IN THE KWAZULU_- NATAL HIGH COURT, DURBAN

REPUBLIC OF SOUTH AFRICA

Case no. 1183/11

In the matter of:

THE STATE

Versus

Mario Masibonwe Tsawe

Sentencing Judgment

Delivered on: 12 December 2011

Govender AJ

1) The accused was charged with two counts of murder and two counts of robbery with aggravating circumstances. Count one and two related to events that occurred in or about the 27th of November 2011 at or near Room 317 in the Formula 1 Hotel situated on Masabalala Yengwa Avenue in Durban. Count 1 of the indictment alleged that the accused unlawfully and intentionally used force and violence to induce submission on the part of Denis Colin Roberts (Mr D Roberts) and stole from him R300.00 in cash, a set of house keys and a Renault Clio motor vehicle, registration

ND 244945. Count 2 alleged that the accused unlawfully and intentionally killed Mr D Roberts on that date at or near room 317 in the Formula 1 hotel referred to above.

2) Counts 3 and 4 relate to events that occurred on or about the 28th of November 2011 at or near 7 Begonia Road, Glenhills in Durban. It is alleged in Count 3 of the indictment that the accused unlawfully and intentionally used force and violence to induce submission on the part of Noreen Crystal Roberts (Ms N Roberts) and stole from her a Dell laptop computer, a Blackberry cell phone, a Nokia cell phone and a wallet containing R 1600.00 in cash and various credit cards in the name of Mr C Roberts which were in her possession. It is alleged in count 4 of the indictment that on that date and place, the accused unlawfully and intentionally killed Ms N Roberts.

3) At the hearing on the 6th of November 2011, the state was represented by Ms Rea Mina and the accused by Mr Sivakumar of Justice Centre, Durban. The accused pleaded guilty to all the counts in the indictment. Mr Sivakumar, on behalf of the accused, read out a statement in terms of section 112 (2) of the Criminal Procedure Act 51 of 1977 (CPA) (the section 112 statement). The statement was handed in and marked exhibit A. The accused indicated that he understood and was conversant in English and consented to the proceedings being conducted in English. The

accused confirmed that he had read the statement and that his signature appeared on every page of the statement. He further confirmed the veracity of the contents of the statement and acknowledged that he understood its contents. Based on the statement and on the confirmatory answers provided by the accused, the court was satisfied that the accused is guilty of the offences to which he had pleaded guilty.

4) As a consequence, the accused was found guilty of both murders (counts 2 and 4) as well as both counts of robbery with aggravating circumstances (counts 1 and 3) as detailed in the indictment. Arguments in aggravation and in mitigation of sentence were heard on the 8th of November 2011.

5) Each count of the indictment specifically referred to section 51 and to Schedule 2 of Criminal Law Amendment Act 105 of 1997. Further, there is a specific acknowledgment by the accused in his statement that he has been informed by his legal representative and understands the extent of the sentence which may be imposed upon him. He was thus notified of the discretionary minimum sentencing provisions and its potential application to this case prior to the finding of guilt by the court.

6) It is a firmly established principle in our law that the sentence imposed must be proportionate. As expressed by Heher JA in *S v RO and another* 2010 (2) SACR 248 (SCA) para 30:

> "Sentencing is about achieving the right balance (or, in more high-flown terms, proportionality.) The elements at play are the crime, the offender and the interests of society…"

7) Section 51 of Act 105 of 1997 introduced the concept of minimum sentencing into our law. This section as amended by section 1 of Act 38 of 2007 provides:

> 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.
>
> (2) Notwithstanding any other law but subject to subsection (3) and (6), a regional court or High Court shall sentence a person who has been convicted of an offence referred to in-
>
> (a) Part II of Schedule 2, in the case of-
>
> (i) A first offender, to imprisonment for a period not less than 15 years.
>
> (ii) A second offender of any such offence, to imprisonment for a period not less 20 years; and
>
> (iii) A third or subsequent offender of any such offence, to imprisonment for a period not less than 25 years.
>
> (b)…
>
> (c) …[1]
>
> (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. ..”

