



IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG DIVISION)

CASE NO: A185/2007

7/9/2010

In the matter between:

ELIAS BOY MANGANY ~~DELETE WHICHEVER IS NOT APPLICABLE~~ Appellant

And

THE STATE

(1) REPORTABLE: ~~YES~~/NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO.

(3) REVISED.

7/9/2010
DATE

SIGNATURE

Respondent

JUDGMENT

LEDWABA, J

- [1] This is an appeal against conviction and sentence. On 23rd February 2005 appellant was convicted on a charge of murder committed on 19th June 2004 at Benoni and was sentenced to twenty years (20) imprisonment.
- [2] The appellant was legally represented in the court *a quo* and leave to appeal was granted on 24th July 2006. The late filing of the appellant's heads of argument was condoned. The identity of the deceased, together with, the cause of death was not disputed and was formally admitted by the defence. Photos of the scene were also admitted and they formed part of the record.

- [3] The body of Becky Zeziba, the deceased, was discovered in the swimming pool at her premises on 20th June 2004 at about 10H,00 by her employer Mrs. Stevens. She further saw an iron rod and some blood stains next to the pool. According to Doctor Skosana who conducted the post mortem, the cause of death was a head injury. In the Medico-Legal Post Mortem Examination Report the doctor also noted that the external injuries on the deceased's body were a 4cm incised wound chin abrasion frontal scalp, 3cm laceration (L) parietal area of scalp and abrasion occipital area of scalp.
- [4] Mrs. Stevens testified that she went to the room where deceased used to sleep after seeing her body in the pool. She noticed the deceased's clothes scattered on the floor and drawers were pulled out as if somebody had ransacked the room.
- [5] Ms. Joyce Ndlovu, the first state witness, was the deceased's friend. She testified that on 19th June 2004 at about 12H00 the deceased came to her place of employment. They were both domestic workers and stayed in the same area not far from each other. They left the place where she was working at about 14H00 to bet lotto at the shopping centre. Whilst walking in the street the appellant approached them. This was not the first time she had seen the appellant and the deceased had told her that she once had a love affair with the appellant.
- [6] She further stated that when the deceased saw the appellant, she told her that they should return to her work place because the appellant had a habit of halting her movement in the streets. They indeed returned to her premises and the appellant followed them. When they reached the gate he spoke to the deceased demanding a certain document. The deceased said that she did not have the document but would give the appellant the document should he come to her place. The appellant left.

- [7] After some time they left her work place and walked to the shopping centre again. From the shopping centre they walked to the deceased's place of employment and arrived at about 15H00. When the deceased was about to close the gate of the premises, the appellant approached from the street carrying a plastic bag over his shoulder. Appellant blocked the path of the gate so that the deceased could not close it. The deceased told the appellant to move from the gate and an argument ensued. The appellant approached the deceased in the yard. He pulled out an object which looked like an iron rod from the plastic bag. The appellant chased the deceased. She left the scene, as the appellant instructed her to leave and went to her place of employment.
- [8] Under cross-examination she admitted that on the 16th June 2004 they met appellant at the shopping centre. The appellant asked the deceased what she wanted from him and the deceased responded that she wanted nothing from him. It was further put to her that the appellant denied meeting her and the deceased on the 19th June 2004. She insisted that she met the appellant on the 19th June 2004.
- [9] After the close of the state's case, the appellant testified about events prior to the 19th June 2004 which are in my view not relevant. He denied that he met the deceased and Joyce on the 19th June 2004 and that he had a plastic bag. He said that he spent the whole day of the 19th June 2004 with his girlfriend Lena Masemela at the place where he stayed.
- [10] Lena testified for the defence that on the 19th June 2004 she spent the whole day with the deceased.
- [11] In evaluating the evidence for the State and the defence, it is clear and is common cause that Joyce Ndlovu and the appellant knew each other very well. Joyce testified that she saw the appellant on 19th June 2004 at the premises of her employer and also later at the premises of the

deceased's employer. It was during the day and they spoke to each other.

- [12] She further testified about the iron rod which the appellant had in his possession, which was also seen by Mrs. Stevens and the police who were at the scene of the crime.
- [13] There is no evidence indicating why Joyce would falsely testify that she saw the appellant if that did not happen.
- [14] Evidence was also led regarding previous fights and confrontations between the appellant and the deceased.
- [15] Even though the appellant's alibi was confirmed by his girlfriend Lena, on the evidence in its totality, I am of the view that the defence of an alibi is not reasonably possibly true and the court *a quo* correctly rejected it as false when it convicted the appellant. See **S v Chabalala 2003 (1) SACR 134 SCA**.

SENTENCE

- [16] Appellant's personal circumstances were put on record. He is a first offender and had already spent about eight months awaiting trial in custody.
- [17] There is evidence indicating that the appellant is a violent person. According to the evidence of Joyce Ndlovu, the deceased wanted to avoid meeting the appellant. However, the appellant kept on following her.
- [18] The magistrate in my view correctly found that there are no substantial and compelling circumstances justifying the imposition of a sentence lesser than the prescribed minimum sentence.

[19] However, I also think the sentence of twenty years imprisonment is far too excessive and there is no justification for adding on an extra five years to the prescribed minimum sentence. The trial court did not state the aggravating factors warranting the addition of five years to the minimum prescribed sentence as it should have. In the circumstances the sentence should be altered.

[20] I therefore make the following order:

(i) The appeal against conviction is dismissed.

(ii) The appeal against sentence is upheld. The sentence imposed by the court *a quo* is set aside and is substituted with the following sentence:

"Appellant is sentenced to fifteen years imprisonment".

(iii) Sentence is antedated to 23 Feb. 2008.

P LEDWABA

JUDGE OF THE HIGH COURT

I concur,

G WALBERTS

ACTING JUDGE OF THE HIGH COURT