

REGISTRAR OF THE NORTH GAUTENG HIGH COURT, PRETORIA
PRIVATE BAG/PRIVAATSAK X67 JUDGE'S SECRETARY
2020 -01- 3 0
REGTERS KLERK PRETORIA 0001
GRIFFIER VAN DIE NOORD GAUTENG HOË HOF, PRETORIA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

Case number CC 49/19

THE STATE

VS

NYAKABONE ROBERT TSHETSHE

Accused

JUDGMENT

BAM, J

Appearances:

For the State: Adv A Fourie and Adv A Roos

For the accused: Ms Sono

1. The accused is standing trial on three charges.
 Count 1: Kidnapping of Howard Takalani Monyai on 15 August 2014 at Mamelodi East.
 Count 2: Murder of the said victim on the same day.
 Count 3: Contravention of Section 3(b) of Act 12 of 2004 - offering an amount of R10000 to Grace Kuki Monyai, for her not to testify against the accused.)
 Alternative to count 3: Contravention of section 18(b)(ii) of Act 12 of 2004 (Intimidating the said Ms Monyai not to testify against him).
2. The summary of substantial facts reads as follows:

1. On 15 August 2014 the accused and 2 other persons visited the house of the deceased and his sister. They enquired about the whereabouts of the deceased.
2. Moments later the deceased arrived enquiring from the accused and the two men why they were looking for him.
3. They grabbed him and loaded him on the back of their bakkie. They hit him with fists and poured an acid substance over his body. They then drove away with the deceased.
4. Later the same day the deceased was found by community members in the street, screaming and clearly in pain. He was taken to hospital.
5. The deceased passed away on 16 August 2014 in hospital.
6. According to the hospital records the deceased suffered 45 to 50% burning wounds. It will thus be alleged that the deceased passed away because of the wounds he suffered.
7. No post mortem was conducted.
8. On 24 August 2014 the accused approached the complainant in count 3 offering to pay her R10 000 00 in exchange that she refrains from testifying against him.
3. The accused pleaded not guilty and the following plea explanation was advanced: Counts 1 and 2: The accused did not see the deceased on the alleged day;

Count 3 and Alternative: The accused never saw the said person or intimidated her.

4. The following formal admissions were made:

The identity of the deceased; That the deceased died on 15 August 2014 as a result of the injuries he sustained on 15 August 2014.

5. The State adduced the following evidence:

5.1 Ms Grace Kuki Monyai. The deceased was her brother. They lived in the same house at Mamelodi East. On 14 August 2014 the accused and two other men arrived at their home. They were known to her. The men enquired about the deceased who was not at home. Somebody else told the three men where the deceased was. The three men returned about 15 minutes later with the deceased. The three men then assaulted the deceased. When they brought the deceased into the house he was already burned. They also pulled his private parts with a pair of pliers. The deceased's skin peeled off. His body was pink. She said the deceased was already assaulted when they brought him back to the house.

Court adjourned –State concerned about the witness.
On 28 January 2020.

Witness claimed she was intimidated yesterday and that she became afraid to testify and to implicate the accused directly.

Court assured the witness of her safety in court. The people who apparently intimidated her yesterday are not present.

Evidence proceeded.

She testified that the deceased was assaulted in her presence.

She repeated her evidence. Accused and the other two men who arrived looking for the deceased were informed by two boys outside where the deceased was. The accused and the two men left. They were driving a bakkie. After a short while later they returned with the deceased. The deceased was assaulted with a sjambok and a baton, and the accused's companion, called Jaman, poured acid over his body. The 2 litre acid container was made of plastic. It had the word ACID printed on it and also bore a human skeleton. They also pulled the deceased by his private parts with a pair of pliers. The skin was peeling from the left side of his body. His penis was bleeding. He was completely naked. The deceased was then put in the back of the bakkie and they drove off. Somewhat later the three men and others returned to her house. They arrived in a white Corsa and two other cars, a Conquest and a Jetta. They wanted to drop the deceased off at her home. She refused because the deceased was seriously injured. He was very weak. He was inside the Corsa. The three cars, with the deceased, then left. It was about past 12h00 on 15 August 2014. She did not see the deceased again. Later she heard that he was taken to the hospital. He passed away on the 15th August 2014.