8) The broad question that needs to be answered is whether the offences on which the accused has been convicted fall within Parts I and II of Schedule 2 of Act 105 of 1997. If they do not then the minimum sentencing provisions do not apply. If they do, the minimum sentencing provisions apply unless there are substantial and compelling circumstances justifying the imposition of a lesser sentence.

9) In the *S v Malgas*,[2] the import of the changes brought about by the minimum sentencing provisions was explained by Marais JA as follows:

> “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…”

[2] 2001 (1) SACR 469 (SCA) at para 8

10) It is this shifting of the emphasis to the objective gravity of the type of the crime and the public's need for effective sanctions against it that has resulted in the adoption by the legislature of the discretionary minimum sentences for certain serious offences. However, there is a residual discretion that vests in the presiding officers to depart from the minimum sentences if substantial and compelling circumstances exist which justify the imposition of a lesser sentence than that provided for in the legislation.

11) Thus the first question is whether the offences with which the accused has been charged falls within the Parts I and II of Schedule 2 of Act 105 of 1997.

The following offences are listed under Part 1 of Schedule 2 of Act 105 of 1997:

> Murder, when-
>
> (a) it was planned or premeditated;
>
> (b) …
>
> (c) the death of the victim was caused by the accused in committing or attempting to commit or after having committed or attempted to commit one of the following offences:
>
> . . .
>
> (ii) Robbery with aggravating circumstances as defined in Section 1 of the Criminal Procedure Act Act 1 of 1977; or

(d) the offence was committed by a person, group of persons or syndicate acting in the execution or futherence of a common purpose or conspiracy."

Part II of Schedule 2 to the extent relevant for purposes of this judgment includes the following offences:

"Robbery-

(a) when there are aggravating circumstances;

(b) involving the taking of a motor vehicle…"

12) It was contended by Mr Sivakumar that count 2 did not fall within the ambit of Part I of Schedule 2 and that Count 1 did not fall within the ambit of Part II of Schedule 2. He further argued that Count 4 did not fall within the ambit of Part I of Schedule 2 but conceded that Count 3 fell within the ambit of Part II of Schedule 2. On the facts, the concession regarding Count 3 was correctly made.

13) He submitted that the murder of Mr D Roberts was neither premeditated nor planned and he argued that it occurred spontaneously when the accused and his accomplice, who was named in the section 112 statement as Sthe Ximba, were in the room at the Formula 1 hotel. He referred to the previous unsuccessful attempt to set up a meeting in the 'Dark Room' at Adultworld and argued that the purpose of setting up this meeting

was simply to rob Mr Roberts. The facts do not support this argument.

14) The accused planned to rob Mr Roberts of his bank cards as he was aware of his pin codes. He intended to use the cards to withdraw money from Mr Robert's bank accounts and then to use the money to pay for his rental and to transport his furniture back to Pretoria. Mr Roberts did not have the bank cards in his possession when the accused and his accomplice murdered him at the Formula 1 hotel. It is probable that one of the reasons for the accused going to Ms Robert's home was to retrieve Mr Roberts bank cards. The accused found Mr Roberts bank cards in Ms Roberts home and used it to withdraw cash.

15) In his statement, the accused explained that he drew 'a piece of electric cord from his jacket pocket' and that this was used to strangle the deceased. On the face of it, the accused's conduct in taking the cord to the scene suggests that this was premeditated. Mr Sivakumar sought to explain this by stating that his instructions were that the accused took the DSTV cable from the hotel room, put it in his pocket and then used it to strangle Mr D Roberts. This explanation is highly improbable. It is materially different to that which was stated in the section 112 statement

and appears to be an afterthought aimed at bolstering the argument that there was no premeditation.

16) Once the accused entered the room, his accomplice began assaulting Mr Roberts and the accused at that point drew what was referred to as a piece of electric cord from his jacket pocket and wrapped it around the neck of Mr Roberts and proceeded to strangle him. The accused described it as 'a piece of electric cord ' which is not how one would generally describe a DSTV cable.

