

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Case No: 63/2012

In the matter between:

THE STATE

VERSUS

BORAKI DANIEL MOSIA

JUDGEMENT: **MOLEFE, AJ**

HEARD ON: 30 JULY 2012

DELIVERED ON: 02 AUGUST 2012

[1] The accused person is Mr Boraki Daniel Mosia, a 19-year old South African citizen residing at M30 Phahameng, Ventersburg. He first appeared before me in the Free State High Court sitting at Virginia on Monday, 30 July 2012 on three criminal counts.

First count – murder read with section 51 of the Criminal Law Amendment Act 105 of 1977. The state alleged that the accused had on the 31 October 2011, at Ventersburg, unlawfully and intentionally killed an adult male person named Martins

Lehlohonolo Matlokotsi.

Second count: Contraventions of Section 3 read together with sections 1, 120(1)(a), 103, 117, 121 and schedule 4 of the Firearms Control Act, No 60 of 2000 and read with Section 250 of the Criminal Procedure Act 51 of 1977, in that the accused possessed a firearm without a license.

Third count: Contravention of Section 90 read together with sections 1, 103, 117, 120(1)(a) and 121, read together with schedule 4 of the Firearms Control Act, No 60 of 2000 and read together with section 250 of the Criminal Procedure Act of 1977 in that the accused was in unlawful possession of ammunition without holding a license or permit to possess ammunition.

- [2] Advocate M Moroka appeared for the state and Mr K Pretorius appeared for the accused as the defence counsel. Mr K Pretorius confirmed that Mr Mosia understood the charges against him and that he had been informed of the provisions of section 51 of the Criminal Law Amendment Act 105 of 1997 ("the Minimum

Sentences Act”).

[3] Mr Mosia pleaded guilty to count 2 (possession of firearm without a license) and in his plea explanation in terms of Section 112 of the Criminal Procedure Act 51 of 1977 through his legal representative, Mr Pretorius he admitted that on the 31 October 2011, he was in possession of a firearm without a license and knew that it was wrong and against the law to possess a firearm without a license.

[4] Mr Mosia pleaded guilty to count 3 (possession of ammunition without a license or permit) and in his plea explanation in terms of section 112 of the Criminal Procedure Act 51 of 1977, through his legal representative, Mr Pretorius, he admitted that on the 31 October 2011, he was in possession of ammunition without a license and permit and knew that it was wrong and against the law to possess ammunition without a license or permit.

Mr Mosia’s version was that the deceased and he found and picked up the firearm in the veld and had it in their possession

with the intention of handing it over to the Police.

- [5] The Prosecutor accepted Mosia's plea of guilty to count 2 and count 3. I was satisfied that Mr Mosia admitted to all the elements of the counts preferred against him and convicted him as charged on his plea of guilty.
- [6] Mr Mosia pleaded not guilty to count 1 of murder and in terms of section 115 of the Criminal Procedures Act in his plea explanation through his legal representative, he denied that he intentionally killed the deceased but that the firearm accidentally went off and Mr Matlokotsi was killed.
- [7] By agreement between the Prosecution and the Defence, admissions of 5 (five) documents in terms of Section 220 of the Criminal Procedure Act, 51 of 1977 were handed in as exhibits:
- (i) Exhibit "A" – admissions in terms of section 220;
 - (ii) Exhibit "B" – report on a Medical Legal Post-Mortem Examination;
 - (iii) Exhibit "C" – photographs of the crime scene, recovered

firearm and sketch plan of the scene;

- (iv) Exhibit “D” - a ballistic report in terms of section 212(4)(a) and 218(8)(a) of Act 51 of 1977;
- (v) Exhibit “E” – Affidavit in terms of Section 212 of the Act of 1977.

Mr Pretorius, counsel for defence, confirmed the admissions and that I could note them as formal admissions in terms of section 220 of the Criminal Procedure Act, no 51 of 1977.

- [8] The State called the following witnesses to proof its case beyond reasonable doubt:

Ms Malefu Miriam Radebe was called as state witness 1. She testified that she was a 21 year old residing at Ventersburg and that the deceased was her boyfriend. She knew Mr Mosia from seeing him in the company of the deceased.

On the 31 October 2011 at 01H35, the deceased and she came from a tavern and went to the deceased’s residence where he

resided with his grand-mother. They went to the backroom and were preparing to sleep when Mr Mosia came into the room as the door was closed but not locked. Mr Mosia told the deceased that he was coming to sleep there but the deceased informed him that that he could not as Ms Radebe was there. Mr Mosia left the room. The light in the room was on and Ms Radebe could see properly.

- [9] After about 10 minutes, Mr Mosia came back into the room and Ms Radebe who was in bed with the deceased, with the deceased on top of her as they were about to make love, heard and saw Mr Mosia cocking the firearm and shooting the deceased.

She felt the deceased going limp and warm on top of her and she pushed him to the floor. Mr Mosia was holding the firearm and Ms Radebe started screaming. He threatened her and told her that if she did not stop screaming, he would shoot her too. He also told her to tell the Police that she knew nothing about the shooting.