On that day, at a BP Garage the accused, accompanied by other people, wanted to talk to her. She, however, did not want to associate with them. The accused offered her R10 000, 00 to drop the case. She was not amenable to that and did not speak to them any further. She was then threatened that she would follow the deceased should she proceed with the case. The cross examination was extensive.

She said the day she attended the court sitting at Mamelodi, she was insulted and threatened by the accused's sister. Yesterday, when she was called to testify, she noticed the accused's sister in court. The two companions of the accused, who assisted him on the day of the deceased's assault, had fled. When the accused returned with the deceased on the bakkie, the deceased had already been assaulted, but they then proceeded to assault him at her home. When they assaulted the deceased they said he shot one Dan, family of Jaman. When they assaulted the deceased he was screaming. She could not interfere. One of the men, Jaman, also had a firearm tucked in at his waist. After the accused took away the deceased, she called the police several times. The police only arrived some time later. She said she refused to let the deceased being dropped off at her home because he was badly injured, and she would not have known what to do if he died in her hands. Her husband was busy fixing his car and did not see what happened.

The accused's defence was recorded. It was a complete denial of any involvement and all the allegations against him.

- 5.2 Dr M Hattingh: On 15 August 2014 she was on duty at the casualty ward at Mamelodi Hospital. The deceased was admitted. He was dressed in his underwear. She tended to the deceased late afternoon, after 17h00. He was screaming of pain and ran around in circles. He had extensive corrosion burns over his body. It had a chemical smell. He was sedated. Her overcoat later had holes in it where she came into contact with the deceased's body. His condition worsened. The deceased died the next day. His death was caused by unnatural causes, probably shock because of the extensive acid burns. (Hospital record Exhibit B). (It is common cause that no Post Mortem was conducted but the cause of death is admitted).
- 5.3 Mr J Morotho: He lives in Mamelodi. On 15 August 2014 he noticed a group of people in a street. He recognised the deceased followed by a lot of people. He thought it was some kind of mob justice and managed to let the deceased into his vehicle. The deceased was suffering from pain. He then took him to the hospital. The police also arrived.
- 5.4 Warrant Officer J Ntuli: He is the investigating officer (the third one). No post mortem was held in this case due to the fact that one of the doctors at the hospital, Dr Naude, mistakenly, considered the death of the

deceased to have been caused by natural causes. At the time it was discovered the doctor had made a mistake, which he admitted it was too late to exhume the body. It had already decomposed.

State's case closed.

6. Defence case.

6.1 Nyakubone Robert Tshetshe: He is the accused. He testified that on 15 August 2014, he left a barbershop and then heard a shot. He found a certain Stephens Skosana who had been shot. Stephen told him that he was shot by Takalani (the deceased) and one Mujau. They were not present. At about 10h00 he managed to take Stephens to the hospital, and remained at the hospital tending to Stephens. They had to wait to get a file opened. (Hospital record Exhibit C). He stayed there until Stephens was discharged at about 9pm. Stephens is his cousin-brother. The accused denied that he knew Grace Monyai and that he saw her and the deceased on 15 August 2014. He also did not know the deceased. He also denied that he attempted to bribe Grace on 24 August 2014. The first time he saw Grace was when he appeared in the Mamelodi Magistrate's Court.

Cross examination. He did not know the names Jaman and Batheza. He heard their names at court mentioned by the police. He admitted that his nephew Malatji was shot and killed the Sunday prior to the 15th, a Friday.

He again denied that he knew Grace at all. He did not know why she mentioned his name to the police. He said his signature was on Stephen's hospital record, handed in as Exhibit C.

He knows the BP garage in Mamelodi. That is the garage Grace referred to and he never met her there.

Asked by the Court how he knew that was the garage she referred to, he said that is the BP garage close to his home.

- 6.2 Stephens Skosana. He stayed at the same premises as the accused. The morning of 15 August 2014 he was confronted by the State witness Grace Kuki Monyai (*Kuki*) and the deceased, and a certain Jan. It was apparently about the shooting of a certain Dan. Kuki and the deceased denied that the deceased shot at Dan and they swore at him. They then approached him and pointed fingers at him. He said he would beat Kuki up. Kuki told Jan to give his firearm to the deceased and the deceased shot Stephens in the side. Stephens fell and his friend Lucky pointed the deceased and Kuki out to the accused. They were running away. The accused took him to the hospital and assisted him there. He was treated, and X-rayed, but was later discharged at about 9pm. He said the accused was with him all the time. He was not aware that the accused had a vehicle.