17) Ms Mina argued that once the accused entered the room, it was apparent that Mr Roberts had to be killed as he could have identified his assailants. In my view the sequence of acts bears this out. Para 3.11 of the section 112 statement states that the purpose of the meeting was to lure Mr Roberts to the room to rob him. The accused kept watch and when Mr Roberts arrived at the room, he informed the accomplice of his arrival. The accomplice was waiting in the room. As the accused entered the room, the assault on Mr Roberts commenced. The accomplice assaulted Mr Roberts and both of them wrapped the cord around the neck of Mr Roberts and pulled in opposite direction until he stopped moving. At no stage does the statement make any reference to the accomplice or the accused demanding that Mr Roberts hand them his bank cards or any other valuables. It was only after Mr

Roberts had stopped moving that they began searching for his bank cards and other valuables. After the initial attempt at strangulation, they searched Mr Roberts who appeared to be dead. He did not have his bank cards in his possession and only had the sum of R 300 00 and six condoms. It was at this point, that Mr Roberts began to move and to call for help and the accused and Ximba then proceeded to strangle him again.

18) The sequence of events as described suggests that the accused and his accomplice intended to rob and to kill Mr Roberts. The accused and the accomplice made no attempt to disguise themselves and clearly did not go equipped nor did they make any attempt to confine or restrain Mr Roberts so that they could make good their escape.

19) Mr Roberts was open about his sexuality and about his relationship with the accused. He had met the accused's family, had brought the accused to live with his family and had subsequently moved into a flat with the accused. It is most improbable that Mr Roberts would not have reported the robbery out of concern that his sexual preferences and orientation would become known. I am satisfied that the murder of Mr Roberts was planned or premeditated.

20) In any event, Mr Roberts' murder falls under paragraph C of Part I of Schedule 2. His death was caused by the accused when committing the offence of robbery with aggravating circumstances as defined in Section 1 of the CPA.

21) Mr Roberts was murdered when the accused and his accomplice sought to steal his bank cards and valuables. Mr Sivakumar argued that the original intent was to steal the bank cards. As it transpired, they stole R300.00 and the vehicle. As I understand his argument, no direct force was used when the motor vehicle was taken by the accused and that the motor vehicle was taken subsequent to the murder. He argued that there had been a lapse of time between the murder and the motor vehicle being taken. He contended that the taking of the motor vehicle was therefore theft and not robbery. This argument is untenable. The accused pleaded guilty to and was convicted of having committing robbery with aggravating circumstances as detailed in Count 1 of the indictment.

22) The fact that the accused took items that they did not intend to take when the robbery had been planned does not in anyway change the nature of the offence from one of robbery to theft. There is a direct nexis between the fatal assault perpetrated on Mr Roberts with the intent to rob him and the taking of the

R300.00 and that of the motor vehicle. The accused took the keys to the motor vehicle immediately after the attack on Mr D Roberts. It is part and parcel of one transaction and it would be artificial in the extreme to divide it up and describe the taking of the motor vehicle as a separate crime of theft because it was taken subsequent to the murder.

23) I am therefore satisfied that, in addition, that the death of Mr Roberts was caused by the accused when he committed the act of robbery with aggravating circumstance. Accordingly, Count 2 falls within paragraphs (a) and (c) (ii) of Part I of Schedule 2.

24) It must follow that once a determination is made that Count 1 amounts to robbery, this conviction, given the aggravating circumstances, must then fall within the ambit of Part 2 of Schedule 2.

25) Mr Sivakumar correctly conceded that the offence in Count 3 amounted to robbery with aggravating circumstances and fell within Part 2 of Schedule 2. Ms N Roberts was killed by the accused and his accomplice while they were committing robbery with aggravating circumstances. Once this concession is made, it

must follow that Count 4, the murder of Ms N Roberts falls within paragraph (c)(ii) of Part I of Schedule 2.

26) In any event I am of the view that the murder of Ms N Roberts was either planned or premeditated as described in Part I of Schedule 2. The accused and his accomplice went to her house knowing that she would recognise them. They made no attempt to disguise themselves. If the accused simply wanted to retrieve the items, it would not have been necessary to take the accomplice along. The accused carried the piece of electric cord that he had previously used to strangle Mr D Roberts and used this cord to strangle Ms N Roberts. His explanation provided from the Bar, that it just happened to be in his jacket pocket after the first murder, is unconvincing. It is apparent that the accused used Mr Roberts' vehicle to travel to the home of Ms Roberts the following day. This suggests that he was unconcerned that Ms Roberts would see him driving her brother's vehicle. Once the death of Mr Roberts became known, the fact that the accused was seen driving his vehicle would be incriminating. This brazen act of driving the vehicle to the home suggests that the accused was wholly unconcerned by the prospect that Mrs Roberts would see him in the vehicle and could have thus subsequently linked him to the crime. In my view the only reasonable and probable inference that can be drawn on these facts is that the accused acted in this fashion as he intended to kill Ms Roberts and therefore prevent her from identifying him.

