



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTHERN CAPE DIVISION, KIMBERLEY)**

Case No. K/S33/18

Heard on: 28/01/2019

Delivered on: 29/01/2019

In the matter of

THE STATE

V

HENKIE CLOETE

JUDGMENT

PAKATI J

[1] The accused, Mr Henkie Cloete, a male of 49 years of age, appears before me on a charge of murder read with the provisions of section 51 of the Criminal Law Amendment Act, 105 of 1997 ("the Act"). It is alleged that he murdered the deceased, Sussana Abel. The incident is alleged to have occurred at Middelstraat 18, Leerkrans, in Upington on or about 29 to 30 April 2017. He is represented by Mr Steynberg of Legal Aid South Africa.

[2] The accused pleads guilty to the charge and Mr Steynberg, on his behalf, read into the record a statement in terms of section 112 (2) of the Criminal Procedure Act, 51 of 1977 ("the CPA"), which he handed up as Exhibit "A". It reads thus:

'I, the undersigned, Henkie Cloete, declare as follows:

1. I am an adult male and the accused in this matter.

2. I make this statement freely, voluntarily and without being unduly influenced thereto. I am also [in] my sound and sober senses.

3. I understand the charge of murder as set out in the indictment, and confirm that my legal representative, Mr Steynberg, explained the applicable minimum sentences as set out in section 51 (1) and 51 (2) of Act, 105 of 1997 to me.

4. I also confirm that he explained the competent verdicts with regard to the offence of murder to me.

5. I plead guilty to a count of murder read with the provisions of section 51 (2) of Act, 105 of 1997, as I do not admit that this offence was planned or pre-meditated.

6. I wish to make the following admissions:

6.1 I admit that I assaulted Sussana Abel (hereinafter the deceased) on 30 April 2017 by hitting her with a broom on the head and also by kicking her multiple times over her body.

6.2 I admit that when I assaulted the deceased as set out above, I did not have any grounds of justification to do so.

6.3 I admit that the deceased died on 30 April 2017 as a result of the injuries sustained during the above assault.

6.4 I consequently admit the content of the report on the Medico-Legal Autopsy compiled by doctor George Albertus Isaacs on 08 May 2017, and also admit the cause of death as set out in the report as being anoxia (lack of oxygen).

6.5 Even though it was not my direct intention to kill the deceased, I foresaw that there was a possibility that the assault on her might cause her death, and I recklessly proceeded with my actions.

6.6 Whilst assaulting the deceased, I knew that my actions were wrong and that I could be punished for it.

6.7 Even though I was strongly under the influence of alcohol, it did not affect me to such an extent that I did not know what I was doing. The consumption of alcohol exacerbated my anger and made me to care less about the result of my actions even though I foresaw that it may cause her death.

6.8 I admit that the offence was committed at Melkstroom, Upington, within this Honourable Court's jurisdiction.

6.9 I admit that the body of the deceased was correctly identified as that of Sussana Abel, and I also admit that the body of the deceased did not sustain any further injuries from the time she was removed from my house up until the post mortem was conducted by Dr Isaacs.

7. The basis [of] my plea is as follows:

The deceased and I were in a love relationship. We were living together. On the day of the incident we consumed alcohol at Melkstroom, where after we proceeded home. When we arrived at home both of us were already strongly under the influence of alcohol. We continued to consume alcohol. The deceased and I got into an argument. We argued over the fact that the deceased always asks [for] money from me to go home, which money she uses to buy alcohol and drugs, instead of going home. During our argument, my brother, Japie Cloete, who was also present, left the house. The alcohol exacerbated my anger during the argument and I hit the deceased on the head with a big broom. The deceased left the house and proceeded towards the veld. I followed her and grabbed her where after she fell to the ground. We argued and I kicked her multiple times over the body and head. When I assaulted the deceased as set out above, I did not have the direct intention to kill her. I, however, admit that I foresaw the possibility that the assault on her may result in her death, but I recklessly

proceeded with my assault on her. I therefor admit the form of intent as being *dolus eventualis*. After kicking the deceased, she was lying unconscious in the veld where after I took her back into the house. I tried to wake her up but did not succeed. My brother arrived in the morning and called the ambulance.

