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

**CASE NO: CC110/2019**

In the matter between

**THE STATE**

**V**

**MUEPA PAUL KASONGO**

**JUDGMENT ON SENTENCE delivered 04 November 2022**

**THULARE J**

[1] The accused was convicted of three counts, to wit, assault with intent to do grievous bodily harm, theft, and murder read with the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1997 (CLAA) as amended. The accused strangled, bit and held the deceased on her wrists so tight that she suffered abrasions when he held her in a room, away from visiting friends. The court also found that the accused held on to the deceased' phone and refused to hand it back, and the deceased never received her phone back from the accused since he took it from where the deceased had left it in the lounge. The accused stabbed the deceased 11 times with a knife including on her head, back, left arm and side of the abdomen and the deceased died from the injuries from that stabbing. There were abrasions on her breasts, finger and right elbow.

[2] In order to assist with sentencing, the defence asked for a pre-sentence report which was prepared and presented by the probation officer, Ms S Parks. Over and above the submissions of counsel from the bar, the personal circumstances of the accused were placed on record through that report and also through the testimony of his mother. He is the second born child and the only son with four siblings. He is 23 years old and comes from a stable family. His parents moved from the Democratic Republic of Congo and settled in Cape Town, South Africa. The accused was born and raised in SA. The accused is a first offender.

[3] Both the probation officer and his mother described him as very supportive to his sisters and that he took special care of the last sibling, S[....] who was 9 years old, including assisting her with her school work. The family provided a positive upbringing with no history of trauma or abuse and had Christian-based values and principles. They also both described him as a quiet person who did not have a loud voice and was not known to be violent. The mother indicated that she was never called to school or any institution for any bad behaviour or untoward conduct by the accused. The mother was in total disbelief that it was her son who was guilty of such a gruesome offence.

[4] The accused was a social drinker, enjoying outings to wine farms and socializing with friends and had no history of substance abuse. There was no indication that on the day that he committed the assault and theft, or on the day that he committed the murder, he was intoxicated or was under the influence of any prohibited substances. He attended school in Maitland and Kensington areas. He went to St. John's RC Primary School and Maitland High School. He studied Visual Communication and Graphic Designing at the Cape Peninsula University of Technology and after a year moved to Architecture. He quit the course when he could not adjust to online learning. He worked part time at Teleperformers and later at XL Events and did modelling part-time and he met the deceased, who was a model, through modelling. The accused contributed towards the household when he earned money. His mother described him as a responsible young man who always made the family proud.

[5] The probation officer referred to Erik Erikson's theory of psycho-social development and the eight stages of development which were infancy, early

childhood, preschool, school age, adolescence, young adulthood, middle adulthood and maturity. The accused at 23 years was considered to be in the sixth stage with focus on the key theme of intimacy and isolation. During this phase individuals built long term love relationships that felt safe. Lacking the security and warmth of loving relationships, individuals in this phase were more likely to experience loneliness and depression.

[6] From the judgment of the court on the merits, the probation officer formed an opinion that the deceased refused contact with the accused and was fearful of him. The indication was that the deceased terminated her relationship with the accused. The probation officer formed the opinion that the accused experienced great difficulty in terms of dealing with this form of rejection from the deceased. The accused persisted to make amends whilst the deceased tried her best to avoid the accused. The probation officer expressed the view that should the accused have respected the wishes of the deceased to have distance between them, this brutal crime could have been prevented.

[7] The probation officer noted that the accused stemmed from a stable background with firm Christian-based values and principles and it was unfortunate that his life spiraled in this manner. He was young and had the ability to thrive should he apply himself positively. He was, however, convicted of serious and violent-based offences involving assault and murder of a woman he was romantically involved with. The probation officer considered that the country ranked third in the world concerning the crime rate, with this information sourced from Crime Index for Country, 2020 and that violent-based crimes against women and children were rife in the country. The deceased endured a vicious death as she was stabbed eleven times. The accused accepted responsibility, except for the count of theft, and was remorseful.

