

***S v Pacham* [2019] JOL 45328 (WCC)**

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

Case No.: **CC 50/2018**

In the matter between:

THE STATE

and

R PACHAM

Accused

JUDGMENT ON SENTENCE: 12 JUNE 2019

STEYN J:

1. On the 20th May 2019 the court found the accused guilty of the murder of his wife, Gill, with the direct intention to kill her. He was also convicted of an attempt at defeating the ends of justice, by placing her body in the boot of her vehicle to conceal it, later setting it on fire to attempt to destroy incriminating evidence of the crime, and thereafter supplying false information to the police in order to mislead the investigation as to the cause of her death, and the fact that he was the perpetrator.

2. Now the court has to determine an appropriate sentence for the accused for the crimes of which he has been convicted. The determination of a suitable sentence does not entail a mechanical process in which predetermined sentences are imposed for specific crimes. In each case the sentencing court has to take into account all relevant factors, afford the appropriate weight thereto, and strike a balance between the various factors and interests to consider. Mitigating factors

must be properly considered by the trial judge and should be balanced against aggravating features.

3. The task of punishing someone who has been found guilty of offences as serious as those, of which the accused has been found guilty of, is a big responsibility. He is no longer a young man and is the father of two daughters, their only surviving parent. However, sentencing is a responsibility that cannot be avoided. The law and society demand that those who transgress society's required norms are appropriately punished by those to whom that responsibility has been deputed.

4. I am aware of the effect the sentence of this court will have, not only on the accused, but also on his family, friends and loved ones, who will lose the usual comforts and support of a father, brother, friend or confidant for years to come. I am also aware that the family and friends of the victim, who have lost the comfort of her presence in their lives forever, as a direct result of the unlawful conduct of the accused, require of the courts that the accused be sentenced appropriately.

5. The purposes of sentencing have been identified as being deterrence; prevention; rehabilitation and retribution. Those objects are sought to be achieved by applying the principal criteria that have been evolved by our courts over a number of decades, namely the personal circumstances of the accused; the seriousness of the offences of which an accused has been found guilty; and the interests of society. Courts are furthermore required, when applying those criteria in a balanced manner, to introduce an element of mercy.

S v Zinn 1969 (2) SA 537 (A).

6. In **S v SMM** 2013 (2) SACR 292 (SCA) (9 May 2013) Majiedt JA confirmed that each sentence must be individualised, for punishment must fit the crime, the criminal and the circumstances of the case. Sentencing should be considered and passed dispassionately, objectively and upon a careful consideration of all relevant factors. Public sentiment cannot be ignored, but it can never be permitted to displace the careful judgment and fine balancing that is involved at arriving at an appropriate sentence. Courts must therefore strive to arrive at a sentence which is just and fair to both the victim and the perpetrator, which has regard to the nature of the crime and takes account of the interests of society. Sentencing involves a high degree of responsibility which should be carried out with equanimity.

7. In **S v Rabie** 1975 (4) SA 855 (A) at 866 A-C, Corbett JA held that a judicial officer should not approach punishment in a spirit of anger, because that will make it difficult for him to achieve the delicate balance between the crime, the criminal and the interests of society, which his task and the objects of punishment demand. Nor should he strive after severity; nor, on the other hand, surrender himself to misplaced pity. A judge should not flinch from firmness, where firmness is called for, but he should approach his task with a humane and compassionate understanding of human frailties.

8. The interests of society are not a clearly defined concept. Courts are obliged to impose sentences that engender respect for the criminal justice system, failing which members of the public might be tempted to take the law into their own hands, as has manifested itself on a number of occasions in this court's jurisdiction. Whilst the public cannot be seen to dictate what sentences courts should impose, courts should be astute not to disregard society's needs.

9. As noted in **DPP, North Gauteng v Thabethe** 2011 (2) SACR 567 (SCA) para 22:

‘Our courts have an obligation in imposing sentences ... to impose the kind of sentences which reflect the natural outrage and revulsion felt by law-abiding members of society. A failure to do so would regrettably have the effect of eroding the public confidence in the criminal justice system.’