During cross examination he could not think of any reason why he was confronted by the deceased and Kuki.

The accused was the only person he told that he was shot by the deceased. He did not mention to the accused that Kuki was involved. He denied that the deceased was aggressive but became aggressive when he threatened Kuki. He said the accused stayed at the hospital to assist him because he was in pain. It was pointed out to him that it was the nurses' job. He said the nurses only assisted him at the time the X-rays were taken.

Evaluation.

7. The State bears the onus to prove the case against the accused beyond reasonable doubt. The accused bears no onus. In the event of the court finding that the accused's defence is reasonably possibly true, the accused shall be entitled to an acquittal. However, in the event of the State's case being totally acceptable and unshaken, there is no room for a finding that the accused's defence may be reasonably and possibly true. See *S v Trainor* 2003(1) 35 SCA - Pars [8] and [9].
8. The deceased's death was caused by extensive burns over parts of his body he sustained on 15 August 2014 due to acid having been poured on him. Although no post mortem was conducted, Dr Hattingh, the physician, who attended to him, opined that he died of shock.

9. The facts proved that whoever assaulted the deceased by dousing him with a corrosive acid, had the intention to kill him.
10. The State adduced evidence of an eye witness implicating the accused and two accomplices in the kidnapping and attack on the deceased.
11. The accused denied any involvement in the kidnapping and killing of the deceased, and pleaded an alibi. In respect of count 3, the bribing of the State witness, Grace Monyai, the accused denied the allegations.
12. The State relied on the evidence of a single witness, Grace Monyai, the sister of the deceased.
13. It is trite that the evidence of a single witness has to be approached with caution. In this regard it is of importance whether there is any other evidence corroborating the evidence of the single witness.
14. Ms Sono, appearing for the accused, submitted that the State failed to rebut the accused's version that he had an alibi, concerning counts 1 and 2. Mr Fourie, on the other hand, submitted that the State's single witness was truthful and reliable, and that her version is corroborated by certain circumstantial evidence.
15. Ms Monyai, the State's single eyewitness, at first said that she did not see how the deceased sustained the acid burn wounds. However after an adjournment, returning to the

witness stand the next day, she explained that she was afraid and intimidated, and scared to directly incriminate the accused. She explained how she was intimidated and threatened. She then testified in detail what the accused and his accomplices did to the deceased. She also testified that subsequent to the death of the deceased, the accused met her at a BP Garage where he offered her an amount of R10 000 00 not to proceed with the case against him.

16. I am satisfied that the witness Grace Kuki Monyai was clear and satisfactory, and honest, in every material respect in implicating the accused. It must be remembered that she implicated the accused pertaining to two separate events, in time removed. What is corroborating of her evidence involving the accused, is the following:
 1. Shortly after the shooting of Kosana, allegedly by the deceased, the deceased was attacked with acid. The accused is the only third party who knew that the deceased allegedly shot Kosana. Kosana's friend, Lucky, who also knew about the shooting, never became involved.
 2. The accused stumbled during cross examination when he said the BP garage Kuki referred to, concerning the corruption charge, count 3, is the one close to his home. The accused could not have known that if it did not happen.
 3. Kosana could not vouch for the accused's presence at the hospital all the time. The hospital and Ms

Monyai's home is close to each other. Kosana's evidence, attempting to implicating Ms Monyai in the shooting incident, was palpably a lie. It came as an afterthought and Kosana's admitted failure to tell the accused, and defence counsel about it, remained unexplained.

4. It is appreciated that a witness may lie for a variety of reasons, but, holistically considered, it is highly improbable that Me Monday would have implicated a totally innocent person whom did not even know her at the time.
17. It follows that the State's evidence implicating the accused in the crimes preferred against him is totally acceptable and unshaken, and that the accused's defence is rejected
- 18 The accused is convicted as charged. (Count 3 – the main charge.)



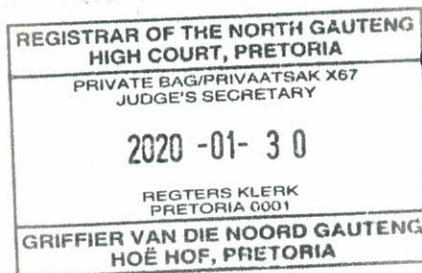
A J BAM

JUDGE OF THE HIGH COURT

29 JANUARY 2020.

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION



CASE NUMBER CC 49/19

STATE

VS

NYAKABONE ROBERT TSHETSE

Accused

JUDGMENT – SENTENCE

BAM, J

Appearances:

For the State: Adv A Fourie en Adv A Roos.

