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JAMES SHENXANE and THE STATE

SMALBERGER, JA -

IN THE SUPREME COURT OF SOUTH AFRICA(APPELLATE DIVISION)

In the matter between:

JAMES SHENXANE

Appellant

and

THE STATE

Respondent

CORAM: JANSSEN, JOUBERT, et SMALBERGER, JJA

HEARD: 20 MARCH 1986

DELIVERED: 25 MARCH 1986

J U D G M E N T

SMALBERGER, JA :-

The appellant was convicted of murder in
the Witwatersrand Local Division by LE GRANGE, J, and two

assessors/

assessors. Extenuating circumstances were found to be present, and he was sentenced to 12 years imprisonment.

The appellant was refused leave to appeal against his conviction by the Court a quo, but was subsequently granted such leave by this Court.

The appellant's conviction arose out of the death of one Noah Nzeku (the deceased) on 12 October 1983. The appellant was charged with the deceased's murder together with his younger brother, Philip. At the conclusion of the trial the latter, for reasons which are not relevant to the present appeal, was convicted of assault with intent to do grievous bodily harm, and sentenced to 5 years imprisonment.

It is /

It is common cause that on the night of his death the deceased attended a "stockvel" at house 2121 Mohlakeng, Randfontein. He was apparently in good health and had no injuries apart from a recently acquired but relatively minor wound over one eye. According to the State witnesses the appellant arrived at the house in question shortly after 9 p m in the company of Philip and one Sipho. The purpose of their visit appears to have been related to an incident which occurred two days previously when the deceased stabbed Philip in the course of an altercation. The State evidence reveals that Philip and Sipho initially entered the house and called or beckoned to the deceased to come outside. He refused to do so.

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The appellant then entered the house. He had in his possession a plastic bottle or container which by all accounts must have contained an acid-like substance. Words passed between the deceased and the appellant before the latter sprayed some of the contents of the container into the face of the deceased. The deceased screamed with pain, and fell to the ground. As he did so a clasp knife fell from his trouser pocket. The State witnesses differ as to whether the knife was open or closed, but the difference is of no real consequence. The knife was picked up by the appellant. The deceased was taken outside by Philip and Sipho where the appellant proceeded to stab the deceased with the knife he had picked up. One witness testified to the appellant stabbing the deceased five times

on or in the region of his back; another to the appellant stabbing the deceased "many times" on the back. A third witness observed the deceased being stabbed in the chest a number of times, but as it was relatively dark outside and the deceased was lying on the ground at the time it is conceivable, as found by the Court a quo, that the witness was mistaken in his belief that the deceased was lying on his back rather than his stomach when he was stabbed. After he had been stabbed the deceased got up and ran away.

The appellant, Philip and Sipho left the scene after admonishing those present not to mention what had occurred.

The appellant and Philip advanced a different version of the events which occurred. Both claimed that Philip remained outside and never entered the house.

According /

According to the appellant, he went inside to ascertain from the deceased why he had stabbed Philip earlier in the week. While he was speaking to the deceased someone behind him (the appellant) threw or squirted liquid into the face of the deceased. At the time he thought the liquid was beer or water, but he subsequently realised that it was in the nature of an acid. The deceased put his hand into his trouser pocket and produced an open knife. The appellant grabbed hold of the hand in which the knife was. A number of other people intervened in an attempt to wrest the knife from the deceased's grasp. In the ensuing struggle the deceased was dragged outside with the appellant still clutching the deceased's hand holding the knife. Outside the house the appellant fell, and the deceased fell on top

of /

of him. The appellant managed to dispossess the deceased of his knife. The deceased held on to the appellant with his arms around the appellant's upper body. In order to free himself the appellant stabbed the deceased "two or three times" in his lower back. The deceased let go of him, and the appellant got up. The deceased did likewise, and then ran away.

It is not disputed that some time later the deceased was found lying outside the house of a certain Mrs Mmoledi. She lives at house 2068 Mohlakeng, a relatively short distance from house 2121 where the stabbing occurred. She thought he was drunk, and sent a message with some children to his parents who lived in the same street. The deceased's brother, Daniel, went to Mrs Mmoledi's house

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in response to her message. The time was 10.15 p m.

