

REPUBLIC OF SOUTH AFRICA
IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CIRCUIT LOCAL DIVISION)

REPORTABLE

Case No: CC 4112020

In the matter between

THE STATE

and

GRANT ROBERTSON

ACCUSED

SENTENCE JUDGMENT DATED 18 MAY 2022

KUSEVITSKY, J

Introduction

[1] This sentence involves one case of femicide and numerous instances of gender based violence perpetrated by the accused against not one, but three of his intimate partners. Femicide is classified as the murder or intentional killing of a female by her intimate partner. ¹ In the latter charge, the progression of physical violence ended up in the death of the accused's intimate partner, R[....] J[....].

¹ World Health Organization, 2012; Centre for the Study of Violence and Reconciliation (CSVR), 2015, Femicide Census, 2016)

[21] It is so easy to glibly use the phrases and terminology of femicide and gender based violence, in part because of the relentless frequency of its occurrence in our society, communities and homes, that it hardly causes anyone to bat an eyelid or to raise an eyebrow. In this matter the court will take into account the nature and prevalence of the crime and balance these considerations with the effect of the accused's actions, not only in relation to his family, but also to that of his victims and their families, and the court will ultimately consider the question as to what sentence would be appropriate and proportionate to him in light of the prescripts of S v Zinn 1969 (2) 537 (A) at 540G and this disease of gender based violence and femicide which permeates the psyche of our country.

[3] The accused in this matter is Grant Robertson who has been convicted on nine charges. Three relate to contraventions of section 17 (a) of the Domestic Violence Act, 116 of 1998, one is for Robbery with Aggravating circumstances, in terms of which a minimum sentence of 15 years is applicable, two charges relate to

Assault with the Intent to cause Grievous Bodily Harm and one charge for Assault

Common, and the final two charges relate to a charge of Rape and a charge for Murder. In respect of the latter two charges, the applicable sentences are subject to the provisions of section 51 of the Criminal Law Amendment Act No. 105 of 1997

("the Minimum Sentence Act") with the murder charge, attracting a minimum sentence of life imprisonment.

[4] The complainants and the deceased in this matter were all in a romantic relationship with the accused. A[....] F[....], the complainant in counts one to four and the accused was in a relationship for eight years and they have two sons together. The complainant in counts five and six is the wife of the accused, Desire Robertson. One child was born of the marriage. Counts seven, eight and nine relate to the deceased R[....] J[....], who was the intimate girlfriend of the accused at the time of her death.

[5] In passing sentence, it is well established that a court has to take into account various considerations in mitigation and aggravation of sentence. The considerations in particular enunciated in *S v Zinn* supra finds application in that this court has to take into account the personal circumstances of the accused, the gravity of the crime and the interests of the community. Whilst it is so that a court must always endeavour to exercise a measure of mercy, sight must not be lost on the purpose and objectives of punishment. In *S v Rabie* 1975 (4) SA 855 (AD) at 862G-H, the court held 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"

[6] This means that a court should consider the objectives of punishment which is that of prevention, deterrence, reformation and retribution and a court must decide what punishment would best serve the interests of justice. A court should also be cautious in weighing one element of such consideration, above that of another. Rather, a balance must be struck between the interests of the accused and that of society.

[7] It is trite that in sentencing proceedings, a more inquisitorial approach is taken during the sentencing phase, with formulation taking a back seat. The object of the exercise is to place before the court as much information as possible regarding the perpetrator, the circumstances of the commission of the offence and the victim/s circumstances, including the impact which the commission of the offence had on the victims, and in this instance, one can also include the impact of the offences on the victim's family.² It was in this in mind that the court requested a pre-sentence report which was compiled by Probation officer Ms C Titus and which set out inter alia, the personal circumstances of the accused. She was also called to testify with regard to certain aspects of her report. Victim Impact reports were also obtained in respect of Mrs Desire Roberson and the J[...] family, the family of the deceased, compiled by Ms Manual, who also testified in respect of those reports. Finally, a psycho-legal report was obtained from a clinical psychologist, Colonel K Clark ("Clark report")

² *S v Olivier* 2010 (2) SACR 178 (SCA)

in relation to the pre-sentencing of the accused and the prevalence of crimes relating to gender based violence and femicide. The father of the accused also testified in mitigation of sentence on behalf of the accused.