For the Accused: Adv MM Sono.

1. The accused was convicted on 3 serious charges, Kidnapping, Murder and Corruption.
2. To impose the most appropriate sentence is a difficult task.
3. The purposes of sentence are as follows: Retribution (that is the punishment itself), deterrence, prevention and rehabilitation. In matters of a serious nature, like murder, however, the purposes of prevention and rehabilitation necessarily recede into the background.
4. In respect of premeditated murder, or where the murder was committed by several perpetrators, with a common purpose, the Act on Minimum Sentences of 2000 provides for a minimum sentence of life imprisonment. The same Act however provides that in the event of the existence of substantial and compelling circumstances justifying a lesser sentence, the court shall impose a lesser sentence.

5. In order to determine whether such circumstances exist the court has to consider all relevant facts, including the personal circumstances of the accused, the nature and extent of the crimes, and the interests of the community. The latter issue also includes the consideration that the sentence should be victim centred. It means that the impact of the crimes on the victim's family should also be of importance.
6. In respect of the nature and extent of the crimes, the following:
The deceased was attacked in a most gruesome way. After the attack, when he was observed by his sister Ms Monyai, he was in a bad condition, and even at the stage his skin was peeling off his body. The deceased, in this severe condition, was apparently left abandoned at the roadside by the accused and other perpetrators, almost naked. The accused and his fellow perpetrators showed no mercy to the deceased. When he was fortunately noticed by a Good Samaritan, a member of the public, who knew him and who transported him to the hospital, he was physically in a weak condition. Even a few hours after the attack at the hospital, whilst the skin was peeling off his body, the deceased was observed running around and screaming in pain. He was then heavily sedated but died later as a result of the injuries caused by the acid. The deceased suffered severely for hours on end. It is difficult to imagine a more cruel way to treat a fellow human. The circumstances of this case are seriously aggravating.
7. The personal circumstances of the accused are as follows: At the time of the incident he was 47 years of age, divorced but has two teenage children to care for. He was not employed.
8. Concerning the interests of society it must be remarked that it appears that the crime of murder in our country is on the increase. Human life became cheap and is not respected anymore. People are randomly killed. Regarding the impact of the deceased's death on his family, it suffices to say that the death of the deceased in this cruel manner must have been devastating.

9. There are no substantial and compelling circumstances justifying a lesser sentence than the prescribed life imprisonment. This court, in any event has jurisdiction to impose life imprisonment in matters where the aggravating circumstances are of the nature as in this case.

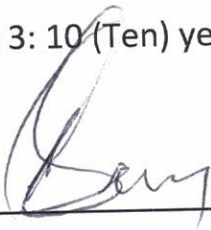
10. In respect of counts 1 and 3 it suffices to remark that these crimes are also of a serious nature.

SENTENCE:

Count 1: 10 (Ten) year's imprisonment;

Count 2: Life imprisonment;

Count 3: 10 (Ten) year's imprisonment.



A J BAM

JUDGE OF THE HIGH COURT

29 January 2020

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

CASE NUMBER: CC43/19

THE STATE

Vs

NYAKABNE ROBERT TSHETESE

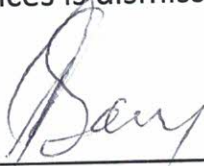
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REGTERS KLERK PRETORIA 0001
GRIFFIER VAN DIE NOORD GAUTENG HOË HOF, PRETORIA

Accused

JUDGMENT –LEAVE TO APPEAL

BAM, J

1. On 29 January 2020 the accused was convicted and sentenced on 3 counts, as follows: 1 –Kidnapping – 10 years imprisonment; 2 Murder – Life imprisonment; 3 Corruption – 10 years imprisonment.
2. The accused's application for leave to appeal was opposed by the State.
3. Adv Sono who also appeared for the accused at the trial, did not raise any argument that was not raised during the trial.
4. Accordingly I deem it expedient to refer to my written judgments concerning the convictions and the sentences.
5. In my view there are no reasonable prospects of success on appeal.
6. The application for leave to appeal against the convictions and sentences is dismissed.



A J BAM

JUDGE OF THE HIGH COURT

30 January 2020