10. In their judgments courts should give recognition to the emotions that serious crime evoke in the societies affected by the crime. When the seriousness of a crime is considered and proportioned to a sentence, the views of society must accordingly play an important role. It is not wrong to give recognition to the natural indignation of interested persons, but *‘righteous anger should not becloud judgment.’* The court will not increase a sentence disproportionately, due to the outrage of society.

See **S v Karg** 1961(1) SA 231 (A) at 236 A-C and **S v Gardener** 2011 (1) SACR (SCA) 570 on 591 e.

11. In matters attracting minimum sentences, such as murder convictions, it is my impression that communities and activist groups are often not aware that there must be compelling reasons to increase prescribed minimum sentences that are, by law, ordinarily regarded as the appropriate sentences in given circumstances.

12. The accused elected not to testify in mitigation of sentence. His counsel put some factors to court for consideration with regard to his personal circumstances. In mitigation of sentence the testimony was presented of **Kerry Meyer**, the elder daughter of the accused. She is 28 years old, is married and is employed in the UK, where she has resided for the past 3 years. Her younger sister, Nicola, who testified in the trial, lives in Johannesburg. Ms Meyer was in regular telephonic contact with

the deceased, with whom she had a close relationship. She also had a close relationship with the accused over the years and mentioned the sporting activities that they enjoyed together and that he was someone that she approached for advice. He worked hard to provide for his family, and was always the breadwinner, which was shown to be inaccurate.

13. As far as she is aware, the accused was never violent to anybody. He was a loving, caring, helpful, concerned, supportive father, son and husband, who disliked conflict, but, although he would calm her mother down, he never walked away from an argument. He had an impact on the lives of his children and she would like him to have an impact on the lives of her children. She requested that he should not be '*put away forever.*'

14. The accused's elderly parents live in Johannesburg. He attended their 60th wedding celebration in February 2018 and returned home shortly before her mother's death, on the 17th February. Her mother did not attend the celebrations in view of the marital issues and not wanting to discuss these with the family. She was pleased when the accused returned earlier than expected. (Despite allegedly returning early, the accused did not assist his wife the next day when she, according to him, took recycling material away, and cut her hand.)

15. The witness always thought that her parents had a normal, happy, loving relationship, despite some frustrations. She heard about the disclosure relating to the infidelity of the accused and knew that this had a '*huge impact*' and caused the deceased a lot of hurt and anger. It was her impression that they were working through it by attending counselling.

16. She gave testimony relating to the qualifications and employment of the accused over the years and that, *inter alia*, the one business that he was involved in relocated, while another failed. This was traumatic for the family who had to sell properties to make ends meet, which caused tension, frustration and anger. Although the deceased was cross with the accused, she was optimistic. The accused was out of work for a while and they had to start '*from scratch*'. During the difficult financial times the deceased supported the family. She had two apartments that she let out and they sold one of her properties in 2016. To generate further income the deceased obtained a position at the school where she was working at the time of her untimely death.

17. Under cross-examination Kerry agreed that her wonderful childhood memories also included her mother. She thought her mother was '*open and honest*'. She was informed by her about her father's infidelity after her sister had '*insisted*' that her mother be told, contrary to the allegations of the accused in this regard.

18. The witness spoke to the deceased on the afternoon of 21 February. She again phoned later the same evening, when she spoke to the accused. He told her they were having an argument. She heard her mother in the background. The accused said the deceased was '*very angry with some of the things he had shared, and they were working through it.*' This is not consistent with the allegations by the accused in this regard.

19. The witness knew that the unidentified witness, who testified at the trial, testified that she and the accused spoke about him getting a divorce. Kerry was not aware of this. She was also not aware that the accused was leading a double life after the '*disclosure*'. She was under the impression that he had stayed with her

aunt during the break in their relationship and did not know that he went away with his mistress, which she appears to disbelieve. She could not respond about her father's comment to his mistress that he loved his life but not his wife, or that he ultimately chose a different life to the one he was ostensibly living.