8. Not only do I regret my actions, I am also remorseful for causing the death of Sussana Abel.

9. I ask the Honourable Court to have mercy on me.'

[3] After consultation with the accused Mr Steynberg added the following information after I asked questions in order to clarify some issues referred to in the plea explanation thus:

3.1 That on the day of the incident the accused and the deceased consumed wine called Rooi Prop but the accused could not estimate how much liquor they consumed;

3.2 That the accused used aluminium broom to assault the deceased and assaulted her using the part that is used for sweeping;

3.3 That at the time the deceased was assaulted with the broom she was on her feet and when kicked she was lying on the ground rolling around trying to ward off the blows;

3.4 That the accused is not sure of the time the incident took place but estimates that it was around midnight;

3.5 His brother, Mr Japie Cloete, arrived at the accused's place between 08h00 and 09h00 and that is the time that he summoned the ambulance; and

3.6 The deceased was already certified dead the same day (30 April 2017) when photos were taken around 11h10am.

The accused confirmed the contents of the plea explanation.

[4] State counsel, Ms K Jansen, confirmed that the contents of the plea explanation were consistent with the version as contained in the docket and accepted the accused's plea of guilty to murder read with the provisions of section 51 (2) of the Act as tendered. She indicated that no one witnessed the incident. By consent between the State and defence a photo album, key to photos and sketch plan were allowed as Exhibit "B" and the defence admitted the contents of the post-mortem

report (Exhibit “C”). Regarding the chief autopsy findings Advocate Jansen called Dr Isaacs to testify.

[5] Dr Isaacs recorded the chief autopsy findings as follows:

- ‘Superficial laceration of 2 x 1cm of the forehead on the right. (A)
- Both eyes swollen with peri-orbital bruising. (B)
- Three lacerations of the inside of the upper lip (C)
- Two lacerations of the inside of the lower lip. (D)
- Superficial laceration of 1.5 x 0.4cm above the left eye. (E)
- Superficial laceration of 3 x 1.5cm of the forehead on the left. (F)
- Confluent bruises and swelling of the right side of the face. (G)
- Laceration of 4.5 x 1.5cm of the scalp of the right temple. (H)
- Superficial laceration of 2.5 x 0.5cm of the scalp of the left temple. (I)
- Confluent bruising and swelling of the left side of the face. (J)
- Bruises and abrasions of the front of the neck. (K)
- Bruise of 4 x 2.5cm and small abrasion of the front of the right shoulder. (L)
- Four bruises over an area of 9 x 7cm of the front of the right upper arm. (M)
- Linear abrasions over an area of 9.5 x 37cm of the right lower chest and abdomen, from below the breast to the inguinal region. (N)
- Bruise of 10 x 6cm of the right forearm. (O)
- Patchy bruises over an area of 19 x 5cm of the front of the right upper thigh. (P)
- Linear scratches over an area of 2 x 1.5cm of the front of the right middle thigh. (Q)
- Impact abrasion and bruises of 4 x 3.5cm of the right knee. (R)
- Linear abrasions and bruises over an area of 20 x 5cm of the right shin. (S)
- Bruise of 3.5 x 3cm of the inside of the left ankle. (T)
- Deep abrasion of 3 x 1.5cm of the lower left shin. (U)
- Bruise of 4 x 2cm of the middle left shin. (V)
- Bruise of 7 x 2cm of the upper left shin. (W)
- Bruise and abrasions of 7 x 3cm of the left knee. (X)
- Bruise of 12 x 3cm of the inside of the lower left thigh. (Y)
- Superficial linear abrasions of 7 x 2cm of the upper left thigh below the groin. (Z)
- Bruise of 10 x 3cm of the left forearm. (AA)
- Bruise of 7 x 5cm of the inside of the left elbow. (AB)
- Superficial abrasions and bruises over an area of 20 x 10cm of the left lower chest. (AC)
- Bruise and abrasions of 22 x 12cm of the left shoulder and upper arm (AD)
- Bruise of 6.5 x 5.5cm over the left clavicle. (AE)
- Impact abrasions and superficial scratches over an area of 10 x 12cm of the back of the chest on the left, overlying the scapula. (AF)
- Bruise and swelling of 13 x 8cm of the back of the left hand. (AG)
- Deep linear abrasions of 24 x 5cm of the back of the lower leg and heel. (AH)
- Bruise of 14 x 5cm of the back of the middle right thigh. (AI)
- Superficial abrasions of the back of the right forearm (AJ)
- Superficial abrasions of 4 x 3.5cm of the right elbow. (AK)
- Bruise of 7 x 5cm of the back of the lower chest on the right. (AL)
- Impact abrasions and superficial scratches over an area of 11 x 10cm of the back of the chest on the right, overlying the scapula. (AM)