27) He stated that he wanted to retrieve the cellphone and laptop computer belonging to the deceased as it contained various incriminating messages that he had sent to Mr Roberts. The accused knew that these items would be in the house occupied by Ms Roberts. He went there with the accomplice and states that when Ms Roberts, at his request, started searching for his charger, they decided to kill her and she was then strangled with the cord and subsequently stabbed by the accomplice. I am of the view that this was a premeditated and planned murder.

28) Accordingly I am of the view that Count 1 falls with Part II of Schedule 2, Count 2 within Part I of Schedule 2, Count 3 within Part II of Schedule 2 and Count 4 within Part I of Schedule 2.

29) I now turn to the question of whether there are substantial and compelling circumstances which justify the imposition of a lesser sentence than the minimum sentence provided for in section 51 of Act 105 of 1997. The following approach when exercising the discretion conferred in 51 of the Act was suggested by Cloete J in *S v Homareda* 1999 (2) SACR 319 (W) at 325 – 326:

> "1) The starting point is that a prescribed minimum sentence must be imposed.

2) It is only if a court is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence, that it may do so.

3) In deciding whether substantial and compelling circumstances exist, each case must be decided on its own facts. The court is required to look at all factors - mitigating and aggravating - and consider them cumulatively.

4) If the court concludes in a particular case that a minimum prescribed sentence is so disproportionate to the sentence which would have been appropriate … it is entitled to impose a lesser sentence.

5) The decision whether or not substantial and compelling circumstances are present involves the exercise of a value judgment; but a court on appeal is entitled to substitute its own judgment on this issue if it is of the view that the lower court erred in its conclusion …"

Also important in this context is the following caution issued by Marais JA in *S v Malgas:*[3]

> "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."

30) It was submitted on behalf of the accused that he was a first offender, had admitted his guilt and by doing so showed contrition and that he was in possession of tertiary qualifications. It was argued that he planned to use his time in prison to further

[3] 2001 (1) SACR 469 (SCA) para 9

his studies and intended to be productive upon his release. It was pointed out that he was 29 years of age and that he was prepared to co-operate with and assist the police in their investigation into the involvement of the accomplices in these crimes. He also had no previous convictions. Mr Sivakumar argued that these factors when assessed cumulatively amount to substantial and compelling circumstances, justifying the imposition of a lesser sentence than the prescribed minimum.

31) He relied heavily on the *S v Nkomo*,[4] where the majority held that it was for the court imposing the sentence to decide whether the particular circumstances call for the imposition of a lesser sentence. According to the majority those factors traditionally taken into account in mitigation such as the age of the accused and whether he has any previous convictions or not must be considered together with the aggravating factors in deciding whether there are substantial and compelling circumstances. On the facts of that case, the majority held that age of the accused, 29, that he was a first offender and that there were prospects of rehabilitation assessed collectively amounted to substantial and compelling circumstances thus justifying a lesser sentence. Despite being convicted of a brutal rape, the accused had his sentence reduced from life imprisonment to 16 years. However the majority noted that the each case must be assessed on its own facts.

[4] 2007 (2) SACR 198 (SCA)

32) I was referred by Ms Mena to the more recent judgment of the SCA in *S v Matyityi*[5]. A unanimous SCA reassessed the various issues on discretionary minimum sentencing and laid down guidelines on the discretion of judicial discretion in such instances. The court referred with approval to the dicta in *Malgas* and concluded that as a consequence of the discretionary minimum sentencing provisions, the court:

> 'no longer had a clean slate to inscribe whatever sentence it thought fit for the specified crimes. It had to approach the question of sentencing, conscious of the fact that the minimum sentence had been ordained as the sentence which ordinarily should be imposed, unless substantial and compelling circumstances were found to be present.'[6]
>
> The court cautioned against trial judges displaying a marked reticence to impose the prescribed sentence.