20. She is traumatised and devastated by her mother's death and the fact that neither parent was at her wedding and her mother will never be there for her again. The reason for the absence of the accused, namely breaking his bail conditions, makes it worse, but he is still her father.

21. Her mother was a wonderful warm, fun, person, friend, wife and sister, with a big heart. Her relationships with her 4 sisters were fractured but improved in the period before she was murdered. Everybody was traumatised in her family and members of the family on both sides had attended counselling. Her mother's death has left a hole in everybody's lives; she believes this includes her father. She became understandably emotional when talking about the deceased.

22. The **state** filed two victim impact statements from two of the four sisters of the deceased, Ms Helen Humphrey from the USA, and Ms Roslynn Humphrey, who appears to live in France. All her sisters attended the trial from time to time. Both sisters describe in their statements the sadness, nightmares and trauma caused by the news of the death of their sister and the way she met her death. Helen mentions the division and fear that resulted within the family, the stress of attending the trial and the lack of answers. She has received counselling for psychological distress. She describes the attack on the deceased as a disgusting, violent act. She blames herself for not getting the deceased to talk to her more freely, for her to help emotionally or financially. She blames herself for not being able to tell her to walk

away from her marriage. She is sad at the fact that her family will never again experience her sister as a part of the family, sharing important events. Roslynn regards the death of the deceased as a living nightmare. She has experienced shock and extreme grief. The horrendous crime has removed her kind, friendly and thoughtful sister from their lives. She too is receiving counselling.

23. The seriousness of the offences of which the accused has been found guilty is self-evident. He has been convicted of murder, an offence referred to in Part II of Schedule 2 of the Criminal Law Amendment Act 105 of 1997 (the Act). The court is obliged, by virtue of the provisions of s 51(2)(a) of the Act to sentence the accused to a minimum sentence of 15 years' imprisonment. A lesser sentence may only be imposed if substantial and compelling circumstances, within the meaning of that expression, are found to exist, that, viewed cumulatively, justify the imposition of such a lesser sentence (S 51(3)). The court has a discretion to increase the minimum sentence, if circumstances and relevant factors so dictate and warrant. A sentencing court should identify the circumstances that compel it to impose a sentence harsher than the prescribed minimum sentence and explain why it finds that a departure from the minimum sentence is justified.

See: **S v Mbatha** 2009(2) SACR 623 (KZP) 631 and **S v Mathebula** 2012 (1) SACR 374 SCA para 8.

24. At the inception of the trial and in the charge sheet the state indicated that it would argue and show that in this matter an appropriate sentence, in the event of conviction, may warrant that this court should exceed the prescribed minimum sentence of 15 years' imprisonment, taking into account the aggravating features of the murder in respect of which the accused has been convicted. Counsel for the

accused argued that substantial and compelling circumstances exist for the imposition of a lesser sentence than the prescribed minimum sentence of 15 years in this matter.

25. The approach to be followed in determining whether substantial and compelling circumstances exist to deviate from the minimum sentence is to be found in **S v Malgas** 2001(1) SACR 469 at 482. The '*determinative test*' enunciated in the said judgment, has been described as '*undoubtedly correct*' in **S v Dodo** 2001(1) SACR 594 (CC) and was approved in **S v Matyityi** 2011(1) SACR 40 (SCA). It was held that the sentencing court should be aware that the legislature had ordained minimum sentences as the sentences which would ordinarily be imposed for the crimes specified. The legislature aimed at ensuring a severe, standardised and consistent response from the courts to the commission of certain crimes and that there should be truly convincing reasons for a different response. The specified prescribed sentences should not to be departed from for flimsy reasons. The court has a duty to consider the circumstances of each case, including the many factors traditionally taken into account by courts when sentencing offenders.

26. It has also been held that for circumstances to qualify as substantial and compelling, these do not have to be exceptional but should be truly convincing or weighty justification for deviating from the prescribed sentence. If the sentencing court, on consideration of relevant circumstances, is satisfied that they 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 the prescribed sentence, it is entitled to impose a lesser sentence. I believe the same applies to the imposition of a harsher sentence.