Ms Radebe asked Mr Mosia to call the deceased's grand-mother and she telephoned the Police after he had left the room. She told the Police about the shooting and when Mr Mosia came back to the room she lied and told him that she was talking to her sister. At that time Mr Mosia was not holding the firearm.

[10] Ms Radebe left the room, still naked to call her friends who lived nearby and the Police came. She informed the Police that Mr Mosia (by pointing at him), had shot the deceased. Ms Radebe further testified that the deceased never provoked Mr Mosia and was not even aggressive when he told him he could not sleep at his home.

[11] During cross-examination, Ms Radebe vehemently refuted the accused version as put to her by the defence counsel. She confirmed that she could smell alcohol from Mr Mosia but that he was not drunk.

She denied that Mr Mosia put the firearm underneath the chair after the shooting.

[12] Sergeant S J Wolmarans was called as state witness 2. She testified that she was a sergeant in the South African Police Service, stationed at Ventersburg, Shift Crime Prevention Unit.

On the 31 October 2011, she attended to the scene of crime at 1049 Mamahabane, Ventersburg. She was with a reservist. She went to the backroom and found the deceased shot, lying on his back on the floor covered with a blanket. He had no pulse. She asked the three people who were standing outside the yard, who shot the deceased and Ms Radebe pointed at Mr Mosia. Sergeant Wolmarans introduced herself to Mr Mosia, told him his rights and arrested him.

She went back into the room where the deceased was shot and searched everywhere for the firearm. It was not in the room. She found the firearm outside inside a drum next to the outside toilet. She did not touch the firearm but left it inside the drum. When the Local Criminal Regional Centre (LCRC) team arrived, they took photographs of the firearm, made the firearm safe and

put it in the evidence bag.

[13] During cross-examination Sergeant Wolmarans denied the accused's version put to her by the defence counsel that the firearm was found underneath the chair and that when she arrived at the scene of the crime, Mr Mosia was inside the backroom with the deceased's grand-mother.

[14] Ms Mamotse Elina Matlokotsi was called as state witness 3. She was testified that she was the deceased person's grand-mother. The deceased was born in 1993 and was 18 years when he got killed.

Mr Mosia was well known to her. He was the deceased's friend and frequently visited their home. They went to school together and always did homework together. She took him like her own child.

On the 31st October 2011, her grand-son, Lehlohonolo was shot whilst in his bed in his room. Ms Matlokotsi heard a gun shot and

was later woken up by Mr Mosia knocking on her bedroom window and told her to come see her child.

The both went to the deceased's room and she found Lehlohonolo lying on the floor, naked and covered with a blanket. Mr Mosia told her that someone fired a shot in the yard and shot Lehlohonolo and that the perpetrator could still be nearby or in the yard. There was blood underneath his arm and she realised that he was dead.

The shooting incident affected her badly, especially that she now lived alone and also that she never knew that Mr Mosia was an enemy who could kill her child.

[15] During cross-examination, she refuted the accused version put to her by his defence counsel that Mr Mosia kept quiet when she asked him what happened. She confirmed that she did not know Ms Radebe until after the shooting incident. Cross-examination did not elicit anything new to the defence case.

[16] The defence called the accused Mr Borani Daniel Mosia as their only witness. Mr Mosia testified that he was the accused and was born on the 23 February 1993 and that on the date of the offence on the 31 October 2011, he was 18 years, 10 months. He was a Grade 11 student and did not finish school due to his arrest.

The deceased was his friend since they were young and in Grade 1. They used to study together, and went to school together. Mr Mosia resided in a informal settlement area with his grandmother and aunt and he frequently visited the deceased at his home.

[17] He reiterated his plea explanation and testified that he was in possession of a firearm which he together with the deceased found in the veld in September a week before the school holidays. He looked for the deceased on the 30 October 2011 so that they could take the firearm to the Police Station but only found the deceased late, in the evening at a tavern. The deceased agreed that they could take the firearm to the Police

later that day. Later on that night on the early hours of the, 31 October 2011, he realised that the deceased had left the tavern without informing him.

[18] He left the tavern past the deceased's home, and called the deceased by whistling and when the deceased came out of his room wearing boxer shorts the deceased told him to fetch the firearm so that they could hand it over to the Police.

[19] Mr Mosia, testified that went to his home to fetch the firearm and went back to the deceased's room. The deceased was lying in bed on top of Ms Radebe, talking. Mr Mosia told him that he had brought the firearm and that they should take it to the Police. The deceased told him that he was busy. Mr Mosia took the firearm from his waist and noticed that it was in a cocked position and the hammer pulled back. He tried to uncork it to make it safe and a bullet fell to the floor. He bent down to pick up the bullet and he sat on the chair with the firearm on his right hand. The firearm knocked, or hit the armrest of the chair and accidentally fired a shot. He heard the deceased saying "you shot

me". He put the firearm underneath the chair. He approached the deceased and helped Ms Radebe to place him on the floor.

