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**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE DIVISION, MAKHANDA**

Case No.: CA&R 214/2022

Date Heard: 3 May 2023

Date Delivered: 4 May 2023

In the matter between:

LEE ROY ARIN MAPOE

Appellant

and

THE STATE

Respondent

JUDGEMENT ON APPEAL

RONAASEN AJ:

Introduction

[1] On 26 August 2022, in the Regional Court, Gqeberha, the appellant was convicted of the following offences:

1.1. Count 1 - murder, for which he was sentenced to imprisonment for 15 years;

1.2. Count 2 - the unlawful possession of a firearm, for which he was sentenced to imprisonment for 5 years; and

1.3. Count 3 - the unlawful possession of ammunition, for which he received a sentence of imprisonment for 3 years.

[2] The Regional Court directed that the sentences in respect of counts 2 and 3, would run concurrently with the sentence in respect of count 1.

[3] This appeal, however, proceeds solely on the question of the conviction of the appellant on the three counts mentioned, with the leave of the Regional Court.

The evidence adduced by the State at the trial

[4] At the trial the State presented the evidence of three witnesses whose evidence I summarise, below.

Aubrey Jantjies

[5] On the evening of 23 April 2017 at approximately 21:00, he was at his home in C[...] Street, G[...], G[...].

[6] He saw the appellant walking in the street in the company of one Cadwin Campher, the third witness for the State. The appellant had a firearm in his possession which was visibly displayed by him.

[7] He later heard one gunshot being fired and thereafter the sound of multiple gunshots. He later saw the appellant running and discharging a firearm, shooting in the air. He told his wife to call the police.

[8] He responded to cries from Jadine Jansen, the second witness for the State that his son had been shot and went to a house in the same street, where he encountered his son, the deceased, lying on the ground. He had clearly been shot.

[9] The witness confirmed that he knew the appellant well - he had grown up in front of him in the area in which he lived.

Jadine Jansen

[10] This witness testified that she was the girlfriend of the deceased. On the evening in question she was walking in Chamois Street with the appellant. She also knew the appellant well as they had grown up together in the vicinity. They were going together to buy "tik". As they walked, they were joined by Campher, the third witness for the State.

[11] While they were walking the deceased approached from the opposite direction and started chasing the witness, whereupon she ran into the nearby home of her aunt, closely followed by the deceased. She ran through the house into the backyard, followed by the deceased and the appellant.

[12] In the backyard of her aunt's home the deceased started to assault her. Whilst he was in the process of doing so the appellant brandished the firearm in his possession and told the deceased to stop assaulting her and that if he did not cease doing so, he would shoot the deceased. The witness remembered the deceased throwing a stone at her, which hit her in the stomach causing her to double over. While she was doubled over, she heard a shot being fired and saw the deceased falling. She also saw the appellant holding a firearm. From her observations it appeared that the deceased had been shot in the head.

[13] The witness tried to grab the firearm from the appellant, but he resisted. He again shot at the deceased. She was uncertain as to the number of shots which had been fired.

[14] She ran out of the house shouting and encountered the first State witness, the deceased's father coming in the opposite direction towards the house where the

shots had been fired. She also saw the appellant run away in the opposite direction to which she had run.

Cadwin Edwin Campher

[15] The witness confirmed having seen the appellant enter the house of Jansen's, aunt, following the deceased and Jansen.

[16] He confirmed that the appellant had a firearm with him. He also knew the appellant, who had grown up with him in the area.

[17] He heard shots being fired, after the appellant, the deceased and Jansen had entered the house of Jansen's aunt.

The evidence adduced by the appellant at the trial

[18] The appellant gave evidence in his defence but did not call any other witnesses to give evidence.

[19] The appellant's defence was one of an alibi. In his evidence he confirmed the plea explanation made on his behalf by his defence counsel at the commencement of the trial, in which he had admitted knowing the deceased. He denied having killed the deceased or that he had been in possession of a firearm on the night in question. He was not in Gelvandale when the deceased was killed. He stated that he had previously resided in Gelvandale, but that he had moved away from there in 2015, when he went to live with his father in Kuyga, where he was on the night that the deceased was killed.

Common cause facts

[20] At the commencement of the trial the appellant made certain admissions in terms of section 220 of the Criminal Procedure Act, 51 of 1977, including that:

20.1. the deceased died on 23 April 2017 as a result of a head injury caused by a gunshot;

20.2. the post-mortem report conducted in respect of the deceased was accurate and could go in as evidence without any further proof. This report confirmed the existence of two gunshot wounds to the head of the deceased, one of which would have caused his death.

Legal principles

[21] The following principles emerge from the judgment of the Supreme Court of Appeal in *Tshiki v The State* [2020] ZASCA (18 August 2020) at [13]

21.1. in criminal proceedings the State throughout has the onus to prove an accused's guilt beyond a reasonable doubt;

21.2. an accused's version cannot be rejected only on the basis that it is improbable, but only once the trial court has found, on credible evidence, that the explanation is false beyond a reasonable doubt;

21.3. thus, if the accused's version is reasonably possibly true, he/she would be entitled to an acquittal: and

21.4. the conviction of an accused can accordingly only be sustained if, after the consideration of all the evidence, he/version of events is found to be false.

Discussion

[22] The evidence of the witnesses Jantjies and Campher was not upset in cross-examination to any material extent and can be accepted as being credible. Crucially their evidence corroborates that of Jansen in the following material respects:

- 22.1. they knew the appellant well;
- 22.2. the appellant was present at or in the vicinity of the location where the deceased was shot; and
- 22.3. the appellant was visibly in possession of a firearm at the time; and
- 22.4. they heard shots being fired from the vicinity of the location where the deceased was shot.

[23] Campher, further, adds credibility to the version of Jansen by testifying that he saw Jansen running to the house of her aunt, followed by the deceased and the appellant and thereafter hearing shots being fired from that vicinity.

[24] Jansen's version as to how the deceased was shot is corroborated by the post-mortem report. Generally, her evidence cannot be faulted and was not materially challenged in cross-examination. She knew the appellant well and it is improbable, given the corroborative evidence referred to above, that she was mistaken as to the identity of the person who caused the death of the deceased.

[25] On a consideration of all the evidence adduced at the trial I am satisfied that:

- 25.1. the appellant's version presented at the trial was not reasonably possibly true;
- 25.2. the version of the appellant, in fact, was false, beyond a reasonable doubt;
- 25.3. the State, at the trial, had established the guilt of the appellant, on all counts, beyond a reasonable doubt.

Conclusion and order

[26] Thus, no grounds exist on which the conviction of the appellant on the three counts concerned can be disturbed. I accordingly make the following order:

The appeal is dismissed.

**O H RONAASEN
ACTING JUDGE OF THE HIGH COURT**

Lowe J: I agree

**M J LOWE
JUDGE OF THE HIGH COURT**

Appearances:

For the Appellant:

Adv H Charles

Instructed by:

Grahamstown Justice Centre

For the Respondent:

Adv H Obermeyer

Instructed by:

Director of Public Prosecutions
Grahamstown

Date heard:

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