[8] The probation officer recommended the sentence as envisaged in section 276(1)(b) or (i) of the Criminal Procedure Act, 1977 (Act No. 51 of 1977) (the CPA). Her view was that these sentences provided a stronger measure of retribution. She also noted that such a sentence could afford the accused the opportunity to address any social challenges whilst serving the period of imprisonment. She noted that the Department of Correctional Services worked in a holistic manner as it had a multi-

disciplinary team consisting of Social Workers, Psychologists, Educators etc. She also noted that such a sentence would meet the seriousness of the offence and would offer the accused an opportunity to reflect on his unacceptable behaviour and conduct. She observed that the State had a responsibility to protect the public and to ensure that justice was served. Her view was that the position of the victims of this offence should also be taken into consideration in sentencing. The family endured suffering because of the trauma that they had been subjected to. Her opinion was that a sentence of direct imprisonment will send a clear message that such violent based offences will not be tolerated. She recommended a custodial sentence.

[9] Most of what the accused mother told the court was covered in the probation officer's report. The mother's main observation was that the accused, in committing the offences for which he was convicted, acted out of character of the calm and sweet boy she had raised. She knew her son as someone who once rebuked her for attempting to kill an insect which had become a nuisance in the house, arguing that it was also a creation of God and need to live and the mother should let it leave. If it was a nuisance, the best way to deal with it was to open for it to leave the house instead of killing it. She pleaded for mercy and that her son be given a second chance. She had stopped the accused from going to the deceased family soon after he was released on bail, as she felt it was too soon and their wound from their loss was still too fresh for his reception. She intended to make time and reach out to the family of the deceased once everything is settled.

[10] The probation officer also met with the deceased's sister who was badly affected by the death. She had to seek student counselling as she was unable to cope with academic work as a student at Nelson Mandela Bay University. Shamiela Omar was the neighbor of the accused. She went to the same primary school with the accused and knew his family very well. The accused was a very helpful person. Not only did he assist her child with school projects, but he was available to provide resources to help her ends meet when the need arose. She could confide in him more than she could in her own blood sister. Although the accused had told her that he was arrested in relation to a fight with his girlfriend and that things ended badly, he did not elaborate and she did not know what the accused was alleged to have done,

until recently. She was shocked to learn about what the accused was alleged to have done.

[11] Bongekile Khumalo attended the same church with the accused and she was a pastor assistant whilst the accused was involved in the media team. She joined the church in 2019. She knew the accused as a sweet and compassionate person. The accused was fun to have around and was very respectful. Although she was young and a woman the accused did not find difficulty in submitting to her authority at the church. The church had been informed that the accused faced a charge of murder and asked to pray for him in intercession. She was too junior in the church to know if the accused had disclosed to the elders what actually happened. She only came to know what is alleged the accused did, about two weeks ago, and it was a shock to her. It was not consistent with the person she knew. She was trying to come to terms to understand how it happened.

[12] The State led the evidence of Professor Naeemah Abrahams, who is in the Division of Social and Behavioral Sciences, School of Public Health and Family Medicine at the University of Cape Town (UCT). She is the Director of the Gender & Health Research Unit of the South African Medical Research Council. She had training in Social epidemiology and have worked for more than 30 years as a researcher on interpersonal violence and gender-based violence. Her areas of expertise included research on the murder of women by their intimate partners. She had led three national studies on female murders and intimate femicides in South Africa and have also done some research on intimate femicides at the global level. Her evidence was based on research findings from SA and from the rest of the world. She had access to the typed records of the case of the accused.

[13] In explaining gender-based violence, she said intimate partner violence was the most common form of violence that women experienced, perpetrated by an intimate partner and the most common types were physical, sexual and emotional abuse. Gender-based violence explained the role of gender and power dynamics in the use of violence by men against women and girls. Male control was part of gender-based violence. Male partner controlling behavior was an undisputed part of violence in intimate partner relations. This was described by women and included the male

partner controlling the partner's relationships with important others such as family and friends which was often the victim's support system. Monitoring her phone and communications with others was therefore a common behavior reported by women. Stalking was part of the controlling behavior and the motivation was to gain information about the victim- such as who she met. It was also a form of psychological abuse as stalkers made sure that they were seen and used this as a threat.