27. In **S v Kleynhans** (SS 45/2016) [2017] ZAWCHC 125 (24 October 2017) Boqwana J considered the authorities relating to the inherent jurisdiction of the court to impose a life sentence. She stated that the court has a discretion, which is not fettered by the minimum sentence legislation, insofar as its ability to impose a sentence higher than the prescribed minimum, in appropriate circumstances. In that matter the learned judge did not think the serious circumstances of the matter justified the imposition of a sentence of life imprisonment.

28. In **S v Khoza and Others** 2010 (2) SACR 207 (SCA) at p 88, sentences in excess of the minimum sentences were confirmed to be appropriate if commensurate with the seriousness of the offences, the circumstances of the accused and the interests of society.

29. In this matter the personal circumstances of the accused, the seriousness of the offences, the circumstances under which they were committed, and the victim, his wife, are relevant factors for consideration. The circumstances of the accused that I deal with later, include his mature age, his education, the lack of previous convictions, his employment, and other relevant conduct or activities, that call for consideration together with the interests of society, the protection of society's needs, and the deterrence of would-be offenders.

30. As noted, the issue in this matter is whether the court should impose the prescribed minimum sentence of at least 15 years' imprisonment in respect of the murder charge, or whether to deviate from such sentence, either to impose a less severe sentence, of a suggested 12 years' imprisonment, as argued on behalf of the accused, or a harsher sentence than the prescribed minimum sentence, possibly a life imprisonment sentence, as argued by the state.

31. As noted, although the court is empowered to deviate from the imposition of the prescribed 15 years imprisonment in a case such as the present, it cannot do so lightly. The court must be satisfied that the imposition of a prescribed sentence would not be disproportionate in the circumstances and must be satisfied that the factors, possibly warranting a lesser sentence, are of such a nature that there are substantial and compelling circumstances, justifying the departure from the prescribed sentence. The 15-year prescribed minimum sentence is to be regarded as generally appropriate for the crime of murder for a first offender where no premeditation has been proved, and such a minimum sentence should not be departed from without proper justification.

32. As regards the relevant factors and circumstances for consideration by the court, as highlighted by the counsel of the accused, the following were considered:

PERSONAL CIRCUMSTANCES:

33. The accused, now 58 years old, was 57 at the time of the commission of the offences. I do not agree that he is of '*advanced years*', as argued. He is a fit, strongly built, middle-aged individual. His two daughters are majors and independent. Neither of them lives in Cape Town. The accused is a qualified chartered accountant and has held responsible positions in the business world. He has also successfully furthered his studies. I was told that he was a high-ranking official in a company known as Freeplay South Africa, where he did some admirable work to the advantage of disabled persons, but the business relocated. Subsequently he was involved with a business involved in the refurbishment of computers, where he was '*supportive of a mission*' to '*narrow the digital divide*'. Subsequently he started his own computer retail business. It failed, leading to a

significant financial loss to the business and to his family's fortunes. The family home and a holiday home had to be sold to meet financial commitments. He was unemployed for some 7 months.

34. Fortunately for the family, the deceased supported the accused and the family with her own financial and other contributions during this period. The accused obtained employment again as a CEO of a biscuit baking concern, before he moved, in about 2015, to a soft drink company in Bellville, Twizza, where he was a general manager, until he was dismissed in 2018, after the occurrence of the events before court.

35. The accused was fortunate to have been in a position to obtain regular, apparently lucrative employment, over the years. The business failures and misfortune suffered by him, leading to the economic discomfort of his family, was alleviated with the assistance, support and effort of his wife, the deceased. The accused has been incarcerated for some months whilst awaiting trial and sentencing. His incarceration followed his wilful breaching of bail conditions.

36. As noted, it is in his favour that he is a first offender. But, the legislation specifying imprisonment of at least 15 years for murder in certain circumstances, applies specifically to a first offender.

