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IN THE HIGH COURT OF SOUTH AFRICA
[NORTHERN CAPE DIVISION]

JUDGMENT

CASE NUMBER: KS 4/2013

THE STATE

AND

JOHANNES GOBUSAMANG TAJE

ACCUSED

Dates of hearing : 21-23 October; 8-10 December 2014

Date of judgment : 18 February 2015

Phatshoane J

1. Mr Johannes Gobusamang Taje, the accused, is arraigned before me on 4 Counts:

- 1.1. Count 1: Housebreaking with intent to commit an offence unknown to the State. It is said that on or about 27 or 28 September 2012 at or nearby Ikhutseng, Warrenton, he unlawfully and intentionally broke into the house of Ms M..... S..... M..... with the intent to commit an offence that could not be established.

- 1.2. Count 2: Rape. The State alleges that on 27 or 28 September 2012 at or nearby Ikhutseng, Warrenton, he unlawfully and intentionally performed a non-consensual act of sexual penetration with Ms M..... S..... M.....
 - 1.3. Count 3: Rape. It is alleged that on 27 or 28 September 2012 at or nearby Ikhutseng, Warrenton, he unlawfully and intentionally performed a non-consensual act of sexual penetration with Ms M..... S..... M.....
 - 1.4. Count 4: Murder. The State maintains that on or about 27 or 28 September 2012 at or nearby Ikhutseng, Warrenton, and the accused unlawfully and intentionally killed Ms M.... S.... M..... (The deceased).
2. The accused tendered a plea of not guilty on all the counts. In his plea explanation in terms of s 115 of the Criminal Procedure Act, 51 of 1977, he states that he broke-open the window at the deceased's residence while he was inside the house and escaped through it. He was shocked and could not think straight to use the door to leave. At the worst for him, he says, he is guilty of malicious damage to property. He denies that he raped or had sexual intercourse with the deceased while he was in his sound and sober senses. He claims to have been under the spell of the muti that the deceased supplied to him. In respect of the murder, he intimated that he might have strangled the deceased in the process of trying to break-free from her but in view of the fact that he was not *compos mentis* during the occurrences he cannot account for the manner in which the strangulation took place.
3. The accused admitted that his mother found his T-shirt and pants under his mattress in his bedroom soiled with the deceased's faecal material and that the blood found on the deceased's kitchen lace curtain was his because he cut his hand after he had broken the window pane. The following admissions were also recorded in terms of s 220 of the Criminal Procedure Act, 51 of 1977 (CPA). The identity of the deceased; that she did not sustain any further injuries from the time her body was removed from the scene to the date of the post-mortem

examination by Dr Adin Don Surtie; the contents of the two autopsy reports handed in evidence including the cause of death described therein as “strangulation with sexual assault”; the photo plan and the key thereto; and that the accused’s soiled running shoes were found in his bedroom.

4. Ms L..... M..... T....., the deceased’s neighbour, knew the accused and had never seen him at the deceased’s residence before. She intimated that on the morning of 28 September 2012 she visited the deceased as usual to ask her for some tea. She knocked at her front door several times and called the deceased’s name out but did not receive any response. At the corner of the house she noticed pieces of glass from a window pane and a stone on the ground. Some of the pieces of glass were on the windowsill. A drain pipe was loose from the wall outside house and lay on the ground as if someone had stepped on it. T..... testified that the deceased never used muti or practised its use on anyone. She called Ms M..... Who was in the vicinity, Ms N..... Flora S..... (“N.....”), one of the neighbours, and other people around. They summoned the police.
5. N..... testified that she grew up in front of the deceased. At some stage she resided with the deceased who took care of her children and kept some of her belonging in her house. She knew the accused and says she has never seen him at the deceased’s house before and neither has the deceased mentioned him to her. She confirmed the condition of the deceased’s residence in the morning of 28 September 2012 as already described by T..... She added that there were more shards inside the house than outside. When she cleaned the deceased’s house on the Wednesday before her death the curtains were clean and had no bloodstains. She knows that the deceased did not use any muti because she was in her company most of the time. She was with the deceased around 17h00 the day before her death and nothing appeared untoward.
6. Ms S..... B..... is married to the accused’s cousin, Mr A..... M..... Just before the accused was arrested Mr M..... had a thought provoking conversation with him which he relayed to the family. Ms Bok says that following the family discussion the accused called her outside and requested