33) Important suggestions were made in this case as to how to assess whether remorse and age qualify as substantial and compelling circumstances. The court drew a distinction between regret and remorse and held that regret on the part of the accused does not translate to remorse. Remorse was described as

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[5] . 2011(1) SACR 40
[6] . Ibid at para 11.

the 'gnawing pain of conscience for the plight of another.'[7] Whether the accused is feeling sorry for himself at being caught or is genuinely remorseful is to be determined factually from the surrounding circumstances. Important factors in establishing contrition are what motivated the accused to commit the deed, what has since provoked his or her change of heart and whether the accused has a true appreciation of the consequences of his/her actions. [8]

34) As far as age as a factor is concerned, the court affirmed that it would not punish an immature person as severely as an adult. The criteria in this regard is whether 'the offender's immaturity, lack of experience, indiscretion and susceptibility to being influenced by others reduce his moral blameworthiness.'[9] The court was of the opinion that a person under the age of 18 would be regarded as naturally immature, but the same does not hold true for an adult. The court held that the age of the accused in that case, 27, was a neutral factor.

35) Ms Mina submitted that the strength of the state's case contributed significantly to the accused pleading guilty. He was found in the possession of the bank card of the deceased which

[7] . Ibid at para 13.
[8] . Ibid.
[9] . Ibid at para 14

was taken at the time of the robbery and murder of Ms M Roberts. These were the cards that were used to withdraw money after the murders of Roberts siblings. Further a tool box belonging to Mr Roberts which had been in the possession of the accused at the time of the murder of Ms Roberts was found at the scene of Ms Roberts' murder. Members of the deceased family identified that box as having been in the possession of the accused prior to the events. Further the accused was driving in Mr Roberts' vehicle after the murders. This court accepts that there was a formidable case against the accused and in these circumstances, the accused plea of guilty is regarded as a neutral factor.

36) The accused did not testify in mitigation of sentence and no evidence was placed before the court to the effect that he was immature or of a juvenile dispossession. It is salient to note that he holds tertiary qualifications, appears to have been well educated and for a period lived off Mr D Roberts. I can only conclude that in this instance, the accused acted in a cold and calculating manner once Mr Roberts ended the relationship. After the breakup of the relationship, he initiated contact with Mr D Roberts, through a gay website, using a pseudonym. After killing Mr D Roberts, he went to Ms Roberts' home the next day to search for the cellphone and the laptop and whilst there stole the bank cards and wallet containing R1 600.00 which belonged to Mr D Roberts.

37) The second murder occurred a day after the first murder and there was adequate time for reflection and reconsideration on the part of the accused. After the murder of Ms N Roberts, the accused drove in Mr D Roberts' vehicle to Verulam where he used Mr Roberts bank cards to withdraw R 4000 00 from his bank account. The spoils were then divided and shared with his accomplice. He then abandoned the car and returned to Durban using public transportation. He then deleted the information from the lap top stolen from Mr Roberts and sold it for R 1 500 00 to an unknown person outside the Workshop Complex. After that he proceeded to Pietermaritzburg and then hitched a lift to the Eastern Cape. He therefore left Durban in a hurry after making some attempts to cover his tracks.

38) These are not the spontaneous, impulsive and unreflected actions of an immature person with juvenile tendencies. These acts reflect a cunning, conniving, determined and devious mind that was prepared to kill not once but twice for greed and then to cover his tracks in order to prevent being detected. The accused was the main culprit in these killings as he initiated the plan, roped others in to assist and finally was an active participant in executing both murders. He is 29 years old and there is nothing in the evidence to suggest that he is immature. Indeed the evidence quite strongly suggests the contrary.

39) The pattern of behaviour does not suggest that the accused was remorseful after committing the murders. His professed sense of remorse appears to coincide with his arrest. Nowhere in the section 112 statement or in representations made on behalf of the accused is there a full and complete acknowledgment and appreciation of the enormity of the consequences of the murders for the Roberts family. The professed intention of the accused to acquire additional qualifications while in prison and rehabilitate himself is at this stage purely speculative.

