

THE WHICHEVER IS NOT APPLICABLE
REPORTABLE: YES/NO.
OF INTEREST TO OTHER JUDGES: YES/NO
3) REVISED.

12/01/2010
DATE

SIGNATURE



12/1/2010

IN THE HIGH COURT OF SOUTH AFRICA

(NORTH GAUTENG DIVISION)

CASE NO.: A815/08

In the matter between

NELSON SEPURU MAKGATHO

Appellant

and

THE STATE

Respondent

CORAM: MAVUNDLA J et EBERSOHN AJ

DATE HEARD: 14 September 2009

JUDGMENT HANDED DOWN ON: 14th JANUARY 2010

JUDGMENT

MAVUNDLA J:

[1] The appellant was arraigned on a charge of murder before the magistrate. The accused pleaded not guilty.

[2] The usual formal admissions were made by the appellants' counsel. It was also admitted that the death of the deceased was caused by a gunshot fired by the gun of the appellant but the appellant denied that it was aimed at the deceased. His

defence was that he and other state witnesses were wrestling over the gun and that a shot went off hitting the deceased.

[3] The state witness Stanley Phuti testified that the appellant was the aggressor, that the appellant on that day, came twice to have a woman by the name of Daphne accompany him but she refused. On the second occasion, after she refused again, the appellant slapped her in front of the witnesses. The appellant then assaulted one Nico and also the witness Phuti.

[4] The appellant then produced a firearm. The appellant grabbed the witness by the hand and fired a shot into the air and then fired a nother shot in the general direction of the people in front of him. The appellant then left.

[5] It was later found that the second shot fired by the appellant hit the deceased. Other witnesses also testified and they corroborated the version of Stanley Phuti. The appellant testified and stated that when he spoke to Daphne the bystanders attacked him and he took out his gun. There was then a scuffle over the gun and 4 shots went off.

[6] The magistrate very carefully analysed the evidence and concluded that there was *dolus eventualis* present on the part of the appellant and he convicted the appellant. The evidence and the reasoning of the magistrate was carefully considered. The magistrate did not err and the conviction is in order.

[7] Regarding the appeal against sentence the magistrate duly considered the crime, the interest of society and the particular personal circumstances of the appellant when sentencing the appellant. The appellant didn't succeed to convince this court that the magistrate erred in this regard.

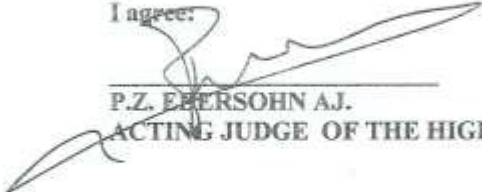
[8] It is clear that the appeal cannot succeed.

[9] I accordingly make the following order:

1. The conviction and sentence of the appellant is confirmed.
2. The appeal against the conviction and sentence is dismissed.


M. MAVUNDLA J.
JUDGE OF THE HIGH COURT

I agree:



P.Z. EBERSOHN AJ.

ACTING JUDGE OF THE HIGH COURT
