



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 No.: A204/2017

In the appeal between:

AYANDA BAREND NGQELENGQELELE

Appellant

and

THE STATE

Respondent

CORAM:

MATHEBULA J et MURRAY AJ

JUDGMENT BY:

MATHEBULA, J

HEARD ON:

11 DECEMBER 2017

DELIVERED ON:

22 FEBRUARY 2018

- [1] On 6 April 2011, the appellant was convicted in the regional court sitting in Bloemfontein on the charge of murder. He was sentenced to fifteen (15) years imprisonment. In terms of Section 103 of Act 60 of 2000 he was declared unfit to possess a firearm.

The court *a quo* granted him leave to appeal against both conviction and sentence.

- [2] At the onset of the trial the appellant pleaded not guilty and denied all allegations against him. The chain evidence was admitted relating to the identity of the deceased, the cause of death as contained in the post mortem report and the photo album compiled by the police service.
- [3] The version of the state was narrated by five witnesses namely Israel Mhlabahlaba, Mamokete Nkemele, Calesile Dumbela and Ntomani Monyake. They all testified that on 10 August 2007 there was a domestic dispute between the appellant and his wife. The appellant did not permit his wife and children to enter the marital home and use the bathroom. In the bathroom the body of the deceased was found on the floor and covered with a blanket. It had multiple stab wounds. A bloodstained pick was found in the main bedroom. The alleged murder weapon was handed to the police by Mamokete. Israel Mhlabahlaba testified that he had a conversation with the appellant who informed him that he had killed a person. On arrival at his house the police found it not only in disarray but they made a grisly discovery. It appears that from his conduct the accused was attempting to prevent his wife and the police to enter the house. It was as if he was hiding something. None of the witnesses testified that they saw the appellant assaulting the deceased. According to Mamokete loud music was heard emanating from the house of the appellant on the days prior to the day the body of the deceased was found in his house.

- [4] The appellant testified that he was innocent and does not have any knowledge about the reasons or circumstances that led to the death of the deceased. He parted with the deceased alive in jovial mood accompanied by two (2) unknown persons. He went to look for his wife and left the house unlocked. His search for her was unsuccessful and he drank liquor at a tavern until late at night. On arrival at home he continued drinking and slumped on the sofa and fell asleep. There was no sign of the deceased.
- [5] In the morning he drank some beer and felt nauseous. He went to the bathroom. He opened the door and felt that there was something behind it preventing the door to open. On further investigation he saw a person lying on the floor. He tried to awake him but he did not respond. He called the deceased on his cell phone and it rang on the body. He discovered that he was dead. This shocked him and he relayed his discovery to Mhlabahlababa. At no stage did he make any confession about his involvement in the murder. While they were in conversation with each other, his wife and children entered the house. The wife became hysterical and summoned the police. His explanation about the alleged murder weapon was that it was used to slaughter chickens and that the bucket found in the main bedroom full of blood was chicken not human blood.
- [6] The court *a quo* rejected the version of the appellant and accepted that of the state witnesses. The court *a quo* relied on circumstantial evidence and drew the inference that the appellant murdered the deceased. The court *a quo* referred to the state of

disarray, bloodstains all over the walls and furniture and the many versions proffered by the appellant. At some stage he even hinted that the police were complicit in the commission of the offence. Furthermore, his conduct during the conversation with Mamokete and Monyake did not resemble that of the person that made a startling discovery of a corpse in his house. I am of the view that the court *a quo* did not err in finding the appellant guilty as charged. The respondent proved its case beyond reasonable doubt.

- [7] The next aspect to be considered is the issue of sentence. It is trite and this court has repeatedly held that sentencing is pre-eminently the prerogative of the trial court.¹ A court of appeal will only interfere with any sentence in limited circumstances.²
- [8] In this matter the deceased was stabbed with a sharp object and the cause of death was recorded as multiple sharp injuries. The State Pathologist recorded twenty three (23) notes of serious injuries. This means that he was vigorously and relentlessly attacked. This is consistent with proven facts that there was blood splattered all over the house. He must have bled profusely and suffered immensely in the process of losing his life. The appellant also took positive steps to conceal his callous act and did not show any remorse.
- [9] The court *a quo* took into consideration that he was a first offender, gainfully employed with a wife and children. The court in assessing all the potential mitigating personal factors as well as

¹ S v Kumalo 1973 (3) SA 697 (A) at 698 B-C

² S v Pieters 1987 (3) SA 717 (A) at 728 B-C

the shocking and revolting nature of the murder and the extent to which the deceased must have suffered evidently concluded that there were no substantial and compelling circumstances justifying a deviation from the provisions of Section 51 of the Criminal Law Amendment Act 105 of 1977. Relying on the approach adopted in *Malgas case*,³ the court *a quo* proceeded to impose the applicable minimum sentence of fifteen (15) years.

[10] The court *a quo* was correct. The taking of life is abhorrent in a democratic society like ours. Sentence must achieve its primary objective which is retribution, rehabilitation, deterrence and the prevention of the crime. I am not convinced that I am at liberty to interfere with the sentence imposed by the court *a quo*. This appeal ought to fail.

[11] Accordingly I make the following order:-

11.1 The appeal against both conviction and sentence is dismissed


M. A. MATHEBULA, J

³ *S v Malgas* 2001 (3) All SA 220 (A)

I concur.


H. MURRAY, AJ

On behalf of the appellants:
Instructed by:

Adv. S Kruger
Justice Centre
BLOEMFONTEIN

On behalf of the respondent:
Instructed by:

Adv. M Sekoena
Director: Public Prosecutions
BLOEMFONTEIN