



Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

**IN THE HIGH COURT OF SOUTH AFRICA
(Northern Cape High Court, Kimberley)**

CASE NO: **KS 68/2009**
DATE HEARD: **23/05/2016**
DATE DELIVERED: **27/05/2016**

In the matter between:

ALEXANDER, ANDRIES

Appellant

and

THE STATE

Respondent

Coram: Kgomo JP et Olivier J et Phatshoane J

JUDGMENT

Olivier J

[1.] The appellant appeared before Majiedt J in the Gariep Circuit Court on charges of housebreaking with intent to commit a crime unknown to the prosecutor (count 1), the rape of Mrs Fytjie Klaaste (count 2), the murder of the said Mrs Klaaste (count 3) and the murder of Mr Koos Afrikaner (count 4). He pleaded not guilty to all these counts and raised an alibi defence, viz that he was in the

company of his girlfriend, Ms Veronica Meerkat, at a shebeen called Jam Alley. He was convicted on counts 1 and 4 and sentenced to, respectively, 18 months imprisonment and 15 years imprisonment on those counts. He was granted leave to appeal against the convictions by the trial Judge.

- [2.] It is trite that a court of appeal will not readily interfere with the findings of a trial court. It will only do so "*if the recorded evidence shows them to be clearly wrong*"¹.

- [3.] The convictions were mainly based on the evidence of Mrs Anna Gouws. Her evidence was that she had seen the appellant walk right passed her, armed with a knife, that she had witnessed him entering the house where the deceased lived, that she had then heard the deceased, Mr Afrikaner, cry out in pain, that the appellant had then come out of the house and re-entered the house with a stone and that she had then heard the thud of that stone inside the house. She left when everything was quiet inside the house². Both deceased died as a result of stab wounds.

- [4.] The court *a quo* was alive to the fact that Mrs Gouws was a single witness and that for that reason, and also because of the fact that her evidence pertained to the identity of the attacker, her evidence had to be approached with caution.

- [5.] The court *a quo* was also mindful of the fact that Mrs Gouws had on her own evidence been under the influence of liquor, and that it was perhaps strange that she had not immediately reported what she had witnessed, especially in view of the fact that both deceased appeared to have been related to her.

¹ **S v Monyane and Others** 2008 (1) SACR 543 (SCA) para [15]; See also **S v Kekana** 2013 (1) SACR 101 (SCA) para [8]

² The deceased Mrs Fytjie Klaaste was the mother of the deceased Mr Koos Afrikaner.

[6.] As far as the reliability³ of Mrs Gouws' identification of the appellant (as the person whom she had seen entering the house of the deceased) is concerned, it was common cause that, although she observed the particular person at night, the area where she had observed him had been well lit, that the person had walked right passed her and that she had known the appellant well⁴. She also made reference to the attacker's so-called Rasta hairstyle, and it was common cause that the appellant had so-called dreadlocks at the time. There was no suggestion of a reason why Mrs Gouws would deliberately have falsely incriminated the appellant.

[7.] The fact that Mrs Gouws had in her statement said that she saw something shining in the appellant's hand, something that looked like a knife, is not irreconcilable with her evidence that it had indeed been a knife. Police statements are renowned for their inaccuracy and lack of detail⁵. In any event, the issue here is not whether the object in the person's possession was a knife, but rather whether that person was the appellant.

[8.] Exactly how far the witness had been from the house of the deceased when she saw the person entering the house is not really material, because it was her undisputed evidence that the person had just before then walked right past her. That was when she would have had the best opportunity to identify the person, and from that point onwards she clearly followed the movements of the person until he entered the house. Some safeguard for the reliability of Gouws' evidence is the fact that the appellant informed Piet Ntonga that he was seen by a witness entering the premises of the deceased. That witness can only be Mrs Gouws.

³ As opposed to credibility.

⁴ Compare *S v Ngcamu and Another* 2011 (1) SACR 1 (SCA) para [10]

⁵ *S v Xaba* 1983 (3) SA 717 (A) at 729-730; *S v Rautenbach* 2014 (1) SACR 1 (GSJ) para [128];

