

Reportable: Yes / No
Circulate to Judges:
Yes / No

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IN THE HIGH COURT OF SOUTH AFRICA

(Northern Cape Division)

Case No.: K/S 71/06

Heard:

Delivered: 06/09/2007

THE STATE

versus

RIAAN PONO

DANNYBOY ROBERTS

EDWINKRUGER

ACCUSED 1

ACCUSED 2

ACCUSED 3

JUDGMENT

MOKGOHLOAJ:

1. The three accused, Mr Riaan Pono a male aged 31 years, Mr Dannyboy Roberts, a male aged 22 years and Edwin Wouter Kruger a male aged 30 years, are arraigned on one charge of murder. The state accuses them of having murdered a male named Paul John Long at Rietvale, Northern Cape on 17 June 2006.
2. Accused No.1 Mr Pono is represented by Ms. B Segone, Accused

No.2 Mr Roberts and Accused No.3 Mr Kruger are both represented by Mr Rasethuntsa and later by Mr Cloete. All legal representatives are from the Legal Aid Centre of Kimberley. The State is represented by Ms. van Heerden of the office of the Director of Public Prosecution.

3. The State alleges that the three accused murdered the deceased by assaulting him with open hands and clenched fists. It also alleges that the accused further assaulted the deceased by hitting him with planks and a garden spade while the deceased's hands were tied on his back.
4. The three accused pleaded not guilty to the charge. Accused No.1 through his attorney exercised his rights to remain silent. Accused No.2 and No.3 denied all allegations against them and put the State to prove thereof.
5. The statement by Inspector McAnda of the Criminal Record Centre in Kimberley was handed in by consent between the parties. This statement enclosed photos of the scene of the incident. Exhibit 'A'. The DNA analysis was conducted by Inspector Ulrich Koenze of the SAPS Forensic Science Laboratory. The deceased's blood samples were matched to the blood stains found on accused No.1's shirt and Accused No.2's trousers. Inspector Koenze's findings were also handed in as Exhibit 'C' by consent.
6. During the trial all three accuseds made formal written admissions in terms of Section 220 of the Criminal Procedure Act 51 of 1977. These admissions were handed in as Exhibits 'D', 'E' and 'F'

respectively. These admissions can be summarised as follows:

- 6.1. The three accused admit the identity of the deceased as Paul John Long.
- 6.2. They admit that the deceased died on the 17 June 2006 in the veld behind the house No. 46 Aanblom Street, Rietvale, Kimberley.
- 6.3. They admitted that the deceased did not suffer further injuries from the scene at 46 Aanblom Street where he was found by Frans Louw on 17 June 2006 until the post mortem was conducted on his body by Dr D Lourens on 19 June 2006.
- 6.4. They admitted the post mortem report by Dr Lourens and the correctness of its content. They further admit that the post mortem report refers to the deceased, Paul John Long.
- 6.5. Accused No.1 and No.2 admit contents of Inspector Koenze's findings and that the shirt referred to in that report belongs to Accused No.1 and the trouser belongs to No.2.

EVIDENCE OF THE ACCUSED

7. All three accused testified. Their evidence was that on 17 June 2006 in the evening, they were at accused No1's house no 46 Aanblom Street, Rietvale. They were in a company of one Selina Louw, Accused No.1's girlfriend and live-in-lover. They were seated in the bedroom drinking alcohol and listening to music. A certain person later identified as the deceased, came knocking at the door. Accused No.1 went to open the door. Accused No.1 and the deceased stayed in the sitting room arguing over money that Accused No.1 owed the deceased. He tried to intervene and then he left the house (i.e. Accused 3). Accused 2 also went to intervene but failed. He also left.
8. According to Accused No.1, he was then left with the deceased and Selina Louw who was still in the bedroom. He then went into the bedroom and the deceased followed him. He asked the deceased to

leave but the deceased refused. They then started to push each other. Then Selina stood up and took a plank that was in the bedroom and hit the deceased once on the head therewith. The deceased fell and Selina took a rope and tied the deceased's hand to his back. He tried to stop her. Selina told him she has to do that otherwise the deceased will harm him. The deceased tried to fight back. He never assaulted the deceased in any way, he never even helped Selina tie the deceaseds hands.

9. Accused No.1 carried deceased from the bedroom to the sitting room. At that stage the deceased was dizzy. Accused No.2 then came and No.1 asked him to help carry the deceased outside to get fresh air. They carried the deceased outside and he left the deceased with Accused No2 there. He did not know what happened thereafter. He observed that the deceased was bleeding but did not see the wound.

10. According to Accused No.2, when he returned to Accused No 1's house, he found the deceased lying on the floor in the sitting room against the wall, his hands tied to his back, his face and clothes full of blood. The deceased was dizzy he could not speak. Accused No.1 asked him to carry the deceased outside so that he can get fresh air. They carried the deceased outside the house to the veld. He then relieved himself as he turned around he saw Accused No.1 having a shiny object in his hand. Accused No.1 bent towards the deceased head and moved his hands as if wiping something off the deceased head. He does not know whether Accused No1 stabbed the deceased or not. They left the decdeased in the veld and went back to to Accused No.1's house. They left the deceased there and went back to Accused No.1 house. They found Selina cleaning the floors in the house and the walls in the bedroom.

EVIDENCE OF THE STATE

11. Selina Louw testified. She confirmed they were at the Accused No1's house with Accused No.2 and No.3 when the deceased came. The deceased argued with the Accused No.1. They were in the bedroom and she was sitted on the mattress bed. The three accused then stated to assault the deceased with open hands. Accused No.3 then took a garden spade which was in the room and hit the deceased on his head. The deceased fell on the floor.