- Bruise of 8 x 4.5cm of the back of the right shoulder. (AN)
- Dried blood in the nostrils.
- Extensive subscapular bleeding.
- Deep muscle bruising of the muscles of the front of the neck.
- Brain swollen with extensive subarachnoid bleeding involving both hemispheres.
- Fracture of rib 7 on the right over the lateral aspect.
- Fracture of rib 5 on the left over the front.
- Oedema of both lungs.

8. That, as a result of my observations, a schedule of which follows, I have decided:-

- (a) That the death has occurred approximately **1.9 to 2.2 days** prior to my examination and
- (b) That the cause of death is: **BLUNT TRAUMA TO THE HEAD**
- (c) That the mechanism of death is: **ANOXIA (LACK OF OXYGEN)**
- (d) That the manner of death is: **ASSAULT (UNNATURAL).**

Dr Isaacs explained that the alphabet in brackets corresponds with the injuries and marks as depicted in the sketches attached to the post mortem report for better comprehension.

[6] Dr Isaacs explained the following terms:

6.1 Peri-orbital means around the eyes.

6.2 Confluent takes place when a bruise merges into another and form one big bruise. These types of injuries are visible during examination.

6.3 Subscapular bleeding – It is bleeding underneath the scalp.

6.4 Subarachnoid bleeding – The brain has coverings and membranes, the outer tough membrane underlying the inside of the skull, the layer covering the brain called arachnoid which is underneath the membrane.

6.5 Oedema of both lungs – is fluid that accumulates inside the lungs.

6.6 Lateral aspect is the front of the chest and the lateral side is the side of the chest where the arm rests.

[7] Regarding the brain Dr Isaacs, *inter alia*, mentioned that there is evidence of tentorial and tonsillar herniation of the brain. He explained that the brain has two halves separated by a membrane called tentorial. Underneath the tentorial there is an opening where the two halves of the brain are connected. When there is a

swelling on the brain especially if one side is swollen more than the other then the one side is pushed across to the other side where it is not supposed to be. That is called herniation. Tonsillar herniation is the same concept as herniation. He explained further that at the bottom of the skull there is an opening where the spinal cord goes through. Just on top of the opening there is the mid-brain and the cerebellum which is the small brain at the back of the head and bottom of the bigger brain. When the brain swells the mid-brain and the cerebellum are pushed down into the opening. In the mid-brain and the upper part of the spinal cord is an area of the brain called the medulla oblongata. In that part of the brain is the respiratory centre of human beings. When the brain is pushed down it then compresses that area and a patient will have respiratory problems which will eventually lead to lack of oxygen as the patient will not breathe properly. This is referred to as the mechanism of anoxia and it leads to death due to lack of oxygen. He explained further that serial coronal sectioning of the brain happens when during autopsy when there is evidence of swelling. The brain is cut into slices which enables them to inspect the brain more closely and observe the swelling clearly.

- [8] Taking into account the accused's section 112 (2) statement in paragraph 2 *supra* I am satisfied that the accused committed the murder of the deceased with the constructive intention to murder, *dolus eventualis*.

In the circumstances the following verdict is returned:

The accused, Mr Henkie Cloete, is found guilty of the murder of the deceased, Sussana Abel, with *dolus eventualis* as a form of intent.

BM PAKATI
JUDGE-NORTHERN CAPE DIVISION, KIMBERLEY

For the Accused: Mr Steynberg
Instructed by: Legal Aid of South Africa, Kimberley

For the State: Adv C Jansen
Instructed by: Directors of Public Prosecutions