- [9.] It is also not as if there was no explanation for Mrs Gouws' failure to report what she had seen. She explained that she was scared of the appellant, and also of her violent and jealous husband, and that she had been nervous. Although it was unfortunately not properly ventilated in the evidence it would appear that Mrs Gouws made a report to her neighbour the next morning, which in all probability led to the police approaching the witness later that morning.
- [10.] The identification by Mrs Gouws of the appellant was materially corroborated by, *inter alia*, the evidence of Mr Ntonga. His evidence was that he had been incarcerated with the appellant in a police cell in Kenhardt for a number of days, both of them at that stage awaiting trial, and that the appellant had, in reaction to Mr Ntonga's question why the appellant was being detained, confessed to the rape and murders. His evidence was that the appellant had *inter alia* told him that he had killed the deceased Mr Koos Afrikaner (count 4), that his friend Gavin had killed the other deceased, Mrs Fytjie Klaaste (count 3), and that Mrs Klaaste had also been raped (count 2). This evidence placed the appellant on the scene where Mrs Gouws identified him.
- [11.] The version concerning the Presence of two attackers was not necessarily irreconcilable with the evidence of Mrs Gouws. She had seen only the appellant entering the house, but it could not be said that her evidence excluded the possibility of the presence of a second attacker in the house at that stage.
- [12.] Mr Van Tonder, who represented the appellant on appeal, criticised Mr Ntonga's evidence that the appellant had told him the ages of the two deceased during the alleged confession, and argued that it was highly unlikely that the appellant would have known their ages. The possibility of the appellant having become aware of the ages of the deceased by that time cannot be excluded on the evidence.

- [13.] It is also not unlikely that the appellant would have mentioned the rape, without divulging particulars of whether it had been him, Gavin or both of them who had raped Mrs Klaaste.
- [14.] The appellant denied having spoken to Mr Ntonga, and in fact denied that they had been detained together in one cell. Captain Van Wyk, the Station Commissioner at the police station in Kenhardt, confirmed that the appellant and Mr Ntonga had indeed been detained in one cell, until Captain Van Wyk became aware of the fact that the appellant had tuberculosis, when the appellant was immediately transferred to Upington.
- [15.] Insofar as it may have been suggested that Mr Ntonga's evidence of a confession by the appellant had been a fabrication, the evidence of Captain Van Wyk that Mr Ntonga had told him about the appellant's confession could arguably have been relevant and admissible.
- [16.] That the investigating officer had not taken a statement from Captain Van Wyk about Mr Ntonga's report does not in any way detract from the credibility of Captain Van Wyk's evidence in this regard. Mr Ntonga also testified that he had told Capt. Van Wyk what the appellant had said to him.
- [17.] The presence of another person's semen on the body and clothes of the deceased Ms Klaaste confirms Mr Ntonga's evidence of what the appellant had told him about the deceased having been raped, and about him having been accompanied by a second attacker.
- [18.] The evidence of Mr Martin Tieties served to rebut the appellant's version that he had at the time of the attack been at the Jam Alley shebeen. He was adamant that he had witnessed the appellant arriving at that shebeen shortly after 20:00 that evening. That would mean that, if indeed the appellant had been at that

she been earlier, he must have left there at some stage, which would of course be irreconcilable with the appellant's alibi.

[19.] The finding that Mrs Meerkat had not been a credible witness was not challenged and she in any event contradicted the alibi version of the appellant.

[20.] I am far from convinced that any of the trial court's findings were wrong and I can therefore see no reason for interfering with them. In my view the appeal must be dismissed.

[21.] The following order is therefore made:

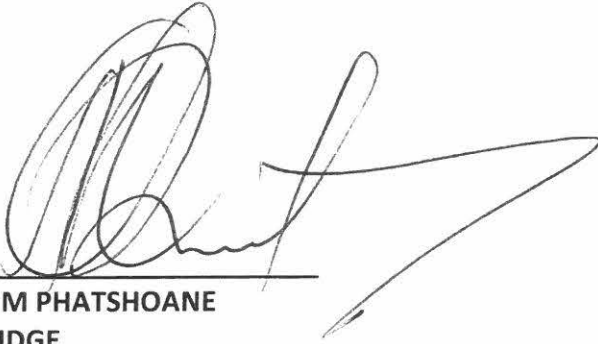
THE APPEAL IS DISMISSED AND THE APPELLANT'S CONVICTIONS ON COUNT 1 (HOUSEBREAKING WITH INTENT TO COMMIT A CRIME UNKNOWN TO THE PROSECUTOR) AND COUNT 4 (THE MURDER OF MR KOOS ALEXANDER) ARE CONFIRMED.


C J OLIVIER
JUDGE
NORTHERN CAPE DIVISION

I concur.


F Diale KGOMO
JUDGE PRESIDENT
NORTHERN CAPE DIVISION

I concur.



V M PHATSHOANE
JUDGE
NORTHERN CAPE DIVISION

For the Appellant: Mr A Van Tonder
Legal Aid South Africa

For the Respondent: Adv J J Rosenberg
Office of the Director of Public Prosecutions