her to give him R60 for transport because he wanted to leave for B..... She reported this to the family. They advised her not to give him the money but to call the police and not to alert the accused. She talked to the accused again later that day when he was at the back of the police van. In their conversation the accused told her that his All-star running shoes were under his bed and she should not allow the police to confiscate them. Nevertheless, she disclosed this information to a detective who was present.

7. M..... says that his mother, grandmother, and aunt came home with a plastic bag containing the clothes the accused wore the day the deceased was killed. M..... was called into the bedroom. They took out the clothes in the plastic bag and showed them to him. The family requested M..... to enquire from the accused where he had been the previous day and about the soiled clothes. The accused told him that he was at a tavern and had a fight. The accused thereafter called M..... outside and told him that he was also at the scene with an unnamed friend from Christiana. The accused reported that his clothes were bloodstained because he stabbed the unnamed friend as he was responsible for the occurrence at the deceased's house and his clothes were soiled when he lifted deceased and put her on the bed.
8. Const Gomolemo Lizzy Mohoerane was accompanied by W/O Koboekae to the scene. They noticed the All-star shoe prints inside the yard and at the corner of the fence. They noticed that the prints faced the house from the fence and also faced the opposite direction out at the fence. There were similar prints next to the house and at the toilet but not at the gate. The kitchen window with a broken pane was slightly open. There were some blood stains on the kitchen curtain. On top of the sink, situated close the window in issue, was a front portion of a running shoe print facing inside the kitchen. The print was sandy without any faecal material. Inside the house they found, *inter alia*, that the deceased was lying on the bed barely clothed. As depicted on the photos, her clothes were tucked towards the breast revealing her lower torso and body. Her legs were stretched outwards. Const Mohoerane says that the deceased had faecal material on her legs. This material was also found on the floor with the similar All-star running shoes prints on them.

9. Const Mohoerane was later involved in arresting the accused on the same date they visited the scene. She says that on their way back to the Police Station she and W/O Koboekae received a radio call that the accused was in Zone 8, Warrenton, which is not where he usually stays. Accompanied by W/O Khethani in a separate vehicle they went to the place and found the accused polishing his shoes with a traveling bag next to him. Mohoerane enquired from him where he was heading. He replied that he was on his way to Bloemhof. She further requested him to give her the takkies he wore the previous night. His Aunt handed over to the police the clothes, referred to earlier, that he wore the previous day. They put him in the police vehicle and took him to where he stays. W/O Koboekae and Khethani went inside the house and came out with a pair of All-star running shoes. They proceeded with him to the police station.
10. Dr Adin Don Surtie, a medical officer in the forensic pathology station in Kimberley, conducted the post-mortem examination on the body of the deceased. He found that the deceased had bruised inner lips and a broken left upper frontal tooth, indicative of blunt trauma to the area of the mouth. She had congested eyes, face and organs; 20 mm laceration to the left upper lip; 5x5 mm bruise to the inferior central chin; 10x10 mm bruise to the left central anterior neck adjacent to the midline. He explained that a bloodless field neck dissection is normally performed when strangulation is suspected. Following this dissection he found petechial bleeds, (small bleeds or bruises within the dermis of the skin) at the level of and above the thyroid bone. The deceased also had bruises on the right anterior chest lateral and inferior to the nipple; 20x5 mm bruise to the anterior chest superior and medial to the nipple; 40x10 mm bruise to the anterior right lateral upper arm; multiple circular bruises to the left anterior arm at the level of the elbow and the upper arm.
11. With regard to the injuries to the deceased's genitalia, Dr Surtie stated that he found bruises at the superior central aspect of the vaginal opening; petechial and bruises bilaterally at the bases of the labia minora; superficial skin lacerations at bases of the labia minora with minimal reaction; laceration in the vaginal canal on the left inferior lateral aspect about 20mm inside the canal; and cervical laceration. He also found a white substance and a hair in the

vagina and blood trickled from it. He could not say what the white substance was. He suggested that the injuries to the genitalia were consistent with forceful penetration.