37. The daughter of the accused perceives him to be a good, caring and supportive father, attributes not exhibited when he murdered their mother, without any reason being divulged. The court has speculated that there may have been an argument, where the deceased possibly exhibited and voiced well justified trust issues, threatening, according to the accused, to address these issues with the CEO of his company, which would undoubtedly have been embarrassing to the accused,

or this may have threatened his employment. But, since he has steadfastly refrained from being open with the court, his actions may also have been motivated by selfishness or self-indulgent reasons, to get his own way, to live a life that he said he loved, but without his wife, whom he said he did not love.

38. In view of the fact that this court is obliged to speculate about the trigger for the horrendous attack on the deceased by the accused, with the result that the court is not in a position to find pre-meditation by the accused, the court is also not obliged or at liberty to consider that the accused merely lost his temper before ending the life of his wife. Although there was no proof that the murder was premeditated, or planned beforehand, his conduct in murdering his wife, can in no way contribute to mitigating circumstances.

39. It is argued that the accused contributed positively to society. It is maintained that he held business positions and employed individuals, sometimes from disadvantaged backgrounds. Nothing in his fractured employment background constitutes substantial and compelling circumstances justifying the imposition of a lesser sentence than the prescribed minimum sentence. Neither did anything testified to by his daughter, about him being a sport companion or a kind caring man to her and some relevant others, constitute circumstances to deviate from the minimum sentence.

40. The accused was disloyal and deceitful and exhibited fatal physical violence towards his wife of nearly 31 years, the wife who stood by him when he experienced financially difficult times; the wife who raised two lovely daughters with him. He conducted an extramarital affair for about two years before he was confronted by his own daughter about his inappropriate conduct, and then, apparently, unbeknown to

his daughters or wife, continued to conduct the same extra-marital affair during the last four months of his wife's traumatised life, in a manner that can only be described as self-indulgent and hypocritical.

41. Very little was said that was favourable about the personality of the accused. He even attempted to get a colleague to provide an alibi under false pretences. When the matter was investigated, he conducted himself in an arrogant, controlling, disdainful, disinterested and un-cooperative manner towards the police. He has not shown any remorse for his actions and neither did he display any remorse, grief or trauma at the death of his wife; he did not formally report her as missing; he avoided being present when her burning vehicle was discovered; he did not want counselling when it was established that a body was found in the burning vehicle; he did not wish to consult with the investigating officer when summoned; nor was he available the next day at the agreed time and place to enquire about the investigation, preferring to take a scenic drive.

42. His attitude was self-centred, deceitful and cowardly, throughout. He relied on his children for information of the investigation, seemingly not perturbed by how traumatic this must have been for them. He complained when photographs were taken of his Audi, when his cell phone was taken and about the conduct of the police in general. Considering the circumstances, I believe the police became justifiably suspicious based on his own objectionable, inexplicable conduct. He also complained about the attitude of his colleagues, who, for obvious reasons, did not support him or believe his web of lies. Although everybody close to him requires therapy to deal with the heinous consequences of his actions, he maintains a dismissive, disinterested air, lacking in empathy, also in court.

43. The **offences**, of which the accused has been convicted, the manner of execution and the impact thereof were undeniably extremely serious. As noted, the victim of these offences was his wife. There is no indication that her conduct was at all to blame for the accused's ultimate betrayal of her, bludgeoning her twice with a blunt object, with the intent to kill her in cold blood. The murder was callous, brutal and shocking. She must have died a painful, gruesome death, suffering extreme shock and horror during the last moments of her life, realising what was happening and who her attacker was, before succumbing to death.

44. The degree of violence which was meted out was excessive, showing horrifying aggression. The successive blows and fatal force executed in ending his wife's life, in the sanctity of her own home, as she was preparing to go to work, disregarded her dignity and bodily integrity, not to mention her entitlement to be protected and supported by her own husband. Instead of seeking medical attention or contacting the police, the accused allowed the deceased to die, before attempting to cover up his despicable deed, while pretending to look for her.