[8] As was stated in *S v Lourens* ³

"[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 embodied in s35 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. As was stated in *S v Dodo* in relation to prescribed minimum sentences in terms of s 51 (1) of Act 105 of 1997, '(Of the sentencing court, in considering the circumstances of the case, is satisfied that these are such as to render the prescribed sentence unjust in that it would be disproportionate to the crime, the criminal and the needs of society so that an injustice would be done by imposing that sentence, it may impose a lesser sentence.'"

[9] In *S v Selli*⁴ the court pointed out that section 51 (3) of the Criminal Law Amendment Act 105 of 1997 calls for a 'purposeful enquiry by a sentencing court' into the presence or absence of substantial and compelling circumstances. The court stated thus:

"Self-evidently, this is intended to avoid visiting an accused with the severest sentence except in circumstances where there are no weighty or cogent facts which call for a less severe sentence. "⁵

The personal circumstances of the accused

[10] The personal circumstances of the accused is as follows. He is currently 35 years old. He was 32 when the murder of the deceased occurred with the first charge occurring in June 2013 when he was 26 years old. The accused is the youngest of two children. He was raised by his maternal grandmother due to the

³ (16424, 205/16 26/2016 [2016] ZAWCHC 58, 2016 (2) SACR 624 (WC) at para 15

⁴ [2015] ZASCA 173 (unreported, SCA case no. 220/2015, 26 NOVEMBER 2015)

⁵ At para 13

work commitment of his parents. His grandmother raised him in a strict Christian home and he had daily contact with his parents.

[11] At the age of eight, the accused moved back home. It is here that he witnessed the assault of his mother at the hands of his father. His father also initially disputed paternity of the accused. The home environment was characterised by constant violence in the form of physical abuse and alcohol dependency by his father. The couple eventually divorced when the accused was ten years and his mother remarried and two children were born of that marriage. That marriage lasted five years and his mother divorced her second husband when the accused was an adolescent.

[12] Subsequent to that divorce, his father and mother reconciled and eventually remarried. Results of a paternity test taken by his father before his parents remarriage confirmed that the accused was indeed his son. During his evidence, the father of the accused admitted that his son was subjected to a father who had initially denied paternity. Mr Roberson Snr. admitted that this knowledge weighed heavily on him and that it caused an initial strain in their relationship. His father also testified that he took responsibility for the fact that he had subjected the accused to witness the violence and abuse that he meted out against his mother. The accused father acknowledged that he had subsequently mended his ways and that he no longer resorts to any forms of violence. He stated that whilst he admits that his son is no angel, he asked the court to impose a long sentence which was not life imprisonment, as he maintained that he is the reason why his son was in this position, a reference to the violence he was subjected to as a child. He also expressed remorse for not having been a better role model for his son.

[13] According to the Clark report behavioural and social theorists believe that intimate partner violence is a learned behaviour, in that a child grows up in a family where violence is seen as an appropriate way of dealing with conflict in a relationships. ⁶ Research also indicated that physically abusive men are more likely to have physically abusive and violent fathers and these current abusers are modelling the behaviour they learnt as a child. The research opines that it

⁶ Paras 5 to 10 of the report, (Matthews, 2010; CSVr, 2015 and Grover, 2015)

would therefore appear that the example set by the abusive fathers leads to a lack of empathy and self-control in male abusive partners in adulthood. The Clark report however cautioned that not all children who grew up in violent homes or in traditional, conservative communities, went on to commit gender-based abuses.

[14] According to the probation officer's report, after his parents remarriage, the family bond stabilized, with the family, including the accused attending church activities. The report indicates that despite the changed environment, the accused still succumbed to environmental pressures and he soon engaged in substance abuse practices and joined a local gang. He progressed until grade 8. At the age of fifteen, his father testified that the accused was involved in a robbery, and although he himself was not a party thereto, his parents decided to intervene in his life and enrolled him in drug rehabilitation course in order to address his drug dependency.

The accused however only attended one course and subsequently defaulted.

