

In the Supreme Court of South Africa
In die Hooggeregshof van Suid-Afrika

APPELLATE

DIVISION).
AFDELING).

APPEAL IN CRIMINAL CASE.
APPEL IN STRAFSAAK.

CAPITAL

JACOB

KHUNON

Appellant.

versus/teen

THE

QUEEN

Respondent.

Appellant's Attorney
Prokureur van Appellant

Respondent's Attorney
Prokureur van Respondent

Appellant's Advocate
Advokaat van Appellant

C.M.S. Brink

Respondent's Advocate
Advokaat van Respondent

P.E. Roux

(Leave - WLD) Set down for hearing on: Monday 24th Nov, 1958
Op die rol geplaas vir verhoor op:

2.4.6.9.10.

(B)

9.45 - 10.10

Appeal dismissed. Reasons to be given later.

Coram: Hoexter de Ser, Malan, Hall (Actg) et Sice (Actg) J.A.

REGISTRAR
24/11/58

Record.

IN THE SUPREME COURT OF SOUTH AFRICA.

(APPELLATE DIVISION)

In the matter between :

JACOB KHUNON

Appellant

&

R E G I N A

Respondent

CORAM : Hoexter, de Beer, Malan JJ.A. Hall et Price A.JJ.A

Heard : 24th November 1958. Reasons Handed In : 17-11-58.

Reasons for JUDGMENT.

MALAN, J.A. :- The appellant in this case was tried in the Witwatersrand Local Division before Steyn A.J., and assessors, on a charge of murder and sentenced to death. At the conclusion of the argument on behalf of the appellant the appeal was dismissed with the intimation that reasons would be given later. Those reasons now follow.

The allegation against the appellant in the Court below was that he had caused the death of a native youth, *ali malibe*. The chief witness for the Crown was a native youth, Norman Mekwa, 17 years of age, who testified to having been an eye-witness of the tragedy. He stated that, shortly after dark on the 14th day of May, 1958, as he and the deceased were walking along a street in the Krugersdorp Location, the

appellant overtook them, separated them from behind and placed
 his arms around their ^{necks.} ~~necks.~~ The appellant addressed the
 deceased and said "Jy Sonny, jou naam is Dood", and told the wit-
 ness to stand aside. The appellant ~~thereupon~~ pulled the deceased
 away for a distance of 5 or 6 yards and a conversation, inaudible
 to the witness, took place between them. The appellant there-
 after struck the deceased with his open hand and the latter told
 the former to leave him alone ^{whereupon} ~~thereupon~~ The witness ~~thereupon~~ approached
 with the object of intervening in the quarrel. ~~whereupon~~ The
 appellant drew a knife with a blade estimated to be 12 inches in
 length and inflicted a severe wound upon the palm of the witness's
 hand. The appellant immediately returned to the deceased and
 stabbed him.

If this evidence had stood alone and had been believed
 by the Court a quo it would have been impossible for this Court
 to interfere but there is, in addition, strong evidence to support
 the Crown case. Constable Ezekiel was called by the Crown to
 prove that on the day following the assault the appellant arrived
 at the Police Station and produced a pocket knife - in itself
 a perfectly innocuous piece of information. Defending counsel
 thereupon asked Ezekiel what the accused ^{had} said to him. He there-
 upon stated that the appellant had told him that he and the

deceased had an/ argument in the course of which the deceased drew a knife and attempted to stab him. He took the knife away from the deceased and stabbed him. Counsel for the appellant, in the course of further cross-examination, tried to neutralise the effect of Ezekile's evidence but without success.

The only other witness for the Crown was the doctor who stated that the cause of death was a stab-wound in the lung which severed the pulmonary artery.

The appellant in his evidence gave several versions as to how the wound might have been inflicted ^{but they} ~~which~~ are not only inconsistent but also conflict with the case put to the Crown witnesses. The Court very properly accepted the Crown evidence and rejected the appellant's story.

Counsel for the appellant has suggested that by reason of the absence of direct evidence of an adequate motive the Court below was not justified in finding an intention to kill. There is no substance whatsoever in this suggestion. A lethal weapon was used in inflicting a fatal wound in a vital part of the body and the appellant must be presumed to have intended the natural consequences of his act.

Finally no ground exists for disturbing the sentence and the appeal is dismissed. ~~I wish to add that this~~

I wish to add that this appeal is entirely devoid of substance and that leave to appeal should not have been granted.

OK.

L. M. A. H.

A. C. H.
H. P.
A. H.

Judgment.

On resuming at 10 a.m.

J U D G M E N T.

STEYN, A.J.: The accused in this case is charged with the crime of Murder in that upon or about the 14th May, 1958, and at or near Knugersdorp he did wrongfully, unlawfully and maliciously kill and murder Ali Malibe, a native male.

