



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

Appeal number: **A324/2017**

In the Appeal between:

BOYKIE GIDEON NTJA

APPELLANT

and

THE STATE

RESPONDENT

CORAM:

NAIDOO, J *et* MOLITSOANE J

JUDGMENT BY:

NAIDOO J

HEARD ON:

13 AUGUST 2018

DELIVERED ON: 16 AUGUST 2018

INTRODUCTION

- [1] The appellant was convicted of one count of Murder (Count 1) and one count of Assault with Intent to do Grievous Bodily Harm (Count 2) in the Regional Court, Welkom. He pleaded not guilty to the charges, but was convicted on both counts. He was sentenced to Twelve (12) years' imprisonment on Count 1 and Two (2) years' imprisonment in respect of Count 2. The court a quo refused leave to appeal and the appellant comes before us, having successfully petitioned the Judge President for leave to appeal against his conviction only. Mr LM Tshabalala represented the appellant in this court and Mr E Van Rensburg represented the respondent, being the state.

BACKGROUND

- [2] Tsietse Edwin Moshe (Moshe) testified that he was at a tavern on the night of the incident on 28 January 2013, in the company of the deceased, Pule Simon Molete and another person, Matshidiso Mogase (Mogase). They were there from 6 or 7 o'clock the previous evening until the early hours of the following morning, which he estimated to be about 1h00. The 3 of them drank beers the whole evening and in total drank approximately 5 quarts of beer. This was shared amongst the 3 of them so that each of them drank approximately 1.250 litres over a

period of 7–8 hours. Moshe, the deceased and Mogase then left the tavern. When they were outside, Moshe noticed the appellant approaching the deceased with a knife in his hand. The appellant then stabbed at the deceased in the region of the upper body several times. The deceased ran away and was pursued by the appellant, who Moshe assumes did not catch up with the deceased. A few minutes later the appellant returned to where Moshe and Mogase were standing. He then pulled out the knife that he had earlier had in his possession. Moshe and Mogase then ran away and were pursued by the appellant. Mogase managed to escape but the appellant then caught up to with Moshe and stabbed him in the back. Moshe fell but he managed to get up and run away. He however became weak, and stopped. He then offered the appellant money in order to stop him from attacking him any further. By this time several people had arrived on the scene and Moshe used this opportunity to run away.

- [3] Moshe was taken to the police station where a case was opened. He was there after taken to hospital where he was treated for his injuries and he was admitted to hospital where he stayed overnight. Although he testified that he was stabbed once, it turned out that he sustained two stab wounds. It was also established that the deceased had sustained a stab wound to the chest, which pierced his heart and lung and he had in fact died. There was also a stab wound on his forearm. The appellant admitted that the injuries the deceased sustained caused his death.

- [4] Moshe testified that lighting in the area of the tavern was very good as there were two Apollo lights in the area, one approximately a hundred metres away and the other approximately 50 m away. He indicated that the lighting was as good as daylight and that he had a clear view of the appellant and was able to see everything that occurred at the time. He also testified that he knew the appellant prior to this incident as he had seen him on several occasions at the tavern for a week prior to the incident. Moshe also pointed out the appellant in an identification parade
- [5] The appellant elected not to testify and closed his case without leading any evidence. The court *a quo*, therefore, had only the version of the state to consider when formulating its judgment. Under cross examination, it was suggested to Moshe that he was under the influence of alcohol and therefore was mistaken as to what he observed on the night in question. It was specifically suggested to him that he was mistaken about the identity of the person who stabbed the deceased and him. Moshe was adamant that although he had been drinking he was not drunk and was able to see everything that occurred. He specifically testified that he was not mistaken as to identity of the appellant as he knew him and was able to see him very clearly at the time.
- [6] There were no inherent improbabilities in Moshe's evidence, and he clearly made a good impression on the trial court. There was no evidence to gainsay Moshe's evidence, and it must therefore be

accepted that the sequence of events as he had narrated it, is in fact what happened on the night in question. This was the reasoning of the trial court, and we cannot fault such reasoning, nor can we fault the conclusions of the court regarding the guilt of the appellant. This is particularly so as the appellant did not testify and therefore the trial court had nothing other than the evidence of the state upon which to base its conclusions.

- [7] An appeal court will not lightly interfere with the findings of the trial court especially as the latter had the benefit of observing witnesses and being steeped in the atmosphere of the trial. The trial court is in the best position to make findings as to such matters as credibility, demeanour and reliability. An appeal court will only interfere if there is a misdirection on the part of the trial court in the application of the law or the facts. In this case we can find neither, and, as indicated previously, we are unable to fault the reasoning of the trial court.

- [8] In the circumstances, the following order is made:

8.1 The appeal against the convictions is dismissed.

8.2 The convictions and sentences in this matter are, therefore, confirmed

S. NAIDOO, J

I Concur

P MOLITSOANE J

On behalf of Appellant:

Adv. LM Tshabalala

Instructed by:

The Justice Centre

Bloemfontein

On behalf of Respondent:

Adv. E Van Rensburg

Instructed by:

The State