[15] At the age of twenty, the accused engaged in a relationship with the first complainant A[...] F[...], in counts one to four. Two children were born of the relationship and are respectively 14 and 10 years old. According to the report, the accused himself confirmed that this relationship was characterised by the regular exert of violence by him, an imitation, the report says, of childhood violence displayed within his family. The accused conveyed that he was mostly under the influence of substances when the violence occurred. The relationship was later terminated by the complainant. The accused and F[...] confirmed that his parents offered alternative ways for them to resolve conflict. The accused however confirmed that he continued to resolve conflict by means of violence.

[16] It is common cause that F[...] obtained a protection order against the accused. The accused admits to having contravened it on numerous of occasions. According to the evidence in the trial, the accused was mostly unemployed and depended on income from his partners. In the first count, and despite the protection order, the accused forcefully by means of knifepoint, stole F[...] 'wristwatch whilst she was on her way to work. The fear, degradation and humiliation of such an act must be been enormous for the complainant.

[17] The intensity of the accused's violence increased. In another act of violence, the accused, whilst laying next her and their baby on their bed, put his arm around her neck and proceeded to cut off her windpipe with his arm to such an extent that she passed out. Had it not been for the baby's cries which alerted F[....]' mother and sister, one can but merely speculate as to what may have transpired had the intercession not occurred.

[18] Ms Titus during her testimony on her report, testified about the interview that she had with F[....]. F[....] confirmed to her that she and the accused were in a relationship for eight years. The relationship was characterised by ongoing violence and substance abuse by the accused. She explained that the accused also maintained relationships with other women during their relationship. She expressed that the accused was easy to anger and aggressive. She averred that the accused would often demand money from her and if he was not furnished with funds, he would subsequently assault her. She feared the accused and signalled that the accused had no respect for women. F[....] also highlighted an incident of assault where the accused stabbed her with a garden fork when she had been pregnant and had been carrying her oldest son, who was a year old, in her arms. She explained that the accused continued to stab her and in the process, broke their son's leg in three places. F[....] indicated to her that the accused denied accountability for his wrongdoing, instead blaming her for their son's injuries. F[....] also indicated to her that the accused also stabbed her brother as well as physically fought with her mother with his fists. These allegations were not disputed by the accused.

[19] The accused married his current wife, Desire Roberston, and the complainant in counts five and six, in 2017. One child was born from the marriage. The child currently resides with his paternal grandparents. The accused articulated to Titus that that marriage was also characterised by ongoing violence , substance abuse as well as various extra-marital affairs instigated by him. As during the trial, his wife was a reluctant witness and refused to share details of the accused's violent nature against her. However, during the trial, it was evident from her evidence that the accused subjected her to extensive verbal and physical abuse. During the incident in question pertaining to count

five, the accused, whilst accusing her of having an affair, which is quite ironic given his admissions of serial extra-marital affairs, kicked open the front door and whilst swearing profanities at her, slapped her in her face and kicked her to the extent that she fell against a couch and hurt her back. He then proceeded to hit her with a serving tray but she prevented the blow, blocking her face with her hand. He was not deterred by her threats to call the police. Eventually his parents, upon hearing the commotion, intervened and the accused left the home. The following morning as she was preparing to go to work, the accused arrived and hit her against her head and pushed her so that she fell to the ground. The accused continued hurling profanities at her and she threatened that she was going to lay a charge against him. He told her that if she called the police, then he was going to go to jail for murder. She testified that she was emotionally shocked that he could assault her in that fashion. She also confirmed that she obtained a Protection order against him and in contravention of this, he proceeded to point his finger at her. According to the report, the accused denied responsibility for the assault, suggesting that he merely pushed the complainant aside.

[20] According to the report, the accused does not accept responsibility for count 7, where the trial court found that the accused slapped the deceased in her face with his hand.

[211] In terms of counts 8 and 9, the accused indicated that he does not accept responsibility. He explained that in count 8, he and the deceased had consensual sexual intercourse. He also explained that he never used an object to hurt the deceased. The probation officers report states that the accused maintains that he was primarily convicted on the basis that he was the only person present on the scene. The accused was also, according to the report, of the opinion, that the testimony of the medical practitioner was overemphasized, whilst his own testimony was discounted.

