



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

Case No: K/S 2/15

Date of Judgment: 18/03/20015

In the matter between

THE STATE

V

JAMES SIFF

JUDGMENT

PAKATI J

- [1] The accused, Mr James Siff, is arraigned before me on a charge of murder read with s 51 of the Criminal Law Amendment Act, 105 of 1997. He is alleged to have killed the deceased, Vernon Hugh Kok, on Saturday 18 October 2014 at around 21h00 in Campbell, in the district of Herbert.

- [2] The accused is represented by Mr J Cloete on the instructions of Legal Aid South Africa. He pleaded not guilty to the charge. In his plea explanation he admitted having stabbed the deceased once with a pair of sheep-shears but claimed that he did so accidentally. He alleged that his life was in danger. This sounds more like self-defence.
- [3] The following admissions were recorded in terms of s 220 of the Criminal Procedure Act, 51 of 1977:
- 3.1 The identity of the deceased;
 - 3.2 The body of the deceased did not sustain any further injuries from the scene until the post mortem was conducted;
 - 3.3 Dr TC Kanaomang conducted the autopsy on the deceased's body on 21 October 2014;
 - 3.4 The cause of death is correctly recorded as cardiac tamponade and the contents of the post mortem are admitted as true and correct; and
 - 3.5 The correctness of the content of the photo album and the key to the sketch plan.
- [4] On 18 October 2014 Mr Thomas Denaar ("Thomas"), Ms Dora Kok, Ms Marie Tembu, also known as Meikie, and the deceased had gone to the house of Ms Yolanda Esel, also known as Pule, to watch a soccer match between Orlando Pirates and Free State Stars. Thomas testified that the deceased knocked at the door and sought permission to watch the match. Ms Esel told him that she was not interested in the game and wanted to sleep. Without an argument the accused approached the door armed with a pair of sheep-shears and stabbed the deceased once

in the chest. Thomas reported the incident to the deceased's sister whose name was undisclosed.

[5] Thomas disputed that:

[5.1] When the accused stabbed the deceased he (the deceased) stood between him and the accused;

[5.2] He and the deceased had an argument with the accused before the stabbing took place;

[5.3] Norman Denaar was present when the incident took place.

[5.4] He bumped against the door while standing outside.

[5.5] The accused asked them to leave;

[5.6] The accused went to fetch the pair of sheep-shears to scare them away;

[5.7] He was armed with a knife on the day; and

[5.8] The accused's life was in danger.

[6] Ms Tembu testified that when the deceased requested to watch TV the accused said that he should not come with his nonsense. He advanced and *'hit the deceased on his chest'*. She did not see the weapon used but saw the deceased fall to the ground. The accused then fled the scene. Ms Tembu corroborated Thomas that the attack was unprovoked. She and Thomas were unarmed.

[7] Ms Kok did not witness the stabbing but saw the accused drop the weapon inside the house and said he had done what he wanted to do. She discovered later that the deceased had been stabbed. She agrees with

Thomas, Ms Tembu and Norman Dienaar that Norman was not present when the incident took place.

- [8] Dr Tebogo Kanaomang, a forensic pathologist who performed the autopsy, testified that the injury to the deceased's chest was caused by a sharp instrument. The cause of the collapse of the left lung was the penetrating injury into the chest cavity. There was a small defect on the pericardial sac with 200ml of blood inside. The presence of blood in the chest cavity was either as a result of the injury to the blood vessels underneath the ribs caused by the sharp object or that the organs inside the chest cavity were injured. He testified further that there was another small defect on the right ventricle close to the apex of the heart. The blood vessels of the heart were open and the defect had nothing to do with the deprivation of oxygen to the heart. The 2cm incised wound he found on the left anterior chest wall between the sternum and the nipple had sharp-like margins with abrasions. He did not measure the depth of the wound. The lungs collapsed and were congested. He recorded the chief post mortem findings as follows:

“A body of a Coloured adult male with a single stab wound to the left anterior chest wall. The sharp object penetrated the left chest cavity injuring the right ventricle of the heart. There is a lot of blood in the pericardial sac. The left lung is slightly collapsed and congested and there is a small amount of blood in the left chest cavity. The right lung is congested. The brain is swollen. Both kidneys are hydronephrotic and swollen.”

Dr Kanaomang concluded that the cause of death was cardiac tamponade. He explained this to mean that there was blood inside the heart sac which spilt in a short period of time causing pressure to the

heart muscles thereby preventing the heart from pumping the blood out.

That concluded the State case.

