



IN THE HIGH COURT OF SOUTH AFRICA
SOUTH GAUTENG DIVISION, JOHANNESBURG

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| (1) | REPORTABLE: [N] |
| (2) | OF INTEREST TO OTHER JUDGES: [N] |
| (3) | REVISED: [N] |
| (4) | Signature: _____ Date: <u>5 MAY</u>
<u>2023</u> |

CASE NO.: 108/2022

In the matter between:

THE STATE

and

LETSOALO, COLLEN

Accused

NEUTRAL CITATION: *The State vs Letsoalo Collen* (SS108/2022) [2023]

ZAGPJHC 430 (5 May 2023)

JUDGMENT

Kumalo J

INTRODUCTION

[1] The accused in this matter is indicted with one count of murder read with section 51(1) of the Criminal Law Amendment Act 105 of 1997 in that upon or about 04 June 2022 and at or near 53 Mississippi Street, Thiteng Section in Tembisa in the district of Ekurhuleni North, the accused did unlawfully and intentionally kill Majorie Masehlake Ralefu, a female person.

[2] Accused is further charged with one count of assault with intent to do grievous bodily harm in that he tried to stab Thabo Rapudi with a knife.

[3] At the commencement of the matter, accused pleaded guilty to the charge of murder and his statement in terms of section 112(2) of the Criminal Procedure Act, No. 51 of 1977 ("the CPA") was handed up as exhibit "A".

[4] The accused admitted the killing of the deceased but stated that it was not premeditated. He stated that he was not forced or threatened by anyone to plead guilty and that he did so freely and voluntarily without having been unduly influenced,

[5] In the light of the fact that the State did not accept his plea, the statement was admitted as further admissions in terms of section 220 of the CPA by agreement between the parties. A plea of not guilty was then recorded.

[6] The State led the evidence of Ms. Regina Ralefu, the sister to the deceased in relation to the charge of murder and the evidence of Thabo Raphudi in relation to count 2 of assault with intent to do grievous bodily harm.

[7] Ms. Ralefu testified that she knows the accused. He used to live at her house before he broke up with her sister. Her sister and the accused separated three weeks before the unfortunate incident and accused had moved out of her home then.

[8] On the day in question and at about 22h36, she was at home inside the house with her children and boyfriend. The deceased called out for her. She felt at that time that there was commotion outside.

[9] As at that time, she had not seen her sister and last saw her in the morning but heard her coming through the gate as it would make a noise when it is opened.

[10] She opened the door and saw the accused stabbing the deceased and called on him to leave the deceased alone. She further testified that she witnessed this from a distance of about three metres and could see clearly as there was light where it all happened.

[11] She described the knife used by the accused to stab the deceased as a folding knife and stated that it had approximately a 10 cm handle and the blade could also have been 10 cm. She further testified that she had seen that knife before on the Accused. The accused normally carried it.

[12] She confirmed that she knows Thabo Raphudi but was not aware that he was in a relationship with the deceased.

[13] She was not cross examined on any aspect of her evidence.

[14] The state further called Thabo Raphudi, the complainant in the assault matter. Raphudi confirmed that's the deceased was his girlfriend. Their relationship commenced two months before her untimely death.

[15] He testified that on the day in question he was in Tembisa at a pub where they usually drink. He had arrived there shortly after lunchtime. The reason why he went there on that particular day was that the deceased had sent him a WhatsApp message that he should meet her there.

[16] He arrived first as the deceased had gone out with her friends at the time and upon her arrival, they exchanged greetings but did not sit together. He stated that that they were seated at approximately six or seven meters apart from each other.

[17] The deceased was at that time with her friends who later left and the deceased was left on her own. The time he estimates was around 20h00 and he was supposed to leave then.

[18] Whilst he was there, the accused arrived. He knows the accused since they live in the same vicinity and not far from each other. The accused spoke to the deceased. He could not hear what they were saying to each other but observed that they seem not to be in agreement on whatever they were talking about.

[19] He saw the deceased pushing the accused's hand away from her. Thereafter they accused left the place and the deceased came to him and asked that he buy two beers which he did and they then left for her place. He further states that at that moment he was tipsy but not drunk and so was the deceased.

[20] They arrived at the deceased home and entered through a garage which did not have a door to go through to the deceased room. As they were approaching her room, the accused emerged from the side of the toilet and he heard the deceased say oh Jabu.- it is then that the accused attacked him with a knife.

[21] He further stated that the accused attempted to stab him and he demonstrated this to the court. He says he fell on the ground. The deceased intervened at that point and told him to run away as the accused was going to kill him. It is further his evidence that he stood up and went back the same route he came in and when he was about to exit the yard he heard the deceased screaming that he must run away. The accused was killing her.

[22] He stopped at the gate and did not know what further happened to the accused as he never came out by the main gate.

[23] He did not see the accused stabbing the deceased. He however saw the knife and described it as a big knife and not the folding knife as described by the first witness of the state. He denied that he ever attacked the accused on that day or carried a knife with him.

[24] Under cross examination he was asked more about his relationship with the deceased and about the allegation that he attempted to stab the accused and the accused fortunately managed to disarm him and took the knife away from him. Upon him being disarmed, he ran away.

[25] The state closed it's case.

[26] The accused was then called to the witness stand. He testified that on the day in question the deceased called him telephonically and inquired where he was. He told the deceased that he was at Mpho section and the deceased told him that when he was done doing whatever he was doing he must come see her.

[27] At the time he was drinking with friends but stopped everything that he was doing and rushed to her. He found her at a Tavern. He did not see the second state witness and does not know him.