[14] Studies in SA and across the globe found that intimate partners were the most common perpetrators of violence against women. Between 25-65% of women in SA reported ever experience of physical/ sexual and emotional abuse by a current or ex-partner and the levels differed dependent on where and who was spoken to. Studies with men on their perpetration of intimate partner violence showed higher proportions disclosed, for example in Gauteng 50% of men said they had ever used physical violence against their partner, KwaZulu Natal and the Eastern Cape 42% of adult men interviewed had ever been physically violent towards a partner and 14% had done so in the previous year.

[15] The killing of women by male intimate partners was the most extreme form of intimate partner violence as well as the most extreme consequence of intimate partner violence. Her research showed that almost 3 women were killed by their intimate partners per day in South Africa. The data from 66 countries in 2013 found that globally 33% of homicides of women were committed by an intimate partner. In comparison, in 2017, 52% of women were killed by intimate partners. Intimate femicide is much more common in South Africa than in most countries of the world. 52% versus 36% indicated that our rate was almost 5 times the global rate.

[16] National studies showed that the victim's home was the scene of crime in 62% of intimate femicides in 2009. 1 in 6 women killed by their intimate partners, that is, 15,3% were either divorced, separated or in the process of separating from the perpetrator. The heightened risk of being killed during the time of separation was well described as a precursor in the international literature and was an extension of controlling behavior. In research the risk was referred to as *"if I can't have you then no one else can"*. Across the three national studies it was found that a third of the

victims were killed by stabbing. In a 1999 study it was shown that 39.4% of the women stabbed to death had multiple stab wounds. Multiple stab wounds were referred to in research as excessive injuries or “*overkill*”. This referred to injuries on more than one body part or multiple wounds in one body area, and was an indication of the brutality of the crime. Research on African men showed that South African men have strong expectations that they should be in control of their partner, to be respected by her and that the use of violence, within limitations, are a legitimate part of this control.

[17] An area which was noted to particularly cause conflict was jealousy and practices related to having multiple partners. Studies showed that men spent a considerable amount of energy trying to police the sexual practices of their female partners. It was very common in the context of violence when men accused women of infidelity. Research also found that it was men with fragile self-esteem and inherent propensity for violence, who after a time started accusing their partner of infidelity, which was usually perceived infidelity. Most men in prison described the act of killing their partner as one of ‘snapping’ or ‘losing control’ but it was often an act which was committed in order to regain control. Most men felt belittled or humiliated at the point where they killed their partner and felt no remorse, and usually externalized blame, asserting that ‘she had made me do it’. At this point they saw her as being of such little value that she deserved to be the victim of his outburst of extreme aggression. The killing was a final attempt to regain the upperhand over their partner, one who was no longer regarded as worth having. In her closing remarks, the Professor said:

“We all have a responsibility daily as individuals and as part of the state systems of justice to prevent and to ensure justice to victims are ensured.”

[18] The State called both the parents of the deceased. The deceased matriculated in and moved from Plettenberg Bay to study Business Management at Cape Town College. She thereafter worked for a fabric company called Mango and later joined Poetry stores. The deceased helped her parents by sending them around R1500 and R1200 per month for their upkeep. The father was employed as a general Assistant at Southern Cape College in Plettenberg Bay. The family also rented two rooms at R900 each to supplement their income. The mother was doing Christmas shopping

in Knysna when she learned about the deceased's passing. She had to stop the shopping and be driven home. The father was at home when he was called by a Lecturer at the College where he worked who asked when last did he speak to her daughter. People around the parents knew about her going missing and her death before the parents did. This included the lecturer and the deceased's half-sister.

[19] Both parents were still struggling to come to terms with her death. The mother shared the last moments which she shared with the deceased when she was last visiting. The deceased had disclosed to her the relationship with the accused. The deceased had informed her of her experiences when there had been arguments with the accused, in that the accused would take her cellphone away from her. The accused would also get angry with her if he had called her, and she did not pick up the phone. He would also then take her phone away with him. The mother did not think much about these things. According to her, the deceased was just explaining the nature of the accused and for the mother it sounded like disagreements that often characterize intimate relationships. The father broke down and shook uncontrollably when he testified about his visit to the house where the deceased was killed and what he saw, as well as his visit to identify her at the mortuary.