The evidence of the Crown was that of the District Surgeon Dr. G.P. Human who found the cause of death of the deceased to be a stabwound in the right lung, which entered near the shoulder and penetrated the lung in a downward direction. He expressed the opinion that the knife which caused this stabwound must have been 4 inches long otherwise if it was less than that the shaft of the knife would have entered the wound to a certain extent and that probably would have caused some bruising in the surrounding tissues, which he did not find. He said that although it was possible that a knife of approximately three inches could have caused this injury it would have caused bruising at the entrance to the wound, which he did not find. He is of the opinion that it was more probable that a knife with a blade of at least four inches long must have caused this injury. The knife in question was not produced in Court although apparently a knife had been produced at the Preparatory Examination. That knife had a blade in the vicinity of 2 to 2½ inches long. The reason for the non-production of the knife in this Court was that the Officer in Charge of this case forgot to arrange for the knife to be produced. However that may be, this is less important as will emerge as I continue.

In/.....

Judgment.

In this case it seems to me one should start off on the basis that the deceased met his death as a result of the stabwound which I have described; that is one stabwound only.

Quite apart from the other evidence of the Crown to whom I shall refer, Native Detective Ezekiel Senne said that at approximately 9 a.m. of the 15th May, that is the day after the offence, the accused arrived at the Police Station and made a report. He says that the accused
10 handed over to him a small pocket knife with a blade of approximately 3 inches. On this knife he says he saw no blood or anything that appeared to be blood with the result that the knife was not sent to the Institute for Medical Research for the usual blood test. In cross-examina-
tion this witness said that the accused told him there was an argument between the deceased and himself because the accused had refused to call the Crown witness Norman's girlfriend. He says the accused said that the deceased drew a knife with which to stab him but he succeeded to
20 get the knife away from the deceased, and he (the accused) then stabbed the deceased. He denied that the accused had said to him that he had been involved in a fight with the deceased and did not know for sure whether he had stabbed the deceased. He said that the accused, when he handed the knife over to him, stated that he had taken the knife away from the deceased. He said the knife was open when the accused handed it to him.

If we accept that evidence, and we see no reason why we should reject it, we must accept the fact that the de-
30 ceased was stabbed to death and the accused on the next day handed over a knife to the Police, and admitted stabbing the deceased but alleged that he had done so in

self-defence/.....

self-defence.

In addition to that evidence, there is the evidence of the Crown witness Norman. Norman, who is a young native male approximately 17 years of age, says that at about 6.30 p.m. on Wednesday the 14th May, he and the deceased left a bus at the Krugersdorp Location and commenced walking home. He says the accused, whom he knew fairly well, came from behind and got between them and placed his arms around their necks. He says that the accused said
 10 to the deceased „Jy Sonny, jou naam is Dood“; a very significant statement in the light of subsequent events. He says that the accused told him (Norman) to stand aside, with the words „Jy staan aan die kant en weet nie wat ons praat nie.“ He says that the accused then released him and he stood aside. The accused thereupon pulled the deceased 5 or 6 yards away from him and there the accused and the deceased conversed in a low tone of voice which he could not hear. He then saw the accused strike the deceased in the face with the open hand, and he heard the deceased shouting "Leave me".
 20 He says he then intervened and asked the accused to leave the deceased alone. He then saw the accused's hand moving to his back pocket, and he saw the accused produce a long knife in the shape of a dagger. He says that he saw the accused raise his hand in which the knife was and make a stabbing motion at him, he ducked and put up his right hand, and in doing so, he received a wound in the palm of his hand.

Doctor Human also examined this witness and he says that he found he had a two inch long wound in his right
 30 palm which could have been caused by the blade of a knife.

So/...

Judgment.

So in that respect he corroborates the fact that Norman had this injury; and in Court, when he gave evidence, Norman actually pointed out the scar which was still in his palm. He says that as a result of that stabwound inflicted upon him he retreated and the accused kept on coming towards him. He then saw the accused return to the deceased and he saw the accused making a stabbing motion with his knife at the deceased. He was somewhat confused about the exact area. At one stage he said that
10 he saw this movement entering the left shoulder of the deceased; afterwards he said it was the right shoulder. He was not quite certain whether it was in the area of the one shoulder or the other. He did see the motion when the accused withdrew the knife but could not see if there was any blood on the knife because he took to his heels.

The evidence of Norman, although slightly unsatisfactory in regard to the exact area where this wound was inflicted, was confirmed in two respects by other evidence.
20 Firstly there is the fact that the deceased was stabbed in the shoulder area and secondly the wound on Norman's palm is accounted for by this evidence. The cross-examination of Norman did not in our view disturb his evidence to any great extent because he apparently was telling what he believed he had seen. He says there was no truth in the suggestion made to him that the accused had been asked by the deceased to call Norman's girlfriend and that the accused refused to do so as he was afraid of that girl's father. It was put to him that the accused
30 would say that as a result of that an argument arose and that the witness Norman and the deceased then attacked the

accused/.....