[28] He testified that on his arrival at the Tavern, the deceased inquired from him why he no longer phoned her and in response he told her that she knows that her friends do not like him. He then told the deceased that his mother sleeps early and was worried that he would be locked out and needed to go home.

[29] The deceased suggested that that he come to her place. He refused because of the status of their relationship.

[30] However, the deceased gave her the key to her room and they agreed that they would meet there. He further stated that the deceased requested him to buy cigarettes.

[31] He denied that he owns a knife or possessed one. He further confirmed that he was last at the deceased house about two weeks prior to the incident. He however stated that the relationship between the two was normal when he left.

[32] He states that upon arrival at the deceased room he then left to buy cigarettes. On his way back, he heard the deceased calling out his name and asking where was he.

[33] He saw the deceased in the company of the second state witness. This person had 2 bottles of beer and asked the deceased if this was Jabu she has been telling him about. The deceased nodded. At that stage, this person put the two bottles of beer down on the ground, peddled and produced a knife. He alleges that he took the knife from the person and this person ran away.

[34] He was left alone with the deceased. He then asked the deceased why she got people to kill him. It is his evidence that the deceased said I am sorry. He then stabbed her because he was angry he did not think about it and when he heard the deceased sister calling on him to stop, he continued. stopped and then he dropped the knife and went away.

[35] She states that the knife was about 25 centimeters and was not foldable. That basically was the evidence in chief of the accused.

[36] In cross examination it was pointed out to the accused that he has deviated from his statement that was handed up as exhibit "A". Nothing much turned on this aspect as it certainly was a technicality in relation to what he pleaded.

[37] There were no further witnesses called on behalf of the accused and he closed his case.

[38] The issue to be determined by this court is a crisp, namely whether the act of the accused was premeditated insofar as count one is concerned.

[39] The accused clearly wants this court to believe that his conduct was not premeditated but happened at to the spare of the moment based on the fact that he was angry with the deceased who he alleged got the second witness of the state to kill him.

[40] It is hard for this court to believe his story. The reason is that he said that upon his return from buying cigarettes he heard the deceased calling his name and asking where he was. If one is to consider his evidence that the deceased gave him the key to her room and agreed with him that they would meet there, why then call out his name and ask where he was. She ought to have known because that was the agreement between them that they would meet at her room and she had given him the key for that purpose.

[41] Secondly I am of the view that the sister to the deceased who was in the house would have heard her sister when she alleged called out Jabu's name and asked where he was.

[42] The sister to the deceased testified that she heard her sister enter the yard as the gate would make a noise. Shortly after she heard the gate noise, she then heard her sister screaming. This would suggest that the accused did not use the gate when he came to the house. As a matter of fact, it is the accused evidence that when he went to buy cigarettes, he did not use the main gate. He clearly was aware of a different entrance to the yard.

[43] The sister to the deceased further testified that he saw the knife used to kill her sister and had seen this knife before in the possession of the accused. This evidence that I believe is very crucial was not challenged. As a matter of fact, this witness was not cross-examined and therefore her evidence stood unchallenged.

[44] When this court drew the attention of the accused counsel to that fact, the response was that he did not cross-examine as he was aware of the evidence of the second state witness that he believed would collaborate the evidence of the accused in so far as the description of the knife was concerned.

[45] However as stated above, the evidence of the first state witness did not only end there. She categorically stated that she had seen that knife before in the possession of the accused.

[46] There is obviously a discrepancy in the description of the knife allegedly used in this unfortunate event. The accused and the second state witness described it as a big knife and unfoldable. On the contrary, she described the knife as foldable and according to her estimate, it would have been about 20 centimeters if one is to take into account that she estimated the blade to be about 10 centimetres and the handle a further 10 centimetres. Thus when opened, it would be about 20 centimeters.

[47] The above discrepancy does not take the matter any further if one is to have regard to the first witness' testimony that she saw the knife and had seen it before in the possession of the accused.

[48] Based on the above, I find that the evidence of the accused cannot be reasonably be possible true under the circumstances and is therefore rejected.

[49] The crux of the matter then is whether his conduct was premeditated.

[50] In the matter of *Kekana v S* (37/2018 [2018] ZASCA 148; 2019 (1) SACR 1 (SCA) [2019] 1 All SA 67 (SCA) (31 October 2018), the Supreme court of appeals reiterated what was stated in *S v Kekana* [\[2014\] ZASCA 158](#) at para 13, that premeditation does not necessarily entail that the accused should have thought or planned his or her action for a long period of time in advance before carrying out his or her plan. This is because 'even a few minutes are enough to carry out a premeditated action.

[51] The accused if his evidence is to be accepted states that after disarming the would be his killer and who at that stage had ran away, he asked the deceased that she got somebody to kill him and her response was that she was sorry. He then stabbed her several times. This suggests that he had the time to think or contemplate his conduct and this does not support the suggestion that it was instantaneous.

[52] The state on the other hand, suggested that when they had the disagreement at the tavern which is denied by the accused, he left to way layed her at her house. This is plausible if regard is to be heard that he did not even use the main gate to enter the premises otherwise the sister would have heard it open.

[53] In the circumstances, I find the accused guilty as charged of count one.

[54] In the light of the fact that this court has rejected the evidence of the accused in so far as it relates to the events at the premises where the deceased was attacked, I have to accept the evidence of the state witnesses and the accused is found guilty of the second count namely assault with intent to do grievous bodily harm.

Kumalo MP Judge
Judge of the High Court
Gauteng Division, JHB

APPEARANCES:

For the State: Adv. Mashabane
From National Director of Public Prosecution
For the Defence: Adv. Mthembu
From Legal Aid
Hearing dates: 19, 24, 25 April and 2 May 2023
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