



IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE PROVINCIAL DIVISION

Reportable: YES/NO

Case No: A147/2019

In the matter between:

DAVID THOM¹
MONNAPULE PETRUS WILLEMSE²

First Appellant
Second Appellant

and

THE STATE

Respondent

Coram: Mbhele, J *et* Opperman, J

Heard: 18 November 2019

Delivered: 6 December 2019

Judgment: Opperman, J

Summary: Appeal - murder - conviction and sentence - evaluation of evidence

JUDGMENT

[1] Both appellants were convicted of murder and sentenced to life imprisonment in terms of section 51(1) of the Criminal Law Amendment Act 105 of 1997 in the Regional Court. An accused sentenced to imprisonment for life by a Regional Court under said section may note an appeal to the High Court without having to apply for leave to appeal in terms of section 309B of Act 51 of 1977. The matter lies as such before this court.

¹ Accused one.

² Accused three.

[2] The facts that are common cause and proven by the State are:

1. The deceased went missing on the night of the 5th of August 2014 whilst working. He was a taxi driver.
2. On the 7th of August 2014 his body was discovered in a stream submerged under water; his hands and legs were tied with shoelaces and there was a plastic bag over his head.
3. The moss on the rock under his bare feet was disturbed in a half-moon pattern. A member of the South African Police that made observations at the scene concluded that the deceased struggled to loosen himself hence the markings by his feet on the rock.
4. The post-mortem report proved that the deceased drowned. There was a bruise on his neck and lower chest on the lateral side that was sustained before death.
5. The girlfriend of the deceased spoke to him over the phone at about 20h00 on the 5th of August 2014. He was to sleep over at her place that night but never arrived.
6. At about midnight of the 5th/6th of August 2014 accused two contacted his nephew to ask for a place to sleep. At about 5h00 that morning this witness, the nephew, met with accused one, two and three. At 13h00 the accused called him and informed of trouble with their vehicle. The witness was at work at this stage.
7. The witness found the three accused by a white Toyota Conquest vehicle. They moved the vehicle to his home. At the witnesses' place the first appellant took, among others, the rear number-plate from said vehicle.
8. The witness wanted to buy the vehicle and two days later the first appellant phoned and made an offer to sell the vehicle to him for R7000.00.
9. The same vehicle was later confiscated from the witness by the police and identified by the owner as the vehicle the deceased drove when he went missing; the rear number-plate was missing.

[3] Confessions made by the second appellant and accused two were correctly ruled admissible by the trial court. The detail of the murder was described therein and correlated with the surrounding and objective facts proven and that are common

cause.³ Evidence adduced directs to the fact that the confessions were obtained in line with constitutional standards.

- [4] In the face of the above the appellants did not testify in their defence or adduce any evidence.

- [5] The onus is on the State to prove its case beyond a reasonable doubt. If the subjective version of the accused is reasonably possibly true after the evaluation of the evidence as a whole, the accused must receive the benefit of the doubt and go free. The quandary of this case is that the versions of the appellants were not placed before the court in any way whatsoever.

- [6] In *S v Mlambo* [1957] 4 All SA 326 (A) it was ruled that if an accused choose not to avail the court of their version or is deceitful, they have only themselves to blame if an adverse verdict is given. An accused's claim to the benefit of a doubt when it may be said to exist must not be derived from speculation but must rest upon a reasonable and solid foundation created either by positive evidence and gathered from reasonable inferences which are not in conflict with, or outweighed by, the proved facts of the case.

- [7] Again, the Mlambo-case: There is no obligation upon the Crown to close every avenue of escape which may be said to be open to an accused. It is sufficient for the Crown to produce evidence by means of which such a high degree of probability is raised that the ordinary reasonable man, after mature consideration, comes to the conclusion that there exists no reasonable doubt that an accused has committed the crime charged. He must, in other words, be morally certain of the guilt of the accused.⁴

³ As was ruled in *R v Blom* 1939 AD 188 and following the cardinal principles of logic:

- 1. The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.
- 2. The proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn. If they do not exclude other reasonable inferences, there must be doubt whether the inference sought to be drawn is correct.

⁴ *S v Mlambo* [1957] 4 All SA 326 (A) on 336.

- [8] The evidence points directly to the guilt of the appellants and the convictions cannot be faulted.
- [9] The sentences of life imprisonment are decreed in legislation. Aside from said provisions the circumstances of the case demonstrate a heinous premeditated crime. The appellants got information of a person that wanted to buy a Toyota. The deceased drove one and they targeted him. The deceased was a friend of one of the accused. They duped the deceased to transport them. They strangled him with a waist belt and whilst he was kicking and struggling, they locked him in the back of the vehicle. They also pulled a plastic bag over his head. They drove off with him to a place where they stopped and submerged him; hands and feet tied, with the plastic bag over his head, in a stream. He fought for his life in the dark of night until he drowned.
- [10] The appellants now, half-heartedly so, claim to be deserving of a lesser sentence than life imprisonment. The substantial and compelling circumstances submitted to the sentencing court were:
1. The first appellant is the eldest of the three perpetrators at 32 years of age. He has two minor children of which one that is three years old stays with him and the mother at his parental home. The appellant's highest educational level is grade twelve and he was permanently employed at the time of the offence. He has one previous conviction dated 2008 for assault with the intent to commit grievous bodily harm.
 2. The second appellant was 27 years old at the time of the sentencing, not married, unemployed and a first offender. He passed matric and later trained at his church.
- [11] There is nothing in the circumstances and cold facts of the case that indicates that the sentencing court erred in any manner and that the punishment *in casu* does not fit the crime and is not fair to society and the perpetrators.⁵ The deceased was a hardworking and trusted man that endeavoured to make a living in a competitive and

⁵ *S v Khumalo* 1973 (3) SA 697 (A).

dangerous world. He was an easy target as a taxi-driver for strangers but, ironically so, murdered by a friend.

[12] In conclusion; the convictions are correct and the sentences apt. The appeal stands to be dismissed.

[13] **ORDER**

The appeals are dismissed and the convictions and sentences of both appellants confirmed.

M. OPPERMAN, J

I concur

N.M MBHELE, J

Appearances

For appellants: ADV V.C. ABRAHAMS
 Legal Aid SA Bloemfontein

For respondent: ADV A.M. FERREIRA
 Office of the Director of Public Prosecutions: Free State
 Bloemfontein