[22] This is perhaps an opportune time to re-visit the objective injuries sustained by the deceased in relation to counts 8 and 9 as evidenced by Dr Mariana Winterbach⁷: The deceased died one and a half to three days prior to

⁷ Exhibits "C" and "M"

the post mortem examination. The decomposition of the body left her unrecognisable. The multiple lacerations noted in the anogenital area were caused by excessive blunt force. Dr Winterbach concluded in her expert opinion that the ano-genital injuries were caused by a 30 cm long hard object. The injuries to the vagina and labia majora were similarly severe and caused by the same object. She had three blunt force injuries to her head. The contusion to the forehead was caused by one specific blow to that area. The second injury was to the right temporal area, above the right ear. There was a further deep skull bruise caused by direct blunt force application. She suffered a subdural haemorrhage. There were significant blows to the stomach which caused extensive injury. Abdominal injuries were present with bleeding in the stomach muscle. This injury was usually caused by fists, kicking or stomping. That fatal wound was the breaching of the internal iliac vein.

[23] It is trite that where the minimum sentence is applicable, a court can only deviate therefrom if substantial and compelling circumstances are found to justify the imposition of a lesser sentence. The State referred to the matter of *S v Malgas*⁸ where it was found that when dealing with certain types of crimes, it is no longer "business as usual" as formulated and that minimum sentences should "not to be departed from lightly and for flimsy reasons which could not withstand scrutiny.

[24] The defence on the other hand placed reliance on *S vs Kumalo* 1973 SA 697 [A] where the the court stated that the punishment must fit the criminal as well as the crime, be fair to society, and be blended with a measure of mercy according to the circumstances. Furthermore, In *S v Mhlakaza and Another* (386/96) [1997] ZASCA 7; [1997] 2 All SA 185 (A) the court found that the object of sentencing is not necessarily to satisfy public opinion but to promote public interests. A sentencing policy that caters predominantly for public opinion is inherently flawed. It noted that given the current levels of violence, it seemed proper that the emphasis should be on retribution and deterrence and retribution may even be decisive. In *S v Scott Crossley* 2008 [1] SACR 223 [SCA]⁹, the court held that any sentence imposed must have deterrent and retributive force.

⁸ 2001 (1) SACR 469 (SCA) at 476f -477f

⁹ at page 241

But of course one must not sacrifice an accused person on the altar of deterrence. Whilst deterrence and retribution are legitimate elements of punishments, they are not the onb/ ones, or for that matter, even the overriding ones. Against that must be weighed the appellant's prospects of reformation and rehabilitation, which, according to Ms Luterick on behalf of the accused, appeared to be good. It is true that it is in the interests of justice that crime should be punished. However, punishment that is excessive serves neither the interests of justice nor those of society."

[25] The defence submitted that there are substantial and compelling reasons to deviate from the minimum sentence with regard to counts 8 and 9. The defence contended that the accused was relatively young and with the corrective programmes available in the Correctional Services, that he could be rehabilitated. It was also contended that the time spent awaiting trial should also be considered together with the other factors as substantial compelling to deviate from the minimum sentence. This is so, the argument went, because the accused has spent time, in limbo, with the trial hanging over his head without a final outcome.

[26] The defence also argued that accused displayed remorse for his actions; he asked for forgiveness from the family of the deceased and was tearful at times when he testified. The State on the other hand however contended that the accused displayed no remorse. The State argued that the post-murder behaviour of the accused should also be a factor to be taken into account when one assesses whether or not remorse existed. In *S v Matyityi* 2011 (1) SACR 40 SCA PONNAN

JA stated the following with regard to remorse:

" There is, moreover, a chasm between regret and remorse. Many accused persons might well 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 the appreciation and acknowledgement of the extent of one's error. Whether the offender is sincerely remorseful, and not simply feeling sorry for himself or herself at having been caught, is a factual

question. It is to the surrounding actions of the accused, rather than what he says in court, that one should rather look."

[27] It is common cause that the accused attempted to evade arrest for nearly 48 hours after the death of the deceased. It is also not in dispute that the accused attempted to solicit money from the son of the deceased, pretending to be her. He then painstakingly cleaned up the scene of his sordid crime and then went about his day, as though nothing happened. These in my view are not hallmarks of a person remorseful of their actions, but rather of a cold and calculated individual hell-bent on concealing his crime. The accused has shown no genuine remorse and the probation officer has indicated that the accused has not demonstrated any real insight into the seriousness of the crime and its impact on the victims and their families.