12. Dr Surtie also found that there was a laceration in the rectum caused by blunt force which suggested forceful penetration in the rectum. He also found the superficial laceration around the anus and the superficial skin lacerations between the buttocks with minimal reaction, meaning that this injury was inflicted during or immediately before death. He found dirt with blood covering the buttocks; blood, debris with hair in the right inguinal fold (groin). Fluid deposits (which could be from semen or saliva) were present on the right anterior abdomen and the left anterior lower leg. The deceased's clothes were torn, had blood and dirt on them.
13. Dr Surtie explained that the fact that the deceased's eyes and organs were congested suggests that her arteries in the neck were obstructed. The pressure applied to the neck must have endured for 5 minutes or so before death finally set in. He concluded that the cause of death was strangulation with sexual assault. All wounds were due to blunt force.
14. The accused says that the deceased's home is situated about 40 metres from his. At times he fetched water for her from the outside toilets if there was water shortage inside the house. On 27 September 2012 around sunset he went to the deceased's home because she called him from the street and invited him over to her house. She was alone. The deceased enquired from him if he was not looking for a job. He replied affirmatively. The deceased informed him that she had medicine (muti) which would help him find a job. She asked him to sit on the couch and showed him powder-like dark-brown muti in a plastic container. After a while she came with a bath and poured half of this muti inside the bath and added some boiling water. She brought in a blanket and advised the accused to cover himself with it while she lit a candle. He bowed down and faced inside the bath with his head covered.
15. The accused says from that moment of the facial steaming ritual (known as "*go arametsa*" in Setswana) he lost his senses and cannot explain what happened

thereafter. The next thing he knew, when he woke up he was on top of the deceased who was holding his penis trying to insert it inside her body part but cannot say in which part. In his plea explanation he said that the insertion was inside the deceased's vagina. He also cannot explain how he reached her bed or how his clothes came to be soiled. He decided to run away. He cannot recall if he was dressed or naked when he left. Because it was dark inside the house he also cannot say whether the deceased was alive when he left.

16. The accused does not know whether he strangled the deceased but he was alone with her. Therefore, he cannot comment on how the deceased was raped or strangled as set out in the autopsy report. He says that he left the deceased's home through a window. He explained that it may be him that broke the window. He cannot tell if he got out of the premises through the gate or the fence. In the morning his grandmother told him that the deceased had died. The clothes he wore were on his bedroom floor and it dawned on him that he was at the deceased's house. He left home and stood at some corner near the deceased's home. He saw many police officers in the yard and went to his aunt's residence. When he was questioned by his family members whether he knew anything about what transpired at the deceased home they were crying. He therefore decided not to tell them the truth and lied instead. He denied having spoken to Const Mohoerane or to Ms Bok on the day in question.
17. In *S v V* 2000 (1) SACR 453 at 455a-c para 3 the Court pronounced as follows:

"[3]...It is trite that there is no obligation upon an accused person, where the State bears the onus, 'to convince the court'. If his version is reasonably possibly true he is entitled to his acquittal even though his explanation is improbable. A court is not entitled to convict unless it is satisfied not only that the explanation is improbable but that beyond any reasonable doubt it is false. It is permissible to look at the probabilities of the case to determine whether the accused's version is reasonably possibly true but whether one subjectively believes him is not the test. As pointed out in many judgments of this Court and other courts the test is whether there is a reasonable possibility that the accused's evidence may be true."

See also *S v Mafiri* 2003 (2) SACR 121 (SCA) at 125 para 9; and *S v Shackell* 2001 (2) SACR 185 (SCA) at 194g-i para 30.