He found the deceased and shone a torch on to him. The deceased was lying on his stomach. His back was full of blood but he did not appear to be dead. He examined the deceased's back and observed what appeared to be five deep stab wounds on his back. He also noticed a dark discolouration of his face. He covered the deceased with a blanket. An ambulance later arrived to remove the deceased. When the blanket was taken off, some of the flesh on the deceased's face came off with it. He also observed that some skin had come off his right eyelid. The ambulance driver testified that the deceased was dead on his arrival at the scene. The deceased was lying on his stomach. He examined the body. He found that the

deceased /

deceased had "four or five" stab wounds on his back, one of which was "a big wound on the left side on the ribs". On turning the deceased over onto his back he found that his face was discoloured, and the flesh had been burnt with "something like acid". When he held the deceased's head some of his hair came off. The deceased was removed to hospital where he was certified dead on arrival. The doctor who so certified him was unable to recall what injuries he had.

The State did not call as a witness the district surgeon who conducted the post mortem examination on what purported to be the body of the deceased. After the defence case the Presiding Judge called him in response to a suggestion by state Counsel that he do so. The district

surgeon /

surgeon testified to having conducted a post mortem examination on a body identified to him as that of the deceased. He found the cause of death to be a stab wound of the back which had penetrated the chest cavity. The body, which he professed to have examined carefully, had no other injury of any description. It is abundantly apparent, having regard to the totality of the evidence, that the body on which he conducted his examination was not that of the deceased - even the appellant admitted inflicting more than one injury on the deceased's back. How this regrettable state of affairs arose is not apparent from the evidence. It need scarcely be emphasized that not only should extreme care be exercised when labelling and identifying bodies for post mortem examination purposes,

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but the post mortem examination itself should be conducted with care and a proper attention to detail. Failure to do so could result in a failure of justice.

The Court a quo accepted the evidence of the State witnesses as outlined above, and rejected that of the appellant as false. In doing so the Court was alive to the existence of certain discrepancies in the evidence of the various State witnesses who testified to the events preceding and concerning the actual stabbing, but held that they were not "of a sufficiently serious nature as to cast doubt on the veracity of any one of these witnesses".

The Court found the appellant's evidence to be improbable in a number of material respects, and that his version of the stabbing amounted to "a fanciful story". It has not

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been shown that the Court a quo misdirected itself in any respect, or overlooked any relevant considerations, in accepting the State evidence and rejecting that of the appellant - indeed, its findings appear to be amply borne out by the evidence.

The only remaining issue is whether it has been proved beyond all reasonable doubt that the deceased died as a result of the assault upon him by the appellant, in other words, whether the necessary nexus has been established between the injuries inflicted on the deceased by the appellant, and the former's death. This is a matter which, in the absence of medical evidence of the precise cause of the deceased's death, must be determined by inference from the proven facts.

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There is no evidence to suggest that the deceased sustained any further injury after being assaulted by the appellant. The observations of the deceased's brother, Daniel, and the ambulance driver dovetail with the evidence of the witnesses to the assault, and rule out any question of the deceased having been stabbed further after such assault. To suggest that the deceased may have fallen and injured himself when jumping over a fence while running away - so severely as to cause his death - is fanciful in the extreme, and this contention, advanced in the appellant's heads of argument, was properly abandoned in the course of argument.

The deceased was a young man, apparently in good health. Prior to the assault upon him the only injury he

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had was a relatively minor one above his one eye. He was subjected to a severe and vicious assault. Although the precise nature, depth and location of the deceased's wounds were not established by expert medical evidence, the lay evidence suggests that they were deep and of a serious nature. It is a matter of common experience that stab wounds of the back frequently result in death. On the evidence the deceased probably died within an hour of the assault upon him. Bearing in mind that what is needed is proof beyond all reasonable doubt - not proof beyond all shadow of a doubt - I am satisfied that the only reasonable inference to be drawn from the considerations and evidence I have referred to is that the deceased died in consequence of the assault upon him by the appellant. It is not

disputed /

disputed that on the State's version of the facts the
appellant was shown to have had the requisite intent to
kill.

In the result the appeal is dismissed.

SMALBERGER, JA

JANSEN, JA)
JOUBERT, JA) CONCUR