[20] The physical reaction of the father as well as his emotional state, in my view, requires urgent medical as well as psycho-social investigation and intervention. One has experienced parents who are unable to live beyond two years after the brutal or sudden death of their children from physical injuries, for this to be ignored. One could not, on the other hand, miss the brightness to the father's face when he narrated the last call that he had with the deceased, the Thursday before her death. On that day the deceased had called him and asked him how he was doing. The deceased then asked him to listen to what music she was listening to. She then played, over the phone, "Nikita", a song by Elton John. The father liked Elton John's songs and used to play that song for her. With time, he concluded, he will heal and be okay. The parents were worried about the timing of the accused's written apology. They had not heard from him or his family before. The accused had prepared from prison, a written apology which his counsel read out to the parents.

[21] The accused wrote:



“This letter of apology is addressed to the Mfengu family. I humbly ask for your forgiveness and compassion. I’ve mentioned before that no amount of sorry will ever fix what has happened because putting myself in your position, I understand any feeling you have towards me. Believe me when I say, up until this day I still ask myself “why?”. It honestly shouldn’t have happened in this manner. I apologise for the embarrassment and humiliation it brought to the family. Although you might not forgive me today, but I pray the God that consoles the heart console the hearts of the Mfengu household. Once again, I truly am sorry. May the peace and undeserved kindness of God be with the family and all that were affected. Thank you.”

The accused was 19 years at the time of the commission of the offence, unmarried and had no children. He had no history of drug or alcohol abuse.

[22] Section 51(1) of the CLAA provides as follows:

“51 Discretionary minimum sentences for certain serious offences

(1) Notwithstanding any other law, but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person it has convicted of an offence referred to in Part I of Schedule 2 to imprisonment for life.”

Subsection (3)(a) provides:

“(3) (a) If any court referred to in subsection (1) or (2) is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in those subsections, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence: Provided that if a regional court imposes such a lesser sentence in respect of an offence referred to Part 1 of Schedule 2, it shall have jurisdiction to impose a term of imprisonment for a period not exceeding 30 years.”

The applicable provisions of Part I Schedule 2 read:

“SCHEDULE 2

(Section 51)

PART I

Murder. When –

(a) It was planned or premeditated.”

[23] Discussing the concept of “substantial and compelling circumstances in *S v Malgas* 2001 (2) SA 1222 (SCA), it was said at para 8 and 9:

“[8] In what respects was it no longer to be business as usual? First, a court was not to be given a clean slate on which to inscribe whatever sentence it thought fit. Instead, it was required to approach that question conscious of the fact that the Legislature has ordained life imprisonment or the particular prescribed period of imprisonment as the sentence which should ordinarily be imposed for the commission of the listed crimes in the specified circumstances. In short, the Legislature aimed at ensuring a severe, standardised, and consistent response from the courts to the commission of such crimes unless there were, and could be seen to be, truly convincing reasons for a different response. When considering sentence the emphasis was to be shifted to the objective gravity of the type of crime and the public's need for effective sanctions against it. But that did not mean that all other considerations were to be ignored. The residual discretion to decline to pass the sentence which the commission of such an offence would ordinarily attract plainly was given to the courts in recognition of the easily foreseeable injustices which could result from obliging them to pass the specified sentences come what may.

[9] Secondly, a court was required to spell out and enter on the record the circumstances which it considered justified a refusal to impose the specified sentence. As was observed in *Flannery v Halifax Estate Agencies Ltd* by the Court of Appeal, 'a requirement to give reasons concentrates the mind, if it is fulfilled the resulting decision is much more likely to be soundly based - than if it is not'. Moreover, those circumstances had to be substantial and compelling. Whatever nuances of meaning may lurk in those words, their central thrust seems obvious. The specified sentences were not to be departed from lightly and for flimsy reasons which could not withstand scrutiny. Speculative hypotheses favourable to the offender, maudlin sympathy, aversion to imprisoning first offenders, personal doubts as to the efficacy of the policy implicit in the amending legislation, and like considerations were equally obviously not intended to qualify as substantial and compelling circumstances. Nor were marginal differences in the personal circumstances or degrees of participation of co-offenders which, but for the provisions, might have justified differentiating between them. But for the rest I can see no warrant for deducing that the Legislature intended a court to exclude from consideration, *ante omnia* as it were, any or all of the many factors traditionally and rightly taken into account by courts when sentencing offenders. The use of the