18. The deceased's window pane was broken. She was raped vaginally, anally, and strangled to death. The crisp issue is whether the accused committed the acts. Although he does not exclude himself as the culprit he is exculpating himself by claiming that he is unable to account how the offences were carried out because he was not in his sound and sober senses and therefore not responsible for his acts.
19. It is common cause that the accused broke the deceased's kitchen window pane. His case that he did so when he escaped from the house and that his action amounted to malicious damage to property is irreconcilable with the overwhelming evidence which points to house-breaking. It makes no sense that he would break a window pane to escape from the house while the window had a handle which he could have used to open. The preponderance of shards inside the house than outside suggests that the pressure to the window pane must have been applied from the outside. The accused's footprint on the sink next to this window faced inside the house as opposed to outside. If the accused's version that he was escaping from the house is to be accepted it does not explain why the print on the sink did not have the faecal residue but was sandy or dusty.
20. The accused's version that the muti altered his state of consciousness with the ramification of complete unawareness of his surroundings is not without problems. Prior to the commencement of the trial Dr N.K Kirimi, a Principal Specialist Psychiatrist at West-End Hospital, Kimberley, whose report was handed in as evidence by consent as exhibit "F", evaluated the accused. On the issue of criminal responsibility, he records in his report that the accused "has normal understanding of right and wrong and can act accordingly".
21. The two witnesses who testified, Ms T..... And Ms S..... (N.....), were very close to the deceased. They vouched for the fact that the deceased did not practice traditional healing. They also never saw the accused at the deceased's residential place. I accept their evidence as reliable, credible and trustworthy. The accused fared badly in his defence. Throughout his cross-examination, when faced with pitfalls, his responses were that his memory had faded. His

mendacity is manifest in his description of the so-called muti upon which his defence solely rest.

22. In his plea explanation he said that the muti was contained in “a tiny bottle”. During his evidence-in-chief he intimated it was powder-like dark-brown muti in a plastic bag; whereas under cross-examination he stated that the stuff was grey in colour in a plastic bag of the Spar Groceries Store size. When he realized that he entangled himself in falsehood he stated that there was muti in a bottle and in a plastic bag. Interestingly he remembers that after the deceased had basically emptied the traditional medicine into the boiled water she gave him the residue of this substance to keep. In the morning when he was at his home he was still in possession of it, even when he was arrested. He went on to say that he attended Court with this muti and had even shown this to his attorney but the attorney did not disclose this fact. His family raised a hue and cry when confronting him with the deceased’s death. It therefore defies any logic that he did not exonerate himself by showing the family or the police the muti. Const Mohoerane’s testimony was satisfactory and I have no reason to doubt it. She testified that the accused was searched by the police and no muti was found in his possession.
23. The accused almost threw in a towel or gave his game away when he testified that he had to lie to his grandmother because telling her the truth could give her a heart-attack. While the accused alleges that his memory had momentarily faded due to the muti inhalation he was able to tell M..... that his clothes were soiled when he lifted the deceased onto the bed. This is in sync with the evidence of M..... who testified that the deceased had faeces on the soles of her feet. Meaning that at some stage she must have planted them on the floor, from which the accused had to lift her. The accused confirmed that what M..... conveyed to the Court was what he (accused) relayed to him and therefore truthful.
24. The fact that the accused’s clothes were found under his mattress is destructive of his case. His soiled clothes could not have been found hidden if he had no inkling of what he did wrongly at the deceased’s house. Although the accused

denied having spoken to Const Mohoerane and Ms Bok I am persuaded that he did, and did so freely and voluntarily. The fact that he was found polishing his shoes with a travelling bag next to him and had requested R60 to travel to Bloemhof shows that he was running away from his deeds.