[28] The State also argued that the accused could be described as cunning, manipulative and deceitful. His possessive nature was exposed in the Whatsapp messages that he sent to the deceased on the afternoon before her demise. The accused, not content to let the deceased enjoy an evening with her friends as she was so accustomed to do, in keeping with his possessive and jealous nature, manipulated her into rather spending the evening with him. She eventually cancelled her appointment with her friends so that his jealousy and possessiveness could be pacified.

[29] The probation officer opined that only a few mitigating aspects could be found. One was the exposure and internalisation of violence and humiliation that the accused may have suffered during his immature stages of bio-psychosocial development. She found however that this pathological parenting condition did not last long as he was mainly educated and cared for in a supportive family environment where Christian values and acceptable moral guidance was extended to him. He succumbed to gang related activities due to the influence of his peers and external pressures but was abolished by his own choice, indicating that he developed the moral and psychological maturity and reasoning to distinguish and appreciate the penal consequences associated with continued gang involvement. He therefore has moral judgment and capacity to distinguish

between right and wrong. The second aspect is that some the offences on the charge sheet were committed a long time ago.

[30] With regard to aggravating circumstances, the probation officer opined that the accused engaged in his individual capacity to commit criminal activities against vulnerable women who trusted him, attended to his physical, emotional, sexual and financial needs. The accused violated their trust. He continuously humiliated and physically harmed and injured and I might add, degraded them. His criminal tendencies span over 20 years without repent or a consideration to change his behaviour. It has escalated and compounded in gravity and intensity. What started as childhood robbery has now ended in the permanent termination of life and it was evident that the accused presented no form of victim empathy. The accused denied accountability for the most serious offences and critiqued the objective evidence proved against him. The probation officer opined that the lies, irrational explanations and concealment of the death on the murder charge defy the presence of any remorse. Furthermore, failing to reveal the whole truth obscures any future attempts at rehabilitation and restoration of harm done.

[31] The State also contended that regard should also be had to the family and friends of the deceased. It is a true that the emphasis in sentencing proceedings is usually focused on the accused. The case law is replete with the factors that one has to consider in considering a just and equitable sentence. In line with these considerations are the interests of the community and the deterrence factor that these sentences may have on would-be criminals. But in my view, sentences hardly act as deterrents, for if this was the case, then there would be a steady decline in the rate of murders and more especially, crimes perpetrated against women. According to crime statistics as contained in the the probation officer's report, for the three month period October to December 2021/2022, 902 women were murdered and 11 315 reported rapes occurred. Furthermore, according to the National crime figures for the previous period 1 July 2021 to 30 September 2021, 6163 people were killed in South Africa with 1 334 murders occurring at the home of the victim or the perpetrator. 9556 people were raped between July and September 2021 and of a sample of 6144, rape cases revealed that 3 951 of the rape incidents occurred at the home of the victim or the home of the rapist;

400 of those rapes were domestic violence related. The police minister noted that almost ten thousand people were brutally and sexually violated in just three months, with over thirteen thousand cases of assault relating to domestic violence cases.

[32] According to the Clark report, Gender based violence and femicide have been recognised as a social and humanitarian problem with the United Nation Office on Drugs and Crime (UNODC) declaring that intimate partner violence and sexual violence are social problems and a mass violation of womens' rights. According to the World Health Organization's review of femicide, they estimated that approximately 35% of women globally experienced physical or sexual violence in their lifetime and that the majority of this gender-based violence is committed by an intimate partner. It was also estimated that approximately 66 000 women and girls globally were victims of femicide annually and that these femicides made up 17% of worldwide homicide cases.¹⁰¹¹ The report states that Southern Africa ranks as one of the top five areas in the world in terms of femicide rates¹¹. The report also contended that the femicide in South Africa is six times higher than the global average and that half of female murders in our country could be classified as femicide. Closer to home, a survey of women living in rural areas of the Southern Cape found that approximately 80% had been victims of domestic abuse and a further study conducted in Gauteng reported that 50% of their female respondents had experienced intimate interpersonal violence.¹² It is with these statistics in mind that a court should be mindful for the need to protect the most vulnerable women from repeat violent offenders.