40) Further, there are strong aggravating factors in this case. Both the deceased were of mature age. Mr D Roberts was 75 years and his sister Ms N Roberts was 71 years. It is apparent that Mr Roberts sought to have a meaningful relationship with the accused. He took him into his home, placed his trust in the accused, shared important details such as his bank pin codes, set him up in a flat, paid for the transportation of his furniture from Pretoria, purchased new furniture, met the parents of the accused and finally moved into the flat with the accused.

41) Sometime in October 2011, he ended his relationship with the accused and stopped paying for rental and other living expenses. The accused alleged that Mr Roberts returned to the

flat with a friend and broke down the burglar gate, assaulted him and removed various items of furniture. There is no elaboration on the nature of the assault and neither is there any further details on the whether the furniture taken belonged to Mr D Roberts or to the accused. After terminating their relationship, Mr D Roberts declined all contact by the accused. The accused states that he enlisted the assistance of one of his lovers called Siya to participate in the robbery planned to occur at Adultworld. It seems that the accused then got on with his life after Mr D Roberts had ended their relationship. Comments comparing the accused to a battered wife or partner are opportunistic, unsubstantiated by the evidence and is rejected by this court. In fact the contrary is suggested. It appears that Mr Roberts was generous and benevolent and there are no reasons before me as to why he terminated the relationship with the accused.

42) The plan to rob and to kill involved a number of separate and distinct acts over a period of time. Contact was made through the gay website, a rendezvous at Adult World failed to materialise and a second meeting was set up at the Formula 1 hotel during which the deceased was murdered. The second murder occurred a day later. After murdering and robbing Mr Roberts, the accused returned to his flat. He then realised that his cellphone and the laptop belonging to Mr D Roberts contained incriminating information linking him to the murder. That evening at his flat, he

decided that he would go the following day to the home of Ms Roberts to retrieve these items together with the accomplice, who had participated in the murder the previous day with him. The court is of the view that the intent was to remove the incriminating evidence, steal the bank cards and kill Ms Roberts as she could identify them. That is precisely what they did. These acts of serious violence were planned and committed on different days and this is an important aggravating factor.

43) Ms Roberts sustained severe injuries which are detailed in Exhibit B, the post mortem report. Her cause of death is described as multiple injuries. In terms of the post mortem report she sustained amongst others, injury to various parts of her body including sternal and multiple bilateral rib fractures: bruises on the neck, head and chest, linear bruising extending across the neck which suggested manual strangulation of the neck. In addition there was a 33mm penetrating incised wound in the left lateral aspect of the neck. Finally there was slicing wounds on the left lower arm which according to the post mortem reports appears to have been caused by attempts to ward of the attack. The accused and his accomplice inflicted this level of violence and brutality on a 71 year old defenceless woman. It appears that Mr D Roberts' death was caused by asphyxiation. The death of the siblings in these circumstances must be calamitous for their family. They lost two relatives at the hand of a man whom they had trustingly let into their home. This double murder will

probably affect their lives irredeemably. A sentencing court must have regard to this as well.

44) After having considered the arguments made on behalf of the accused, having taken into account the circumstances under which the murders and robberies were committed as well as the violent nature of these crimes, as well as the interests of society and that of the victim, and after having reflected on the aggravating factors, I am of the view that there are no substantial and compelling circumstances justifying a reduction of the minimum sentences. I am thus of the view that the sentences prescribed in Section 51 of Act 105 of 1997 is not disproportionate to the crimes committed.

In the circumstances, I make the following order:

The accused is sentenced to the following:

A. **Count 1 - Fifteen years imprisonment.**

B. **Count 2 - Life Imprisonment.**

C. **Count 3- Fifteen years imprisonment.**

D. **Count 4 - Life imprisonment.**

By operation of law, the sentence imposed in respect of counts 1,2, and 3 are to run concurrently with Count 4.

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Govender,A J

Date of Hearings:	6 and 9 December 2011
Date of Judgment:	12 December 2011

Counsel for the State:	Adv R Mina
Instructed by:	Director of Public Prosecutions, Durban

Counsel for accused :	Mr Sivakumar
Instructed by:	Justice Centre, Durban

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[1] . Section 51(2)(b) and (c) patently do not apply to the facts at hand and are therefore not considered.