epithets 'substantial' and 'compelling' cannot be interpreted as excluding even from consideration any of those factors. They are neither notionally nor linguistically appropriate to achieve that. What they are apt to convey is that the ultimate cumulative impact of those circumstances must be such as to justify a departure. It is axiomatic in the normal process of sentencing that, while each of a number of mitigating factors when viewed in isolation may have little persuasive force, their combined impact may be considerable. Parliament cannot have been ignorant of that. There is no indication in the language it has employed that it intended the enquiry into the possible existence of substantial and compelling circumstances justifying a departure, to proceed in a radically different way, namely by eliminating at the very threshold of the enquiry one or more factors traditionally and rightly taken into consideration when assessing sentence. None of those factors have been singled out either expressly or impliedly for exclusion from consideration."

[24] The accused demonstrated a jealous and controlling behaviour. He had no respect for the deceased and her friends. He kept the deceased in a separate room away from the lounge where the guests which the deceased was hosting were waiting. It was in that room where he held the deceased that he strangled, bit and held her tightly on her wrists. It was in that room where the deceased's phone was last seen in his hands. The accused would not stop his abuse even when the visiting friends intervened. His behaviour led to the party being cancelled. The deceased was in such fear that she could not be left alone with the accused and left with her friends whilst the accused was asked to go home. The accused spoilt the evening for everyone and his behaviour made having fun, which was what was planned for the night, impossible. The party continued later at a different place without him.

[25] The Doctor described the deceased's stab wounds on the arms and fingers as defensive wounds. This is when the deceased tried to block off the blows and in the process got stabbed. 6 of the 11 stab wounds were on the deceased's back, which were blows she suffered when she had her back to the accused as she unsuccessfully attempted to flee from the stabbing. Even after the deceased collapsed in the bedroom where she fled to as she was running away from the accused, the accused continued to stab her. The accused could not explain why he continued to stab the deceased even after she had collapsed, except to say that he

was consumed by some strange spirit. Even when the deceased, whilst lying on the floor and bleeding profusely, told the accused that she thought that she was bleeding internally, the accused did not call for any medical attention for her. When he realized that she had passed on, he locked the doors and left the deceased alone. He did not go home, but went to a friend to clean himself and sleep over. The next morning he staged a discovery of the deceased to the neighbours and the police, and cried to seek sympathy and to win the mind game. The alertness of the police and the neighbours revealed his fake innocent discovery and despite his acting, he was arrested.

[26] It seems to me that one of the greatest challenges in confronting gender-based violence and femicide, besides factors like that it happens within the closed setting of acquaintance and is a very close connection and a private and personal bond which includes a sexual relationship, is what I will call the elephant of dual personality of perpetrators. In public and with close family, relatives and friends, the perpetrator displays conduct which enhances innocence, self-importance and trust. The perpetrator earns the attention and admiration of everyone around them. They conduct themselves towards and in the presence of others such that their conduct is to be desired and approved of, pleasing and welcoming to be with. They display all the qualities that are required to build healthy, strong, useful and advantageous relationships which have beneficial effects. This is the personality that the accused's family, friends and church knew, and which the probation officer saw in the accused. It was his one side.

[27] But the accused had the other side, the reality which was unknown to his family, friends and church. The victim, over and above the struggles with the reality that they lived with the perpetrator, was faced with the feelings that excite which the family and the public knew and the perpetrator openly displayed, which I will call emotional intimacy on one hand, and the reality on the other. The reality included the knowledge that the perpetrator controlled not only their thought processes, but also that of others through influence in a cleverly and unscrupulous manner. The perpetrator project a personality which is presented to others so as to mislead in a skillful manner. The perpetrator is manipulative, and uses control and influence over

others so that they get an advantage over the victim, which advantage is unfairly and dishonestly beneficial to them.

[28] The victim experiences the controlling behavior, being belittled, being blamed for the conduct of the perpetrator as the reason for his behavior and being assaulted. It is only when the victim masters enough courage to escape the paradox of a publicly model partner but privately the devil personified, that they are able to acknowledge that they are not the problem. They then seek help and if fortunate escape whilst still alive. The deceased mastered the courage to speak out and told Fekisi who was her friend's girlfriend, Tyhoko who was her colleague at Poetry in Tygervally and Cupido who was a policeman who lived close to where she spent her last weekend. With Cupido specifically, the deceased wanted advice on how to get protection from the State, against the accused. Unfortunately for her, the accused killed her before she could avail herself of the resources provided by the State for her protection.

