

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

Case No: K/S 7/13

Delivered On: 25 June 2013

THE STATE

V

SERAME PIET LETSHWITI

JUDGMENT

PAKATI J

1. The accused, Mr Serame Piet Letshwiti, a male of 34 years, faces a charge of murder read with the provisions of s 51 of the Criminal Law Amendment Act, 105 of 1997. The incident is alleged to have taken place in the afternoon on Saturday 30 June 2012 in Hartswater, Jan Kempdorp. The accused is alleged to have killed the deceased, Kedibone Ellen Davids, by stabbing her with a knife.

2. The accused is represented by Mr J Cloete on the instructions of the Legal Aid Board. He pleaded not guilty to the charge. He elected to exercise his constitutional right to remain silent and tendered no plea explanation. The following admissions were recorded in terms of s 220 of the Criminal Procedure Act, 51 of 1977:

2.1 The identity of the deceased; and

2.2 That the deceased sustained no further injuries from the time of her death till the time the post mortem was conducted by Dr Adin Don Surtie.

3. Mr Michael Masego also known as Manga, a cousin of the deceased, had visited the deceased's mother, Ms Selina Davids. The deceased was not at home. She had spent the night with her boyfriend, Mr Monnapule Leeuw, at Mr Sam Mosinki's premises. Whilst Michael and Ms Davids chatted outside the house, the deceased arrived. The accused also arrived shortly thereafter. The deceased refused to speak to the accused. She left again for Monnapule's place without the accused noticing. The accused realised with the passage of time that the deceased was not home. He disappeared for a while but returned and reported that he had been assaulted by Monnapule, the deceased's boyfriend. Michael and the accused proceeded to Mosinki's premises where Monnapule stays. As they approached Mosinki's yard Mosinki and Ms Andsy Maoupa prevented them from entering the gate. Michael corroborated this evidence. Michael, Mosinki and Ms Maoupa saw the accused when he pushed the gate with his left hand and held a knife in his right hand. The deceased at that stage stood next to Mosinki's shanty. Subsequently Michael heard a noise. When he looked he saw the accused lifting the knife and stabbed the deceased in the neck. The deceased ran and fell in front of the door of the shanty.
4. Monnapule came out of the shanty holding a knob stick and hit the hand of the accused that held the knife. Michael held the accused by the hand and went with him to the deceased and said: *"Man, can you bring me here to stab our child?"* The accused's response was: *"If the police are looking for me tell them they will find me at my home."*
5. According to Mosinki the accused came to his premises twice on that day. He first came looking for the deceased. At that stage the deceased

was standing behind his shanty. He requested the accused to leave because he realised that the accused wanted to assault the deceased. The accused left with the deceased. After some time the deceased returned alone. The accused also returned thereafter. Mosinkielaborated and testified further that the accused chased the deceased who was standing at the back of the shanty. He heard him begging the deceased to reconcile with him because they had separated. Soon thereafter he heard the deceased crying. He noticed that the accused had already stabbed her, whereupon she fell in front of the house. The accused told them that the police would find him at his parental home if they wanted him and left. The deceased was then removed to hospital. Mosinki testified that he had consumed some liquor on the day but was cognisant of what happened around him.

6. Ms Andsy Kelebogile Maoupa stays in a shanty in the same premises as Mosinki. On the day of the incident she was woken up by a noise. She went outside to investigate. She noticed the deceased standing behind Mosinki's shanty and Mosinki standing at the gate. She joined Mosinki at the gate. The accused approached the gate. She and Mosinki refused him entry because the accused was in a fighting mood. The accused left but returned in the company of Michael, the deceased's brother. The accused was armed with a knife and was still aggressive. He pushed the gate and gained entry into the premises. He proceeded to where the deceased was and stabbed her with the knife on the right side of her neck. She went around the shanty and fell in front of the door. The accused fled the scene. Ms Maoupa went to call the deceased's mother, Ms Davids. Monnapule was not present during the incident. Ms Maoupa denied that she was not present when the incident took place.

7. Monnapule corroborated the evidence of Michael and Ms Maoupa that he was not present when the stabbing took place. He testified that he and the deceased have had a love relationship for six months when the incident happened. He saw the accused when he came to the premises for the first time. He and his uncle, Mosinki, refused him entry into the premises. The accused then left. Monnapule did not see him when he returned. He only came out of the house after the accused had already stabbed the deceased. He approached the accused because he noticed that he still wanted to stab the deceased and was swearing at her. Monnapule took a piece of wood from the firewood and delivered one blow to the accused's hand that had the knife. The accused told them to tell the police that they would find him at his home. He thereafter ran away with his knife. Monnapule denied that he assaulted the accused on an earlier occasion on that day.