[33] Perhaps the most appropriate expression of femicide, as gleaned from the authors¹³ can be summarised as follows: Femicide is the manifestation of a man's need to communicate his superiority and dominance over women and such acts are typically rooted in sexism, sadistic pleasure, superiority, a sense of

¹⁰ para 5.4 of the report; WHO (2017)

¹¹ Centre for the Study of Violence and Reconciliation (CSVR), Femicide Policy Brief, Gender Links (2014)

¹² CSVR, 2015, Clark report para 6.4.2

¹³ Clark report at para 5.2 "Femicide defined", page 5; Authors Rocha and May (2015) and CSVAW 2017); Mujica and Tuesta (2014)

ownership and a flagrant dis-respect for women as a group. Femicide is often motivated by strong feelings of contempt and rage and at times, a sense of possession, ownership and masculine superiority.

[34] In this matter, all of these traits are present in the accused — the manner in which the deceased died was of the most sadistic and vilest of acts; he manifested 'ownership' and possessiveness of her by questioning her time spent with her friends and demanding that she spend time with him instead. He also manifested his rage and anger in various physical assaults that he perpetrated against his intimate partners.

[35] According to the pre-sentence report, the accused does not exhibit behaviour of remorse. This attitude, says Titus, is worrisome from a rehabilitative /preventative viewpoint and demonstrates a lack of victim empathy. The accused also displays a lack of accountability, this is apparent from the fact that the murder weapon was concealed, the hiding of the body of the deceased, the lies formulated to hide the truth from the family and the police, the use of the deceased's phone to deceitfully obtain money and to distract evidence from the truth. Ms Titus in her report opines that had it not been for the persistence and determination of the deceased's family in finding their daughter, the possibility of the accused permanently removing the body of the deceased could so easily have occurred — a possibility not too unfamiliar in our reality in south Africa.

[36] The crime committed against the deceased was brutal, violent and sadistic. When weighed against such factors such as his age and the time spent awaiting trial, I am of the view that the aggravating circumstances of the crime far outweigh the mitigating factors. The accused's attitude towards women, his belittlement of them, the vile language used toward them, his lack of respect for even the elderly parents of his so-called loved ones are non-existent. His view of women is that of entitlement — they are there to service his needs, financially, physically and sexually. He has no respect for the law which is evident from the disregard of the protection orders which his intimate partners sought to protect themselves with against him, to his threats of death when a partner threatened to call the police when he was in the process of abusing her. He caused the near strangulation of a partner; stabbed her whilst carrying their infant son causing

severe injuries to the child's leg, and caused the deceased to have a blue eye according to her parents. The parents of the deceased are still languishing since the death of their daughter and breadwinner. Their faith has been challenged with questions surrounding the manner in which their daughter lost her life. Perhaps more devastating for the family is the son of the deceased who has been left an orphan, following the death of his father a few years prior to the murder of his mother. the intervention of his parents in trying to guide him as to how to deal with conflict, he chose to ignore those advices, just like he chose to disregard protection orders and followed his partner to work where he robbed her at knife point. These are all actions in which he, as an adult chose to do. He is a danger to society and the women in society need to be protected against him.

[37] The accused's lack of remorse and the interests of the community to be rid of such crimes, are material factors in considering whether a sentence is appropriate and proportional to the crime. It must also be noted that the accused is not a first offender. A perusal of the record exhibits that he possesses a number of previous offences for theft, malicious damage to property and possession of dependence producing substances. Given all of the above, I am therefore unable to find that there are substantial and compelling circumstances present that would justify a deviation from the minimum sentence imposed on counts 8 and 9.

[38] With regards to Count One, the offence was committed on 18 June 2013, some nine years ago. In my view, given the fact that minimal violence was exerted and the fact that, had he been prosecuted closer to the time of the offence, he would have already served a substantial portion of the sentence, this in my view, would count as a substantial and compelling circumstance to deviate from the minimum sentence in respect of this offense.

Can anything be done to prevent or limit this pandemic of femicide?