[29] The duality in personality often blinds families, relatives, acquaintances and friends of the perpetrator and sometimes even those of the victim, and in my view deserves some scholarly research as part of the national strategy against gender-based violence and femicide. The ambivalent nature of the perpetrators, which presents publicly as good-natured, and on the other and private side can be evil to their intimate partners, reveals that they are human beings with two sides. The accused, after seeing a message on the deceased's phone, which I said was most probably from another man, was in an emotional spectrum of love and hate towards the deceased. Whilst he professed to love her, the message aroused in him a state of anger and loathing, if not outright hate. The accused made a choice that determined whether he loved or hated the deceased. He swung through the continuum of emotions and hate prevailed.

[30] From the evidence of the deceased's mother, the accused monitored the deceased's phone. The evidence suggests that he followed what she did on her phone to control her relationships with others. The probability is that he monitored the deceased's phone to gain information about her, and to establish who she spoke to. According to Professor Abrahams, this controlling, monitoring and stalking was one form of emotional abuse, and emotional abuse was more common in intimate

relationships than physical, sexual and economic abuse, in South Africa. According to the professor, shame, embarrassment, self-blame and a sense of hope were the reasons that women did not report abuse to the police or to their families. The deceased at least reported this emotional abuse to her mother but unfortunately, both were socially-engineered to accept that what was happening was normal in an intimate relationship.

[31] The deceased was in the process of separation from the accused. She did not want to see him. The accused killed her in this period, which is an extension of his controlling behavior. It was the period of heightened risk of “if I can’t have you then no one else can”. The deceased was stabbed to death multiple times. These excessive injuries or overkill indicated the brutality of the crime. The reaction of the accused to the message on the deceased’s phone suggests that the accused suspected the deceased of infidelity. The deceased was killed because of jealousy and a fragile self-esteem of the accused.

[32] It was a controlling behavior that drove the accused to obsession with the deceased’s cellphone and his propensity to violence. He killed her to defend his honour and to regain control over her. His externalized blame, where he blames some evil spirit or not knowing why he killed her, projects a failure to take responsibility for his outburst of extreme aggression. When viewed against his attempt to mislead his own family about what truly happened by not being frank and candid to his own mother, the mind games he attempted with the neighbours where the body was found and the police about what he did to the deceased, his apology to the deceased’s parents is hollow and shallow. It has little or no depth and did not exhibit, require or was capable of invoking serious thought.

[33] Being offered in mitigation of sentence stage just before his sentencing, the apology sounds more like an instinctive tendency to preserve himself from a harmful long term imprisonment and to ensure survival from deserved punishment. To date, he did not unequivocally admit his guilt. Bruce Lee once said: “Mistakes are always forgivable, if one has the courage to admit them.” It seems to me that the belated apology is not a conscious and deliberate product of a desire to help the deceased’s family to heal. It is an impulse impressed upon the accused by self-preservation to

maintain a semblance of veritable remorse. He did not explain what motivated him to commit the crime, what provoked him to now change his heart and there is no indication that he actually and truly appreciate the consequences of his actions. The apology is barren and amounts to no more than an expression of regret. The accused is still on the other side where he is still unable to appreciate that peace trumps intelligence.

[34] The actions of the State to confront gender-based violence and femicide have included public communication which included advocacy initiatives and public awareness campaigns as well as the creation and implementation of legislative packages as part of the strategy to combat the two evils. The legislative packages included the amendments of laws like the Criminal Procedures through the introduction of provisions like minimum sentences as well as the introduction of new thoughts like the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 and the Criminal Law Amendment Act 105 of 1997 in an effort to upgrade the legal framework which provided new tools and innovative means to deal with the problem. These new tools and innovative means represent a deliberate effort and paradigm shift intended to claw back the safety and security of women from the deep throat of toxic machismo.