25. In his plea explanation he stated that he may have strangled the deceased in the process of trying to break-free from her. When asked how he tried to set himself free, in what had become a pattern, he could not remember if he even attempted to break-free due his memory lapse. On the whole, I am satisfied that there was no muti at play which led to the accused losing his self-consciousness. The investigation uncovered none. In *S v Reddy and Others* 1996 (2) SACR 1 (A) at 8c-e the Court made the following pronouncement with regard to the assessment of circumstantial evidence:

“In assessing circumstantial evidence one needs to be careful not to approach such evidence upon a piece-meal basis and to subject each individual piece of evidence to a consideration of whether it excludes the reasonable possibility that the explanation given by an accused is true. The evidence needs to be considered in its totality. It is only then that one can apply the oft-quoted dictum in *R v Blom* 1939 AD 188 at 202 – 3, where reference is made to two cardinal rules of logic which cannot be ignored. These are, firstly, that the inference sought to be drawn must be consistent with all the proved facts and, secondly, the proved facts should be such that they exclude every reasonable inference from them save the one sought to be drawn.

See also *S v Dos Santos And Another* 2010 (2) SACR 382 (SCA) at 400 para 33.

The accused placed himself at the scene of the crime and says that he was alone at the deceased's residence. The inexorable inference to be drawn is that he broke into the deceased's house, raped and murdered her. His defence of memory lapse is improbable and falls to be rejected as false. In my view, the State proved its case beyond a reasonable doubt. The accused's version cannot reasonably possibly be true.

26. The accused was charged with the offence of housebreaking with the intent to commit an offence unknown to the prosecution. The evidence clearly established that his intention (the motive) was to rape the deceased. Nothing was stolen from the house. The murder followed the rape and meant to stop the

deceased from testifying against him. The accused therefore had the direct intention to murder the deceased.

27. To my mind, convicting the accused of housebreaking with intent to rape and rape and the two rapes (count 2 and 3) would amount to undue splitting of the convictions. However penetrating the deceased vaginally and anally convinces me that those are two separate acts. The presence of a white substance and or fluid deposits (which could be semen or saliva) in the orifice of the deceased's vagina and on the right anterior abdomen further fortifies this conclusion. My sense of justice is to convict the accused of rape (*simpliciter*) on the second charge of rape and to acquit him on count 3.

28. In the result:

Order:

1. The accused is found guilty as follows:

- 1.1 **On Count 1: Housebreaking with intent to commit rape and rape;**
- 1.2 **On Count 2: Rape (*simpliciter*); and**
- 1.3 **On the Count 4: Murder with the direct intent to kill.**

2. The accused is found not guilty on count 3, rape, due to duplication of the convictions.

THE SENTENCE:

Date of the hearing: 18 February 2015

Date of the sentence: 10 March 2015

29. Mr Johannes Gobusamang Taje, the accused, was convicted on three counts: house-breaking with intent to rape and rape, rape and murder. I have dealt with

the manner in which the offences were carried out and find it unnecessary to repeat the circumstances.

30. The accused, 28 years of age, is unmarried with no dependents. He attended school up to grade 12 but failed it. His mother and father passed away in 2012 and 2005, respectively. He was raised by his grandparents who took good care of him. His well-being was important to them and he grew up well under their guidance. They stayed with him from childhood until he was arrested two years and three months ago.
31. Ms M..... S..... M....., the deceased, was 67 years of age when she met her untimely death. The accused's family took her as one of their family members. The accused knew her and was aware that she stayed alone and therefore vulnerable. He broke into her house, a place the deceased was supposed to feel safe in, and attacked her. This was a serious incursion into the deceased's right to privacy and dignity. In *Kekana v S* (629/2013) [2014] ZASCA 158 (01October 2014) para 20 the Supreme Court of Appeal recently pronounced:

"Domestic violence has become a scourge in our society and should not be treated lightly, but deplored and also severely punished. Hardly a day passes without a report in the media of a woman or child being beaten, raped or even killed in this country. Many women and children live in constant fear. This is in some respects a negation of many of their fundamental rights such as equality, human dignity and bodily integrity. This was well articulated in *S v Chapman* 1997 (3) SA 341 (SCA) at 345A – B when this court said the following:

"Women in this country have a legitimate claim to walk peacefully on the streets to enjoy their shopping and their entertainment, to go and come from work, and to enjoy the peace and tranquillity of their homes without the fear, the apprehension and the insecurity which constantly diminishes the quality and enjoyment of their lives."