45. The accused, who was physically fit, abused his masculine strength and stature to attack his petite, unsuspecting wife, who had been devastated by the news of her husband's infidelity, who, unaware of her husband's continued deceitful conduct, instead of leaving him, had been trying to restore the marriage, while justifiably suspicious.

46. The accused showed a disregard, not only for the sanctity of the life of his wife, but also what her life meant to her and to those who loved her, including her extended family, especially her daughters. The deceased would have regarded the accused as her husband, the father of her children, who was there for her support,

protection and security. No doubt her guard and defences would have been down in the sanctity of her own home in what should have been the comforting presence of her husband, just before he ended her life violently.

47. The loss of the deceased has left a hole in the lives of those who were close to her, her daughters, family and friends; all individuals who will never again have the pleasure, support and comfort of the presence of the deceased. Her death means that she is no longer able to do the things that she enjoyed. Neither will she ever know the joy of special occasions in her children's lives. The accused does not seem to understand or care that his conduct resulted in trauma and grief to his family; that his children have lost the stability of a normal family existence and that they must suffer conflict and distrust, while mourning the death of their mother, and supporting the accused as their father.

INTERESTS OF THE COMMUNITY

48. Our courts have repeatedly held that vulnerable individuals, such as women and children, must be protected and their constitutional rights recognised. Those sentiments appear from time to time to have been disregarded. It is apparent from trials that serve before this Court, criminal appeals and automatic reviews, that crimes involving violence against those not always capable of protecting themselves, such as females and children, including relationship partners, are assuming epidemic proportions in this court's area of jurisdiction. For that reason, the imposition of severe sentences is sometimes required in order to discourage a continuation of anti-social conduct of that kind.

49. In the matter of **S v Pillay** 2018 (2) SACR 192 KZD a judgment by Henriques J, it was held:

‘[1] Violence by men towards women is endemic in this country. South Africa’s femicide rate is five times higher than the global average. It is the duty of courts to impose harsh sentences to recognise the seriousness of the situation.’

50. In this matter it was noted that the court must not overemphasise the public interest and general deterrence, referring to **S v Scott-Crossly**, 2008 (1) SACR 223 (SCA), para 35, where it was held that excessive punishment serves neither the interests of justice nor those of society. The accused in the matter was sentenced to 20 years’ imprisonment on the charge of murder.

51. In **Mudau v S** (547/13 [2014] ZASCA 43 (31 March 2014) the SCA held:

‘[6] Domestic violence has become a scourge in our society and should not be treated lightly but deplored and also severely punished. Hardly a day passes without a report in the media of a woman or child being beaten, raped or even killed in this country. Many women and children live in constant fear. This is in some respects a negation of many of their fundamental rights such as equality, human dignity and bodily integrity.’

52. This was well articulated in **S v Chapman** 1997 (3) SA 341 (SCA) at 345A-B when the Court said, more than 20 years ago, that women in this country have a legitimate claim to walk peacefully on the streets, to enjoy the peace and tranquillity of their homes without fear, without apprehension and insecurity which diminishes the quality and enjoyment of their lives.’

53. See also **S v Baloyi** 2000 (1) SACR 81(CC) at para 11, a quote by Sachs J that all crime has harsh effects on society, but what distinguishes domestic violence

is its hidden, repetitive character and its immeasurable ripple effects on our society and, in particular, on family life.

54. Justice **Mandisa Maya**, the President of the Supreme Court of Appeal, presented a lecture on **Judicial and Legal Responses to Gender Based Violence and Femicide** at a Gender Violence Summit in Pretoria on 1 November 2018, which was published, that I quote from freely. The learned justice recorded the shocking frequency with which women are sexually assaulted and or killed by a man, often a husband or a partner, and that in a significant number of those incidents there is no justice for the victim. She emphasised that the complex nature of the trend towards gender-based violence in our society needs to be addressed and that gender-based violence is rooted in structural inequalities between men and women and is characterised by the use and abuse of physical, emotional, or financial power and control.