8. Ms Lillian Lorathu is a registered nurse and a mid-wife in Jan Kempdorp Hospital. On 30 June 2012 at about 15h30 she was on duty when the deceased was brought to hospital. She had a stab wound on the right side of her neck and a laceration in her right shoulder. Her blood pressure was low. Dr Van Niekerk examined her and gave Ms Lorathu instructions to suture the wound which she did. She also gave her an injection to prevent infection. The deceased spent the night in hospital for observation. The next day, 01 July 2012, at 07h30 she observed that her temperature was high. She looked stable and was later discharged with medication to take home. On 08 July 2012 she returned and was re-admitted because her wound was septic. On 09 July 2012 at 17h30 Dr Pieter Fischer examined her. Ms Lorathu last saw the deceased on 09 July 2012.

9. Dr Fischer practised as a doctor since 1981. He instructed the nurse on duty to remove the stitches from the wound and drain the abscess. On 11 July 2012 he referred the deceased for x-rays to ascertain the extent of the abscess and whether other vital organs were not affected. On 12 July 2012 he was informed that the x-ray machine was out of order. The deceased was then taken to Hartswater Hospital where x-rays were done. He heard later that the deceased's condition deteriorated and was transferred to Kimberley Hospital.

10. Dr Russel Rowland Du Toit, a surgeon in Kimberley Hospital, saw the deceased for the first time on 12 July 2012. Her wound on the neck was draining food particles and pus. He and two other colleagues suspected that she had an injury in the oesophagus. They did some tests which confirmed their suspicion. An emergency surgery in the early hours of 13 July 2012 to save her life was performed. The deceased died on 19 July 2012. The death was caused by multi-organ failure. According to Dr Du Toit this condition is life threatening and the death of the deceased did not come as a surprise.

11. Dr Adin Don Surtie, who performed the autopsy on 29 July 2012, testified that the injury to the oesophagus was as a result of the stabbing. The deceased developed an infection which spread to the surrounding areas and tissue of the lungs causing pus formation. The deceased's organs were oedematous which means that there was fluid retention in the organs as a result of respiratory distress syndrome caused by the pneumonia. This resulted in organ failure. The deceased also had scattered healing localised subarachnoid bleeds of the brain. This means that there was an indication that there were small areas of bleeding in

the surrounding areas of the brain showing that she sustained head trauma. Dr Surtie recorded the chief post mortem findings as follows:

- “a. Swollen left eye with scar;*
- b. 55mm healing incision with removed sutures right back at level where arm connects to back;*
- c. 60x50mm healing abrasion left upper back;*
- d. 170x100 healing bruises left and central lower back;*
- e. Two areas of dark discolouration right face – possible healing abrasions;*
- f. 70x50mm healing gaping incision with green discolouration right lateral neck with tract inferior medially towards oesophagus. History of incision was sutured but deceased was referred to Kimberley Hospital due to food and [pus] leakage from wound. Exploration of wound was performed and it was found that the oesophagus was injured during the original stab wound.*
- g. 20mm sutured incision of distal oesophagus;*
- h. [Pus] on left lung and mediastinum;*
- i. Bilateral pneumonia;*
- j. Minimal bloody fluid bilateral chest;*
- k. Oedoematous organs; and*
- l. Scattered healing localised subarachnoid bleeds of brain.”*

Dr Surtie concluded that the cause of death was stab neck with incision of oesophagus and its complication of pneumonia i.e. pneumonia was caused by the stab wound.

12.The accused testified that he had a love relationship with the deceased at the time of her death. On the day of the incident he was at the deceased's home with the deceased and her parents. The deceased left at some stage. Her mother, Ms Davids, requested him

to go and fetch the deceased because she had long been warning her about 'this boy', meaning Monnapule. He then proceeded to Mosinki's place. He told Mosinki and Monnapule that he had been asked by the deceased's mother to fetch the deceased. As he was going towards the gate he was struck twice with a knob stick in his eyes. He drew a knife and stabbed randomly in self-defence as his eye that was functioning could not see. His other eye got blind before the incident. Monnapule hit him on the wrist with the stick and the knife fell to the ground. He then sat down trying to recover his eyesight. He thereafter left the premises.

13. Outside the premises the accused met Michael. Michael hit him with a clenched fist on his face and robbed him of his cell phone and left. The accused proceeded to his parental home. He was unaware that he had stabbed the deceased at Mosinki's place.