Judgment.

accused. He denied all that, and continued that he had no girlfriend. When the name 'Nini' was put to him, he said that such a person lived next-door to him but apparently that was not the Nini to whom the accused referred.

That was the evidence of the eye witness.

The defence admitted the fact that the post-mortem examination was performed on the deceased.

10 The accused was called by Miss Reid, who appeared for the accused. The accused, when he gave evidence, apparently decided that he could do better on his own, and proceeded with a story different to that put to the Crown Witnesses by Miss Reid, and so destroyed Miss Reid's version to the witnesses. He said that the deceased requested him to call Norman's girlfriend. According to him it was on the day before the trouble that he refused to call this girl and was allowed to walk away. He said that the next day, Wednesday, the deceased and Norman again stopped in front of the house of this girl Nini and

20 the deceased again told him to call her. He said that he again refused. According to him she came out of the house as he walked away, and when he looked again she was going indoors. This girl was not called to say that she was in fact Norman's girlfriend. He says that he walked away and Norman and the deceased followed him. They caught up with him and then the deceased produced a knife and stabbed at his chest. He says he bumped against the witness Norman and knocked him over. He says the deceased stabbed at and missed him, and he then

30 grabbed the deceased by the arm, twisted his arm and caused the deceased to release the knife. The deceased

threw/....

Judgment.

threw it some yards away. He then wanted to pick up the knife but Norman then grabbed hold of him and kicked him in the stomach which caused him to fall. He says he got up and ran home. He does not know if in getting away from the deceased he stabbed him. He also saw that the deceased ran away. He says that having picked up the knife, and the deceased having run away, he was left with Norman who was unarmed. He says he (the accused) then ran away. He admits that both Norman and the deceased were smaller than himself. According to the accused the deceased was the same size as Norman who was definitely smaller than the accused. He says he closed the knife and took it home and he put it in his wardrobe. Thereafter, the accused says, when on his way to the Police Station, he decided to open the knife again and in that state he handed it over to the Police. He says he saw no blood on the knife (Exhibit 1) at any time. If that was the knife which was used by the accused, according to the medical evidence to which I have referred, the shaft of the knife would have entered the wound to a certain extent and we would have expected some blood on the blade and on the shaft of the knife. However, the accused says he saw no blood on the knife and he did not know whether he had in fact stabbed the deceased. Norman had also been injured in his palm with the knife, and one would have expected blood on the knife.

On this version of the accused one cannot understand in what manner Norman was injured. Nor does it account in itself for the way in which the deceased was stabbed. The Doctor says a certain amount of force was used, and

yet/....

Judgment.

yet, according to the accused's recollection of the fight, he never touched the deceased's shoulder nor did he at any stage stab the deceased. In fact, on his version one cannot understand how the deceased came to be stabbed in the way in which he was stabbed. If the deceased had held on to the accused from behind, the deceased would not have been injured in the way he was injured. According to the accused's evidence he himself had been injured, but it is significant that he showed no injuries to the Police. If the blow to his jaw and the kick to his body, which he said Norman inflicted upon him, were hard enough to fall him one would have expected some injury on his body or to his jaw.

It seems to us that the accused's story should be rejected because it was completely in conflict with all the facts. On his version we cannot understand why he should have handed the knife over to the Police at all, when in handing it over he should have laid a charge of having been assaulted by Norman and the deceased. The accused does not say that he did not give the explanation to the Police that this was the knife which he took away from the deceased and with which he injured him because the deceased wanted to assault him. On the accused's version the knife was handed over to the Police without the admission that he had stabbed the deceased. It is not clear how the accused could have had time to stop and pick up the knife, which he says he did. Neither is it clear why the accused should have asked the deceased and not Norman, whose girlfriend it was, to call this girl in question. It is also not clear why the deceased and the accused should end up in a fight about Norman's

girlfriend/.....

Judgment.

girlfriend, and that Norman should deny that this girl was his girlfriend. In view of all those factors we are of the opinion that the accused has been completely untruthful. We accept Norman's evidence. That evidence is corroborated sufficiently by the evidence of the Native Detective Ezekiel and the other circumstances in regard to the stabbing, and the fact that the accused had no injuries. All these facts corroborate Norman's evidence completely. If we accept Norman's evidence, as we are
 10 entitled to do in the circumstances I have mentioned, we have to find the accused guilty of Murder. We accordingly find the accused guilty of Murder.

MITIGATING CIRCUMSTANCES.

Miss Reid calls the accused:

JACOB KHUNON, under oath states:

MISS REID: Will you kindly tell the Court what happened on this day, when the deceased was killed? --- After I had picked up the knife from the ground, the deceased grabbed hold of me and when I broke away from the deceased I stabbed him in the side. Norman then came along. He struck me with the fist and kicked me and I fell onto the ground. I then got up and ran away. The deceased sent
 20 me along to call Nini. I told him that I would not go and call her because I was afraid of her father and that was the cause of the fight.

Would you please tell us whether you went back to your mother to ask for the taxi fare and if the second

occasion/.....