmed that she, ~~that~~ the appellant and the deceased were in a love relationship. ~~that~~

25 The magistrate said that she could not find any contradictions

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in the evidence of these three state witnesses. The appellant put up an alibi as a defence and the real issue was the question of identification. Dealing with this issue the Court found that the state evidence was reliable and convincing.

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The facts as contained in the medical report showed that the deceased was killed by way of a belt tied around her neck which led to her strangulation. In the light of this evidence the Court then convicted the appellant.

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In regard to sentence counsel for appellant raised a number of standard defences. One aspect of importance is the age of the appellant. In the judgment on sentence it is said by the magistrate:

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"You are currently 21 years of age, <sup>✓</sup> when this  
offence was committed, <sup>✓</sup> you were probably 19."

The age of the accused was also referred to in the judgment on  
20 the conviction. Right at the outset the magistrate said that he was, according to the charge sheet, 19 years old.

The magistrate how<sup>e</sup>ever drew counsel's attention to the fact that <sup>✓</sup>  
in his list of previous convictions his birth date is given as 1  
25 January 1980. If that is correct he would have been 25 years

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old at the time of the commission of the offence.

The state did not, however, dispute the allegation of appellant that he was 19 years old at the time of the commission of the  
5 offence. The state was in fact in possession of information that could have been followed up to prove that he was older than 19.

We approach the question of sentence therefore on the basis  
10 that the accused was in fact 19 years old at the time of the commission of the offence.

The magistrate dealt with relevant factors in her judgment of sentence. She pointed out that the way the deceased was  
15 murdered was cruel. Her neck was squeezed with a belt. She was bleeding profusely. This was a domestic related offence. In her judgment the magistrate referred to a number of other relevant factors and remarked, *inter alia*, that the appellant had ~~not~~ ~~not~~  
not shown any remorse. She also referred to possible  
20 mitigating factors that had been highlighted in argument on behalf of the appellant.

It is common cause that the minimum sentence that could be imposed on the appellant was 15 years imprisonment unless  
25 there were substantial and compelling circumstances which

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would justify the Court to deviate from the prescribed minimum sentence.

One of the factors advanced on behalf of the appellant as a  
5 mitigating factor was his age, namely that he was relatively young. The magistrate then summed up the various relevant factors and as to substantial and compelling circumstances she said:

10 "The fact that you are a first offender and you are young are not sufficient."

I have given consideration to the Magistrate's judgment on sentence. In general it is a balanced judgment and she  
15 appears to have been fully aware of the nature and obligations of a judicial officer in imposing sentence.

There is however one material aspect where I must disagree from her. As I have said, she did not regard the age of 19  
20 years as a mitigating factor or, to put it differently as a substantial and compelling circumstance justifying the Court to impose a lesser sentence.

A person below the years of 18 is treated very specially when  
25 it comes to the imposition of sentence. In the case of a person  
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of 18 years he is also treated specially and a rule of practice, for example, is that a report from a probation officer must be obtained before he is sentenced. X

- 5 Appellant was only one year older. Obviously <sup>he</sup> was not an adult X yet. The deed of which he has been found guilty is also not on the face of it, that of an adult. It is compatible with a young person who was not able to control his temper. On the other hand, I must agree with the Magistrate that this is a serious crime and that it is indeed important to combat the wide spread prevalence of household or domestic violence. X
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Having regard however to the totality of the facts and especially in regard to the age of the appellant, I am inclined to the view that there are substantial and compelling circumstances justifying a lesser sentence.

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In the circumstances I am of the view that the sentence should be set aside and replaced by a sentence of 15 years imprisonment of which five years imprisonment are suspended for a period of five years on condition that the appellant is not found guilty of murder committed in that period.

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I would therefore SET ASIDE THE SENTENCE AND  
25 SUBSTITUTE IT WITH A SENTENCE OF 15 YEARS

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IMPRISONMENT of which five years imprisonment are  
suspended on the terms I set out above. The sentence will be  
ante-dated to the date on which he was <sup>sentenced</sup> in the regional court X  
~~sentenced~~ which is 30 October 2008. X

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~~I agree.~~

10 *I agree.*  
~~It is so ordered.~~

A.P. BLIGNAULT  
OLIVIER, AJ

S. OLIVIER AJ  
BLIGNAULT, J