[39] According to the Clark several South African studies ¹⁴ found the following factors contribute to femicide risk: a history of interpersonal physical, sexual, emotional or verbal abuse; growing up in a family and community where violence

¹⁴ Clark report para 5.6 at p 10; PRU, 2009; Matthews, 2010; csvR, 2015 and Mazibuko & Umejisi, 2015

against women is an accepted norm; intimidation harassment and stalking; damage to property; controlling behaviours such as possessiveness, excessive jealousy and entering a woman's home without her permission; access to a firearm and alcohol and substance use and/ or abuse.

[40] The State referred to the 10 February 2022 State of the Nation address by President Ramaphosa in which he committed to intensify the fight against genderbased violence and femicide through the implementation of the national Strategic Plan on GBV and 'other measures to promote the empowerment of women.' He also went on to state that the implementation of three new pieces of legislation, newly signed into law, would go a long way into ensuring that cases are successfully prosecuted and to ensure that there were more effective deterrents in place. In my view, and as an observation, lest I am accused of over-reaching, one of the glaring disproportional minimum sentences apparent and applicable in this matter, is the minimum sentence prescribed for robbery, which attracts a prescribed minimum sentence of 15 years, whereas a conviction for a first offender of rape, merely attracts a minimum sentence of not less than ten years.¹⁵ Whilst any form of violation should not and cannot be condoned, in my view, the violation of rape in any form and against any person is a far more serious infringement of ones humanity and dignity.

In the circumstances, I sentence the accused to the following:

- Count 1: Robbery with aggravating circumstances read with the provisions of section 51 (2)(a) of the Criminal Law Amendment Act, No. 105 of 1997 - EIGHT YEARS IMPRISONMENT
- Count 2: Contravention of section 17(a) read with sections 1, 5, 7 and 17 of the Domestic Violence Act, No. 116 of 1998 - FIVE YEARS IMPRISONMENT
- Count 3: Assault with the intention to cause grievous bodily harm read with sections 94 and 266 of the Criminal Procedure Act, No. 51 of 1977

¹⁵ Section 51(2)(b) of the Criminal Law Amendment Act, No. 105 of 1997 read with Part II of Schedule 2 for Rape as contemplated in section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, No. 32 of 2007.

and 51 (2)(b) of the Criminal Law Amendment Act, No. 105 of 1997
- SIX (6) YEARS IMPRISONMENT

Count 4: Contravention of section 17(a) read with sections 1, 5, 7 and 17 of the Domestic Violence Act, No. 116 of 1998 - FIVE (5) YEARS IMPRISONMENT

Count 5: Assault with the intention to cause grievous bodily harm read with sections 94 and 266 of the Criminal Procedure Act, No. 51 Of 1977 and of the Criminal Law Amendment Act, No. 105 of 1997 (found guilty of assault common) — THREE (3) YEARS IMPRISONMENT

Count 6: Contravention of section 17(a) read with sections 1, 5, 7 and 17 of the Domestic Violence Act, No. 116 of 1998 - 12 MONTHS' IMPRISONMENT

Count 7: Assault read with sections 94 and 266 of the Criminal Procedure Act, No.51 of 1977 and 51(2)(b) of the Criminal Law Amendment Act, No. 105 of 1997 - 12 MONTHS' IMPRISONMENT

Counts 8 and 9 are taken together for purposes of one sentence.

Count 8: Contravention of section 3 read with sections 1, 50(2)(a) and (b), 156A as amended, 57, 58, 59, 60 and 61 of Criminal Law Amendment Act, No. 32 of 2007. Also read with sections 94, 256 and 261 of the Criminal Procedure Act, No. 51 of 1977; further read with sections 51 (2)(b) and Schedule 2 Part III of the Criminal Law Amendment Act, No. 105 of 1997 — TEN (10) YEARS IMPRISONMENT

Count 9: Murder read with the provisions of section 51 (1) and read with Schedule 2, Part I of the Criminal Law Amendment Act, No. 105 of 1997, as amended - LIFE IMPRISONMENT

The sentences imposed on Counts 1 to 8 will run concurrently with the term of imprisonment imposed for Count 9 in terms of Section 39 (2)(a)(i) of the Correctional Services Act, No. 111 of 1998.

The accused is declared unfit to possess a firearm in terms of section 103 of the

Firearms Control Act, No. 60 of 2000.

D.S KUSEVITSKY
JUDGE OF THE HIGH COURT OF SOUT AFRICA