14. The accused disputed the following evidence by the state witnesses:

- (a) That when he went to Mosinki's place for the first time he was prevented from entering the premises;
- (b) That Mosinki and Ms Maoupa stopped him from entering the gate;
- (c) That he went to Mosinki's place with Michael;
- (d) That when he pushed the gate he had a knife in his hand held in a stabbing position;
- (e) That he went straight to the deceased who was standing at the back of the shanty and stabbed her in the neck;
- (f) That earlier he went to Mosinki's place alone and came back and reported that Monnapule had assaulted him; and
- (g) That after he allegedly stabbed the deceased he told Monnapule and Michael that the police would find him at his parental home.

15. The crisp issue to be determined is whether the accused acted in self-defence when he stabbed the deceased. It is not in dispute that the accused was the cause of the injury sustained by the deceased which led to her death. The accused stated that when he stabbed randomly he ‘was totally blind’.
16. There were minor inconsistencies in the evidence of Mosink and Ms Maoupa which are not material and need not be dealt with. It would be strange to expect the witnesses to give exactly the same account of what took place especially taking into account that they had consumed alcohol and that the scene was moving. None of them expected this incident to happen. I also take into account that this incident took place on 30 June 2012 and the witnesses testified almost a year later. 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. See also **S v NYEMBE 1982 (1) SA 835 (A)** at 842E-G.
17. Michael on the other hand was confronted about his police statement which did not give every detail of what he mentioned in his evidence-in-chief. In his statement he did not mention that he saw the accused when he chased and stabbed the deceased. He testified that what was recorded by the police officer who took down his statement was a summary of what took place and he knew that he still had to testify in court. He said: *“The reason I did not mention this was because my intention was that I will testify about others in court.”* In **S v BRUINERS EN ‘N ANDERE 1998 (2) SACR 432 (SE)** at 432I it was held:
- “The purpose of an affidavit was to obtain the details of an offence, so that it could be decided whether a prosecution should be instituted*

against the accused. It was not the purpose of such an affidavit to anticipate the witness' evidence in court, and it was absurd to expect of a witness to furnish precisely the same account in his statement as he would in his evidence in open court."

See also **S v MAFALADISO EN ANDERE 2003 (1) SACR 583 (SCA)** at 593e-594h.

18. In his own version the accused testified that Ms Davids told him that the deceased was cheating on him. He did not know who Ms Davids was talking about but knew that he would find the man at the place where he went to fetch the deceased. It is therefore strange that he went straight to Mosinki's place where the deceased spent the night with Monnapule. Moreover, when Monnapule assaulted him Monnapule did not say he had a relationship with the deceased. He just intervened on behalf of the deceased. Michael denied that Ms Davids sent the accused to fetch the deceased, her daughter. He was present when the accused left for Monnapule's home. His version of events is more reliable and consistent with the events of that day.

19. The accused testified that the deceased's parents knew about the deceased's relationship with Monnapule but did not tell him. He was angered by this and felt betrayed because he maintained them financially and neglected his own family. He testified that he would never have allowed Monnapule to take the deceased away from him without a fight. The accused claimed not to have seen who struck him with a stick. He explained:

"When I was approaching the gate I just felt being struck with a kierre twice on my eyes. I drew a knife and just stabbed at random.

Monnapule blocked the blow and the knife fell on the ground. When I say he blocked the blow I mean I was stabbing at random and I could not see anything and as I was stabbing randomly not seeing where I was stabbing he hit me with a kierre on my wrist and the knife fell on the ground and afterwards I sat down. Then I heard people saying stop, don't kill that person. At the time my eyesight had slightly recovered."

20. The accused later said that he realized that it was Monnapule who hit him because the people screamed calling his name and asked him to stop assaulting him. He later changed and said that he saw Monnapule approaching him with a knob stick, 55cm long, just before he delivered a blow with it. It is inconceivable that the people screamed when he was hit by Monnapule but were silent when he stabbed the deceased. The witnesses testified that the accused was never assaulted before he stabbed the deceased.

21. The accused's version that he stabbed randomly with the knife and did not even feel that he had reached an object is absurd. He stated: *"I did not feel it at all. I was stabbing at random. My head was confused and my eye was bleeding. The strikes by Monnapule were violent that's why I could not feel that I landed on an object"*

This is improbable taking into account that the knife penetrated from the right side of the neck to the left side where the oesophagus is situated. The truth is that the deceased stood behind the shack and he covered quite a distance to reach and stab her.

22. According to the accused he could not make a call to summon the ambulance after the assault because he was blind. Nevertheless he walked home unaccompanied and later to hospital.