55. It was pointed out that our Legislature has enacted a number of statutes aimed at addressing these women-oriented challenges and that it is not debateable that women are a vulnerable group whose well-being and safety is precarious in our patriarchal society, arising from factors related to their historic oppression and exclusion from economic activity. It was noted that the legal mechanisms in place to deal with this scourge in our society are seemingly inefficient in light of the continued rampant gender-based violence in our country.

56. The learned justice continued to point out that one of the insidious qualities of gender based violence and femicide is its far reaching, adverse impact on all aspects of a victim's life and its devastating impact on a number of their constitutional rights, which guarantee human dignity, freedom and security of persons. Our nation is

committed to the creation of a society that is free from violence and puts a high premium on a person's bodily integrity. Gender based violence and femicide directly violate these foundational principles of our Constitution.

57. The learned justice emphasised that the Courts, guided by various principles of our legal system, play a crucial role in ensuring just outcomes in these cases and in alleviating the problem. They bear the difficult task, when the guilt of an offender has finally been proved, of finding the right balance between a just sentence on one hand, and a clear message that will deter gender-based violence in society on the other hand.

58. She referred to various judgments, including *S v Baloyi & Others*, which highlighted that the Constitution imposes a direct obligation on the State to protect the rights of all persons to be free from domestic violence. The Courts have delivered important judgments which emphasise the rights of victims of gender-based violence and continue to send out strong messages by imposing tough sentences, and through direct remarks that gender violence is not acceptable. Landmark cases include *Omar v Government of the Republic of South Africa & Others*, relating to the provision for protective orders under the Domestic Violence Act.

59. The courts were reminded that they, as the final arbiters in matters involving gender-based violence, have the power to protect abused women and to effectively punish the offenders, and in so doing send a clear message to perpetrators that such conduct will not be condoned. **This is such a case.**

60. It is undeniable that we are experiencing high levels of violent crime, in particular violent crime against women. In **S v Rhode**, CC 43/2017, sentence

handed down on 27 February 2019 in this court, where a husband was convicted of murdering his wife, testimony was presented in aggravation of sentence, based on national and international studies and research on female murders and femicide. Staggering statistics were provided relating to the proportion of intimate homicides in our country.

61. As noted in **Rhode**, it is important, and the duty of the Courts, to contribute in our role in the justice system to impose appropriate sentences, particularly where women are murdered in the context of their marriages, their relationships and in their homes. At the same time the court is mindful that an accused cannot be sacrificed at the altar of deterrence for other would-be offenders, nor can the court impose punishment in anger.

62. The interests of the community must however be satisfied that offenders of serious crimes, such as these before court, are punished appropriately to avoid society from losing confidence in our Courts and to avoid the undermining of law and order. Serious crimes of this nature compel that the objectives of retribution and deterrence weigh more than the objectives of rehabilitation of the offender, and accordingly the interests of the accused would recede.

63. In the matter of **S v Van Staden** (KS21/2016)[2017] ZANHC 21) Mamosebo J states at paragraph 14:

[14] Murder committed by a man on a woman should not be treated lightly. It becomes worse where the perpetrator, as in this instance, was the deceased's partner, who had the duty and the responsibility to protect her and not to harm her. It is killings like the one committed by the accused which necessitate the imposition of a sentence to serve not only as a deterrent but

also to have a retributive effect. Violence against women is rife and the community expects the Courts to protect women against the commission of such crimes.'

AGGRAVATING FEATURES:

64. I repeat the salient aspects of the aggravating features of the murder of his wife by the accused that are significant:

1. The deceased was a woman, middle-aged, of a noticeably petite stature;
2. She was murdered by the accused, her husband of 30 years, a fit, strong, sturdy individual;
3. The parties had two daughters;
4. He murdered her by inflicting more than one blow to her head, breaking the strongest bones in her skull;
5. He attacked her with the direct intention to kill her;
6. The deceased trusted the accused with her own safety. She looked to him for her protection, care and support. He breached this trust, attacked and murdered her in the sanctity of her own home;
7. The deceased was leaving to go to her work, employment that she obtained to contribute financially to the joint home;
8. The motive for the crime has not been divulged, but it appears to have been mostly frustration and anger.