- [20] He testified further that he went to call the deceased grandmother and never told her anything about the accidental shooting.

The Police arrived and he was taken to the Police Station where he put the firearm. He never put the firearm in the drum and did not know who put it there. He denied that he threatened Ms Radebe after the shooting and never instructed her to tell the Police that she knew nothing about the shooting.

- [21] He further testified that he knew Ms Radebe and that there was no bad blood between them. Ms Radebe and the grand-mother were fabricating the version of the events of the night of the shooting. The Police also told Ms Radebe to implicate him because on the night of the shooting, he was not allowed to be present when Ms Radebe was giving her statement but when he gave his statement Ms Radebe was allowed to be there.

[22] Mr Mosia testified that when they found the firearm in the veld in September it was kept by the deceased until after the schools reopened then he kept it in his possession at his home for more than two weeks. He wanted to take it to the Police Station on the night of the shooting as he was afraid that people who would come to his home as his grand-father had passed away would see the firearm.

[23] During cross-examination Mr Mosia was exposed to the fact that from where he was sitting on the chair, if the firearm went off accidentally it could not have hit the deceased on the bed as the chair was lower than the bed. His explanation to the fact that he insisted that on the early hours of the morning and when the deceased was clearly busy with his girlfriend to take the firearm to the Police was also questioned.

[24] I heard the testimony of four witnesses in this case, three witnesses for the prosecution and one witness for the defence.

Advocate Moroka, counsel for the state, based on the overwhelming evidence against the accused, argued for the conviction of the accused on the murder charge on the basis that the murder was premeditated.

[25] Mr Pretorius, counsel for the defence, found it difficult in his closing address to argue for the acquittal of the accused. He conceded that the accused's version is, in all probabilities not reasonably true. Based on the evidence presented by the state, he found no basis for the court, to ignore the evidence as he conceded that the state witnesses were trustworthy and credible.

[26] Murder is the unlawful and intentional causing of the death of another human being. The elements of this crime are:

- (a) causing the death;
- (b) of another person;
- (c) unlawfully; and
- (d) intentionally.

The Prosecution case is that the accused intentionally and

unlawfully caused the death of Martins Lehlohonolo Matlokotsi. There is no dispute that the accused unlawfully caused the death of the deceased. The dispute is the necessary intention. The accused's testimony is that there was no intention, as it was a mistake or an accident and he went to great lengths in an attempt to explain how the accidental shooting occurred.

[27] The State led evidence of a single witness insofar as the commission of the murder is concerned (or eye-witness).

It is now trite that evidence of a single witness can be accepted to be sufficient for a conviction in terms of section 208¹ of the Criminal Procedure Act 55 of 1977 if such evidence is clear and satisfactory in every material respect².

It is also trite that *“there is no rule of thumb, test or formula to apply when it comes to consideration of the credibility of the single witness. The trial judge will weigh his [or her] evidence, will consider its merits and demerits and having done so, will*

¹ Section 208 of the Criminal Procedure Act 51 of 1977 provides: “A court may convict an accused of any offence alleged against him on the single evidence of a competent and credible witness...”

² R v Mokoena 1932 OPD 79 at 80

decide whether it is trustworthy and whether despite the fact that there are shortcomings or defects or contradictions in the testimony, he [she] is satisfied that the truth has been told. The cautionary rule referred to by De Villiers JP in 1932 [in the first Mokoena case] may be guided to a right decision but it does not mean that “the appeal must succeed if any criticism, however slender, of the witnesses’ evidence were well founded” (per Schreiner JA in R v NHLAPO AD 10 November 1953) quoted in R v BELLINGHAM). “It had been said more than once that the exercise of caution must not be allowed to displace the exercise of common sense.”³

- [28] The state’s single witness, Ms Radebe testified in a simple straight forward and clear manner. At the end of her evidence-in-chief and cross-examination, I was satisfied that her evidence, despite being that of a single witness was satisfactory in all material aspects. I could find no reason not to accept it in its entirety, especially in light of the concession made by the defence counsel. Her version was also where relevant, corroborated by the other two state witnesses. Both these witnesses were credible. I had

³ S v Sauls 1981(3)SA 172(A)

no reason not to accept their evidence to the extent that it corroborated Ms Radebe's testimony.

[29] On the other hand, the defence's witnesses' version had many important contradictions which I need not mention in my judgment. His version has such a lot of improbabilities that one can only come to the conclusion that it is a made up story. It does not tally with the overwhelming evidence by the state.

[30] Having considered the probabilities and improbabilities of this case and taking into account the concession made by the defence, I accept the version of the prosecution as a credible and reliable account of what happened on the 31 October 2011 at Ventersburg.

I am satisfied that the State has proved its case beyond reasonable doubt in respect of the murder charge as set out in Count 1.

[31] Accordingly, I find the accused guilty of murder as charged.

D. S. MOLEFE, AJ

Counsel on behalf of the
State:
Advocate M. Moroka

Counsel on behalf of the
Defence:
Justice Centre Bloemfontein
Advocate K Pretorius