23. T

he Court in **S v CHABALALA 2003 (1) SACR 134 (SCA)** at 139i-140b para 15 held that the correct approach which a court should adopt in evaluating evidence is as follows:

“[15] The trial Court’s approach to the case was, however, holistic and in this it was undoubtedly right: S v Aswegen 2001 (2) SACR 97 (SCA). The correct approach is to weigh up all the elements which point towards the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and, having done so, to decide whether the balance weighs so heavily in favour of the State as to exclude any reasonable doubt about the accused’s guilt. The result may prove that one scrap of evidence or one defect in the case for either party (such as the failure to call a material witness concerning an identity parade) was decisive but that can only be an ex post facto determination and a trial court (and counsel) should avoid the temptation to latch on to one (apparently) obvious aspect without assessing it in the context of the full picture presented in evidence. Once that approach is applied to the evidence in the present matter the solution becomes clear.”

24. The evidence of the accused is a fabrication. The evidence against him is overwhelming. He was a poor witness. He was evasive in answering questions. The State Prosecutor would ask him a simple question over and over again without getting an answer until he

abandoned the question. The accused confirmed that he would never be happy to hear that the deceased slept with Monnapule because he was still in love with her. He even called her his “wife” and was committed to her for life. He felt he owned the deceased. He contradicted his own version. He kept adjusting his evidence as the case progressed. The clear motive for the attack was that he knew that the deceased had moved on with her life but refused to accept it. That is evidently why he carried the knife with and brandished it when he was still at the gate.

25. Mr Cloete, for the accused, put to Drs Fischer and Du Toit that the hospital staff were negligent in treating the deceased and that her life could have been saved if she was given proper treatment timeously. Dr Du Toit, a specialist in Kimberley Hospital, corroborated the evidence of Dr Fischer of Jan Kempdorp Hospital that it is difficult at the initial stages to establish that the oesophagus was damaged. Hence Dr Fischer referred the deceased for x-rays to establish the extent of the abscess and to verify if other vital organs were not affected. Dr Du Toit testified further that the injury was on the right side of the neck yet the oesophagus is more to the left side of the neck. This made it more difficult to suspect that there was an injury in the oesophagus. According to him one needs to have a very high index of suspicion that there is an injury to the oesophagus. He stated that if a patient presents with a penetrating stab wound in the neck and especially if they give a history of blood coming from the mouth, complain of severe pain when they swallow or if one is able to see any suspicious drainage from the wound, air or saliva one would then suspect an injury. These symptoms were not present when Ms Lorathu and Dr Van Niekerk first saw the deceased. Dr Du

Toit only discovered the injury after they (he and other surgeons) observed that the wound drained food and pus.

26. In **S v COUNTER 2003 (1) SACR 143 (SCA)** the appellant had shot at the deceased, causing a bullet to strike her on the buttock. She was admitted to hospital, where she appeared to be recovering. However, the bullet had penetrated her anal canal and, in due course, it caused a virulent septicaemia, which led to pneumonia, of which she later died. The appellant was charged with, and convicted of murder. The appellant contended that there was no causal *nexus* between the wounding of the deceased and her death, primarily in light of the averment that the hospital staff were negligent in their treatment of the deceased. The Court held that there was no evidence that any other body of medical expertise would reasonably have discovered earlier what was not discovered until necrotic tissue was first discovered or would have treated the deceased with greater skill or different options, given the information available. Moreover, whatever treatment was administered to the deceased, and even if administered at the earliest stages of her detention in hospital, there was no certainty that she would have survived the onslaught of the bacteria. The doctor who had been treating her before the necrotic tissue was discovered was an experienced practitioner, yet he had found no valid reason to take the steps which, in retrospect, might have saved the life of the patient until two days later. The operation which was performed on her was one which was done once sepsis was known to be present. The Court found that there was no *novus actus interveniens*. Hence the conviction on murder.

27. In the instant case it is clear from the evidence by the doctors that the sequence of events from the time of the deceased's admission until her death had not been interrupted by any causal factor which affected or changed the natural order of events. Moreover, there had been no intervention or omission by any persons responsible for her care.

28. I am satisfied that the State proved its case beyond reasonable doubt and the accused's version is not reasonably possibly true and I reject it as false.

29. Having regard to the instrument used, the delicate location of the stab wound I am satisfied that the accused committed murder with the constructive intention to murder, *doluseventualis*. See **S v SIGWAHLA1967 (4) SA 566 (A)** at 570B-E.

The following verdict is returned:

The accused is found guilty of murder of Kedibone Ellen Davids with *doluseventualis* a form of intent to cause her death.