9. The deceased had been devastated by the revelation of the infidelity of the accused, to the extent that she required medication, but regardless she was loyal and committed to repairing the marriage by attending joint and personal therapy sessions;

10. While pretending to be working at improving his marriage, the accused continued to pursue his paramour, a pursuit that continued even after the death of the deceased and after he was requested to cease doing so, by his lawyers, at the request of his mistress;

11. The actions of the accused, subsequent to the murder, for which he will be sentenced separately, impacts severely on his conduct. Not only did he kill his wife and try to hide this from law enforcement, but what he did was morally reprehensible. He put the body of the deceased in the boot of her own car and then drove around in the car, with its licence plates removed, before finally leaving it at the nearby railway station and later setting it alight, as planned, with her still in the boot.

12. The actions of the accused prevented the family of the deceased, including her children, from getting closure and resulted in additional shock, horror and grief to those who loved her;

13. The motives of the accused with his actions are unknown, but can only be self-indulgent and lacking in empathy;

14. The accused displayed and voiced no remorse or grief at what had happened; not once did he mention that he misses his wife or that he feels sympathy for his children;

65. Not only are there no factors of the nature required to lower the applicable minimum sentence in this case, not separately or cumulatively, but there are ample reasons for a court to increase the minimum prescribed sentence. As recorded, his conduct was morally reprehensible in numerous respects and the aggravating features so extreme and shocking that in my view it outweighs his personal circumstances and the few factors that may have been regarded as mitigating factors. A sentence in excess of the prescribed period of 15 years is warranted.

66. **As regards COUNT 2**, the conviction of attempting to defeat the ends of justice, the features are aggravating and shocking. The accused methodically, brazenly and clinically went about in an attempt to obliterate any proof of his cowardly deed. In the course of the day he had many opportunities to divulge what had happened and to reconsider his attempts at defeating the course of justice, but he refrained from doing so. Setting the body of the deceased alight in the circumstances of this case is horrifying. The deceased was treated without any acknowledgement that she was a woman, previously his wife, who was entitled to her dignity, even in death; so keen was the desire by the accused to ensure his own liberty and to escape the consequences of his murderous conduct.

67. It is a sad fact that the death and loss of the deceased is a shocking, traumatic event. But, by driving around with her body in the boot of her vehicle, before setting it alight, **was the ultimate, brazen, morally reprehensible, betraying act, not only of her, but also of the children of the accused.**

CONCLUSION:

68. I have considered various sentencing options, including the options argued by the defence and by the state. I have considered the views of the society regarding

the reprehensible nature of the conduct of the accused. I have also considered that the sentence must be appropriate and proportionate to sentences imposed in our courts for offences of this nature, where a minimum sentence is prescribed and described as being usually regarded as the appropriate sentence in a murder with the features of the matter before me. For the reasons set out above, I am satisfied that a sentence of long-term direct imprisonment is called for and that the term of punishment should exceed the minimum prescribed sentence of 15 years. I do not believe that a lifelong imprisonment sentence will be appropriate or proportionate in the circumstances of this matter, considering present applicable legal principles. I believe that a sentence **of 20 years direct imprisonment** on the **murder** charge will meet the objectives of sentencing that I have recorded, and that such a sentence will be manifestly fair and just in the circumstances of the case, without destroying the accused on the altar of general deterrence.

SENTENCE ORDER

1. Accordingly, on **Count 1, murder**, you are sentenced to **20 years direct imprisonment**.
2. In respect of **Count 2**, an attempt to defeat the course of justice, also a serious offence, you are sentenced to **4 years direct imprisonment**.
3. It is ordered in terms of Section 280 of the Criminal Procedure Act that 2 years of the sentence imposed on count 2 shall run concurrently with that imposed on count 1.
4. You are accordingly sentenced to an effective term of **22 years direct imprisonment**.

E STEYN J.

**HIGH COURT
CAPE TOWN**