32. As already alluded to in the judgment, the cause of the deceased's death is recorded as strangulation with sexual assault. She sustained multiple injuries including a broken left upper frontal tooth as a result of the accused's actions. Dr Surtie testified that the act of strangulation went on for five minutes or so before death finally set in. Some of the injuries to the genitalia were inflicted during or immediately before death. This suggests that she may have died while she was being raped. She was raped more than once i.e. vaginally and

anally and killed in a quest to silence her forever. There is nothing in the evidence to suggest that she posed any threat to the accused. The scene the accused left behind following the gruesome acts was horrific even for the accused to look at when shown the photo album (exhibit E1 and E2). He placed his family through a trying situation because he tried to influence some of them to conceal exhibits, which conduct amount to an attempt to defeat the ends of justice. They had to deal with their loss and to testify against him. These are serious aggravating circumstances.

33. The *Zinn* triad of factors requires the sentencing Court to strike a balance between the personal circumstances of the accused, the seriousness of the offence, as well as the interests of the public (see *S v Zinn* 1969 (2) SA 537 (A) at 540G – H). The accused is not a first offender. His wrong encounter with the law was in 2009 when he was convicted of theft and sentenced to a fine of R5000.00 or three months imprisonment wholly suspended for three years on certain conditions.
34. The society should be protected against all forms of the crimes, more so those involving violence, and would require that the accused be appropriately punished for his misdeeds. The accused is convicted of serious offences where life imprisonment is ordained absent a finding of substantial and compelling circumstances. Ms M....., for the accused, argued that the only substantial and compelling circumstances present is to be found in the fact the accused spent two years and three months in prison awaiting this trial. That may be a mitigating factor but does not in itself constitute the required substantial and compelling circumstance.
35. I share the sentiments expressed by Satchwell J as follows in *S v M* 2007 (2) SACR 60 (W) at 91 paras 111 and 113:

“[111] Traditionally, time spent in custody while awaiting trial is taken into account for purposes of sentencing. Such time is usually deducted from the sentence of imprisonment which the sentencing judge or magistrate would have wished to have imposed, on the grounds that a period of incarceration has already been endured, notwithstanding that this ordeal took place prior to conviction and certainly prior to sentence.

.....

[113] A life sentence of imprisonment is theoretically indeterminate. As far as the sentencing court is concerned the date when the sentence commences should have no impact on its duration, since it theoretically endures for the remainder of the natural life of the person who is so sentenced. Obviously a person who is 25 years old at the time of sentencing is more likely to serve a longer period of imprisonment than a person who is 60 years old at the time of sentencing. However, that should not in and of itself cause a sentencing judge to fail to impose a life sentence of imprisonment where it is statutorily required.”

36. The aggravating circumstances present in this case far outweigh the accused’s mitigating and personal circumstances. There is nothing I could find which impels any departure from the imposition of the prescribed sentences. An order that the sentences run concurrently should ameliorate their effect including the two years and three months spent by the accused in prison awaiting this trial.

37. In the result the accused is sentenced as follows:

1. **On Count 1: Housebreaking with intent to commit rape and rape: Life imprisonment;**
2. **On Count 2: Rape (*simpliciter*): 15 years imprisonment;**
3. **On Count 4: Murder with the direct intent to kill: Life imprisonment;**
4. **The above sentences are to run concurrently.**

MV PHATSHOANE

JUDGE

NORTHERN CAPE HIGH COURT

Appearing for the State:

Adv Q. Hollander
instructed by Director of Public Prosecutions, Kimberley

Appearing for the accused:

Ms M. Mazibukwane
instructed by Justice Centre, Kimberley

