



IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN

Reportable:	YES/NO
Of Interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case Number: A12/2022

In the matter between:

MPHO KENNETH NTSANE

Appellant

and

THE STATE

Respondent

CORAM: REINDERS, J *et* BOONZAAIER, AJ

JUDGMENT BY: REINDERS, J

RESERVED ON: 3 OCTOBER 2022

DELIVERED ON: 13 OCTOBER 2022.

- [1] The appellant was arraigned in the Regional Court held in Welkom on a charge of murder (read with the provisions of s 51(2) of the Criminal Law Amendment Act 105 of 1997). It was alleged that on 30 November 2019 at Welkom the appellant unlawfully and intentionally killed Mr Frans Tulani Mabaso (hereafter referred to as "the deceased").

- [2] The appellant pleaded not guilty and elected to remain silent. Admissions were made by the appellant in terms of s 220 of the Criminal Procedure Act 51 of 1977 (the “CPA”) which included the report on the medico-legal post mortem examination which was held on 2 December 2019 in respect of the deceased.
- [3] The said report revealed two stab wounds and the cause of death to be a stab wound to the chest. The identity of the deceased was admitted and likewise that the deceased had not sustained any further injuries until the post mortem was conducted.
- [4] During testimony at a later stage by the accused it became common cause that he had stabbed the deceased twice – in self-defence.
- [5] Two witnesses testified on behalf of the state. The first witness confirmed an altercation between the deceased and the appellant and the witness testified that after the deceased slapped the appellant once, the appellant stabbed the deceased twice with a pocket knife. The deceased walked away and collapsed at the corner of the street where he succumbed to his wounds. The second witness’s evidence was not placed in dispute and he testified overhearing appellant afterwards telling people that he had stabbed the deceased.
- [6] The magistrate considered the evidence and came to the conclusion that on appellant’s version he had exceeded the bounds of self-defence. In this respect the magistrate emphasized the first wound as testified by the appellant to have been directed at the chest of the deceased and that appellant had to foresee that the deceased could die as a result thereof. The magistrate stressed that appellant did not sustain a scratch in the altercation and, assuming the appellant’s version to be true that the deceased at the time was disarmed, the deceased was not a threat to the appellant. The magistrate therefore found that the appellant exceeded the bounds of self-defence or, put differently, appellant was not necessitated to defend himself by stabbing the deceased in the manner as aforesaid. The appellant was therefore negligent in causing the death of the deceased. The appellant was accordingly convicted on culpable homicide and sentenced to ten years’ imprisonment.

[7] The magistrate granted leave to appellant to appeal both his conviction and sentence.

[8] In respect of the conviction it was submitted on appeal that the magistrate erred in convicting the appellant on the evidence of a single witness, had erred in rejecting the version of the appellant and that the appellant should have been given the benefit of the doubt and acquitted. On my reading of the magistrate's reasons she accepted much of the appellant's version – for that reason explaining the conviction on culpable homicide instead of murder. Although the single witness's version was found to be holistically reliable, it became less important therefore as the appellant's version in essence confirmed it. It follows that I am not convinced that the magistrate erred in convicting the appellant as she did. The appeal against the conviction should be dismissed.

[9] In respect of sentence it is trite that "sentencing lies in the discretion of the trial court".

See: ***Nkabinde and Others v S*** 2017 (2) SACR 431 (SCA) at para [51]

In the absence of a material misdirection by the trial court, an appellate court cannot approach the question of sentence as if it were the trial court and then substitute the trial court's sentence simply because it prefers to.

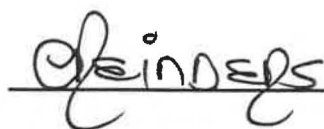
See: ***S v Malgas*** 2001(1) SACR 469 (SCA) at para [12]

[10] Before us it was contended that the sentence was inappropriate and induces a sense of shock. It was submitted that the court over-emphasised the seriousness of the offence and did not take into account properly or at all the personal circumstances of the appellant who he had at the time been awaiting trial for a period of almost two years in custody. At first glance I thought the sentence at least to be harsh. However, the magistrate in her reasons for sentence undoubtedly correctly mentioned the seriousness of the offence and the appellant's previous convictions of assault and rape. Appellant's record of previous convictions confirmed a conviction of assault on the 11th of January

2000 and assault with the intention to do grievous bodily harm, but more importantly on the 22nd of February 2013 a conviction of rape and a sentence of eight years' imprisonment. This incident occurred approximately six years after the aforementioned conviction on 30 November 2019. This was in my view a seriously aggravating factor which rightly weighed heavily with the magistrate. As mentioned, it is trite that sentence is predominantly in the hands of the trial court and that the court of appeal should in general only interfere in the event of a misdirection or the sentence imposed is shockingly inappropriate. None of these could be found by me and in particular the magistrate did not misdirect herself either on the facts or on the law. The appeal against the imposed sentence can therefore likewise not succeed.

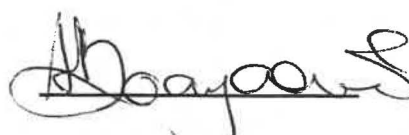
[11] The following order will issue:

The appeal against both conviction and sentence is dismissed.



C. REINDERS, J

I concur.



S. BOONZAAIER, AJ

On behalf of the Appellant:

Adv. P Mokoena

Instructed by:

Legal Aid South Africa

On behalf of the Respondent:

Adv. BG Claassens

Instructed by:

Director of Public Prosecutions