[9] The accused, a 42 year old married male, testified that on the day of the incident he was in the house of his girlfriend, Ms Esel. He and his uncle, Mr Booitjie Rooibaadjie, were seated in the lounge watching the soccer match between Orlando Pirates and Free State Stars. During half-time he heard a knock at the door. Ms Esel asked who it was and the deceased identified himself. He requested to watch the said match. Ms Esel said that they were about to sleep. A short while later the door was hitched. The accused approached it and noticed that Thomas had pushed it open. He was standing outside with Norman and the deceased. The accused requested them to leave the premises. He then closed the door. On his way to the lounge the door was hitched again. He again told them to leave. The deceased and Thomas swore at him and refused to leave the premises. An argument ensued. He then fetched the pair of sheep-shears from the room to scare them off. He again told them to leave but they still refused. Thomas drew a knife and moved towards him. At that stage his life was in danger. He delivered a blow which he aimed at Thomas. The deceased got in between him and Thomas causing him to accidentally stab the deceased. He discarded the weapon in the house and left the scene. He reported the incident to his mother who in turn reported to the police. He was arrested in the early hours of Sunday morning. He denied that Ms Tembu was present during the incident.

[10] Thomas contradicted himself several times. However, those contradictions are so inconsequential that no purpose can be served by

burdening this judgment by itemising them. (See **MKOHLE 1990 (1) SACR 95 (A)** and the remarks in **S v OOSTHUIZEN 1982 (3) SA 571 (T)** at 576B-C and 576G-H).

- [11] The accused created the impression that the deceased and Thomas did not want to leave the premises and were a nuisance. The State witnesses testified differently corroborating one another. According to them the door was open. Therefore there was no need to forcefully open it. In his evidence-in-chief the accused did not explain what Thomas did with the knife except that he drew it and moved in his direction. It only came out for the first time when the Court asked him what Thomas did with the knife that he was holding it in a stabbing position. This, in my view, is an afterthought by the accused.
- [12] The accused's evidence that his life was in danger is a fabrication; regard being had to the evidence of Ms Tembu and Thomas that Thomas and the deceased were unarmed. Again, his version that the deceased got in between him and Thomas is absurd considering his evidence that *'Thomas moved forward in my direction'* meaning that the deceased was left behind Thomas who was 2m away from the accused when he delivered the blow. When he could not take the punches anymore he changed his version and said that Thomas, the deceased and Norman moved towards him simultaneously.
- [13] The accused explained that he left the scene because he was shocked. In his statement made to the police handed as Exh "B" he stated:
- "Ek het toe die oorledene en sy vriende gevra om te loop aangesien my vrymeisie hulle nie daar soek nie. 'n Stryery het ontstaan tussen ek en Vernon, die oorledene, hy het my gevloek, ek het toe kwaad geraak en terug in die huis gegaan na die slaapkamer toe waar ek 'n skaapskêr*

uit 'n boksie uitgehaal het en terug gegaan na die voordeur waar die oorledene en sy vriende gestaan het.

Ons twee het weer verder gestry en ek het die oorledene een keer op sy bors met die skaapskêr terug in die huis gegooi en ek het geloop na my ma se huis toe.”

- [14] When the accused was asked why he did not tell the police that he accidentally stabbed the deceased he explained that he was confused and was not *compus mentis*. In the said statement there is no mention of an intention to stab Thomas who, according to him, threatened his life. He conceded that instead of fetching the pair of sheep-shears he had the opportunity to close the door, lock it and call the police. He gave the excuse that he did not think about it. The manner in which he left the scene after the stabbing is consistent with Ms Kok's evidence that after he stabbed the deceased he said that he had done what he wanted to do.
- [15] The accused confirmed that he had a good relationship with the three State witnesses. There was no reason for them to falsely implicate him in the manner that they did. There was also no reason for them to say Thomas was unarmed.
- [16] The evidence against the accused is overwhelming. He was a poor witness. He was evasive in answering questions. He kept adjusting his evidence as the case progressed. What is clear is that he was unhappy that the deceased and his companions went to Ms Esel's house to watch TV.
- [17] I am satisfied that the State proved its case beyond reasonable doubt and that the accused's version is not reasonably possibly true and I reject it as false.

[18] Having regards to the instrument used and the delicate location of the stab wound (5th intercostal space between 5th and 6th ribs adjacent to the sternum) I am satisfied that the accused stabbed the deceased with the direct intention to murder, *dolus directus*.

The following verdict is returned:

The accused is found guilty of murder of Vernon Hugh Kok with *dolus directus* as a form of intention.

BM PAKATI
JUDGE

On Behalf of the State:
Instructed by:

Adv J Mabaso
Director Public Prosecutions

On Behalf of the Accused:
Instructed by:

Adv J Cloete
Legal Aid Board- Kimberley