[35] When sentencing a young person, it is appropriate that the sentence must reflect service to the interests of society, but also of the young person. The conduct of the accused contemporaneous with and immediately after the murder do not display influence and pressure from others, be it peers or adults. In fact, his own peers, who were visiting, tried to intervene and stop him in his thought processes, but were disregarded. I am unable to conclude that his conduct stemmed from immature judgment from an unformed character. There is no basis for me to conclude that exacting full moral accountability and consequences might be too harsh, under the circumstances. The attempt to cover up his involvement and stage a first discovery of the body of the deceased was not an error. It was a premeditated design to mislead. Unless there is direct intervention in the path that the accused has chosen, there is no leeway and possibility for his resourcefulness to be properly guided.

[36] The Judiciary should speak such that we demonstrate that we are not cold, aloof and far removed from the contemporary challenges. Where circumstances permit, we should show that we heed the public's constitutional call to make the punishment of crimes against women, especially their brutal, cruel and unnecessary killing more severe as part of the overall responsibility of the Republic of South Africa to provide a conducive environment for women to live and love without fear of physical, psychological, economic and sexual abuse and violence. The increase in the involvement of ex-partners, spouses, partners and boyfriends in the women's experience of violence needs effective initiatives beyond policy-making and called for the Judiciary to be the leading force and voice.

[37] The constitutional value of human dignity will sound a hollow and false promise to women unless the Judiciary is prepared to speak with clarity on unprecedented and effective sentencing to deliberately create a new perspective for the safety and security of women today and into the future. Sentencing remain a difficult, complex but powerful tool that makes it easier for the message of the Judiciary to be noted in its confrontation of the culture of abuse of and violence against women. The unequivocal voice of the Judiciary will resound in homes and in relationships, and in that way contribute to change the current tide and course where the home and intimate relationships remain as the spaces of greatest risk for women.

[38] The accused is a young person and a first offender. The savagely violent, unnecessary distress, the showing of desire to willfully inflict severe pain on the deceased in extremely horrifying and terrible circumstances with no feeling of concern and devoid of humane feelings, weighs the scales of justice towards a punitive and retributive disposition as a trajectory towards his reform, rehabilitation and correction. This in my view is one of those instances where the youthfulness and being a first offender should yield to the brutality of the offence, the unnecessary denial of life to another and an unmitigated toxic masculinity, in the scales of justice. The probation officer testified that imprisonment afforded the accused the opportunity to address any social challenges whilst serving his sentence. She noted that the Department of Correctional Services worked in a holistic manner as it had a multi-disciplinary team consisting of Social Workers, Psychologists, Educators etc. Having regard to the mindset of the accused currently, in my view he will require



some time to make a paradigm shift to learn to internalize blame, understand remorse and appreciate what forgiveness requires from those asking for it, in instances where one acknowledged that one erred.

[39] The sentence inevitably result from the nature of the offence, the person of the accused and the interests of society. The contrary, which is treating the accused like a child and as a model member of society is impossible. The strengthening of the judicial hand in sentencing needed to be done to achieve justice, to present a sense that the principle that people receive that which they deserve in the perspective of moral correctness based on rationality and the law is still fundamentally central to the nature of the rule of law in our constitutional democracy. If the victims speak and the nation perceives, and we together ensure justice, appropriate sentences will follow, and women will be safe. The personal circumstances of the accused are dominated by the aggravating circumstances in this case, which includes the seriousness of the crime and the interests of society. The objective gravity of the type of crime and the need for effective sanctions against it, in the midst of all other considerations for an appropriate sentence, call for emphasis. The ultimate impact of all relevant circumstances do not justify a departure from the standardized response that the Legislature has ordained for premeditated murder [*S v Dodo* 2001 (3) SA 382 (CC) at para 11]. I am not satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence.

**[40] For these reasons the accused is sentenced as follows:**

1. On assault with intent to do grievous bodily harm: The accused is sentenced to 2 years imprisonment.
  2. On theft: The accused is sentenced to 2 years imprisonment.
  3. On premeditated murder: The accused is sentenced to life imprisonment.
- The sentences on the count of assault with intent to do grievous bodily harm (count 1) and theft (count 2) are to run concurrently with the sentence on premeditated murder (count 3).
4. The accused is declared unfit to possess a firearm.

DM THULARE  
JUDGE OF THE HIGH COURT