They all three joined together to assault the deceased with booted feet, clenched fists and planks. The other two accuseds also hit the deceased with that garden spade. Accused No.1 and No.2 helped each other to tie the deceaseds hands to the back. They also tied the legs together. They continued to assault him while he was lying on the floor. The 3 Accused then stopped the assault and untied the deceased legs. According to her, the deceased was still alive at that stage but was bleeding profusely.

12. Accused No.3 then fell asleep and Accused 1 and Accused 2 carried the deceased to the veld. Accused No.1 and No.2 told her to clear the blood that was on the floor and burn the planks and the clothes that were blood stained. She did that Accused No.1 and No.2 returned from the veld and Accused No.3 left. After sometime Accused 2 left too. Selina confirmed under cross-examination that she also assaulted the deceased with a plank on his foot whilst the deceased was lying in the floor.

14. Mr FRANS Louw also testified (no relation to Selina). His testimony was that on 17 June 2006 in the morning he was on his way to visit his in laws. Along the way he met all three accuseds. He observed blood on the hands of both Accused No.1 and No.2 but did not enquire further. He talked to accused 2 about the money Accused No.2 owed him. They passed each other and he went back to his in-laws. He had his fishing rods with him and he wanted to shoot at the bird. The bird flew away he went after it until at a certain tree in the veld. He then observed the body of the deceased lying on the ground tied around in a rope. He went and summoned the police.

15. Inspector M.W. Legoshe confirmed that he attended the scene of the incident in the veld. He also observed blood on the ground and he followed the blood stains that led him to Accused No.1's house. He went into the house and found blood stains on the floors and walls and planks which were also blood stained. Selina Louw was also there and she showed him where she burnt the bloodied clothes. He also retrieved a blood stained garden spade Exhibit '1' at house No. 40 Aanblom Street.

MEDICAL EVIDENCE

16. The significant finding that Dr Denise Lourens recorded in the post-mortem examination report, Exhibit 'B' are the following:

“4. *Tydens die lykskouing het ek my bevindings aangeteken en vasgestel dat die vernaamste lykskouingsbevindings in verband met hierdie liggaam volgende was:*

(1) Volwasse man.

(2) Kneusings, skaafwonde en skeure van die liggaam.

(3) Bloedings van die brein.

(4) Frakture van die neusbrug en hyoid been.

(5) Inhalasie van bloed.

5. *dat die oorsaak van die dood die volgende was:*

Stomp trauma van die kop en nek.”

17. Dr Lourens testified that the deceased's body had almost 19 blows. These were abrasions and bruises and could have been caused by being kicked with booted feet and hit by planks. The serious injuries according to the Dr is the one on the head and neck which may have been caused by being hit by a hard object which may include a plank or a handle of a garden spade. The wound on the neck may have been caused by being hit with a plank that has nails or a garden spade or a sharp point of the brick. According to her a combination of both injuries on the head and neck is the cause of death. The deceased also was bleeding inside from nose and throat.

EVALUATION OF SELINA LOUW'S EVIDENCE

18. Its trite that the onus rest on the State to prove its case beyond

reasonable doubt. No onus is placed on the accused. Whether I disbelieve the evidence of the accused is not the test. I need not even reject the State's case in order to acquit them. I am however bound to acquit them if there exist a reasonable possibility that their evidence may be true. (***See S v Kubeka 1982 (1) SA 534 (W) at 577 D – H***)

19. It has been argued by both legal representatives that Selina should be regarded as a credible witness. This argument was based on the fact that (i) she is a single witness and (ii) she is a section 204 witness who took part in the assault of the deceased.

(i) Section 204 Witness

It is argued that Selina lied to this court and was not open to court as she feared to incriminate herself. However she was warned in terms of Section 204 that she is obliged to answer questions notwithstanding that her answers may incriminate herself.

(ii) Single Witness

Section 208 of the CPA 51 of 1977 provides that an accused person may not be convicted of any offence on the single evidence of any competent witness. The courts approach to this section was summarised in a dictum of De Villiers JP.

In R v Mokoena 1932 OPD 79 at 80 as follows:

“Now the uncorroborated evidence of a single competent and credible witness is no doubt declared to be sufficient for a conviction by [the section], but in my opinion that section should only be relied on where evidence of a single witness is clear and satisfactory in every material respect. Thus the section ought not to be invoked where, for instance, the witness has an interest or a bias adverse to the accused, where he had made a previous inconsistent statement, where he contradicts himself in the

witness box, where he has been found guilty of an offence involving dishonesty, where he has not had proper opportunities for observation, etc.”

“In S v Sauls 1981 (3) SA 172 (A) at 180 D – F.

“This section no longer refers to “the single evidence of any competent and credible witness”; it provides merely that “an accused may be convicted on the single evidence of any competent witness”. The absence of the word “credible” is of no significance; the single witness must be credible, but there are, as Wigmore points out, “indefinite degrees in this character we call credibility”. (Wigmore on **Evidence vol III para 2034 at 262.**) There is no rule of thumb test or formula to apply when it comes to a consideration of the credibility of the single witness (see remarks of Rumpff JA in **S v Webber 1971 (3) SA 754 (A) at 758**. The trial Judge will weigh his evidence, will consider its merits and demerits and, having done so, will decide whether its trustworthy and whether, despite the fact that there are shortcoming or defects or contradictions in the testimony, he is satisfied that the truth has been told.”

In R v Mpompotshe and Another 1958 (4) SA 471 (A) 479 E – F

Schreiner JA stated as follows:

“The cautionary rule does not require that the triers of fact should be told, or should warn themselves, that there must always be corroboration of the accomplice. As pointed out in **Rex v Ncanana, 1948 (4) S.A. 399 (A.D.) at p.405**, there may be a sufficient guarantee if certain other features are present. But if those features are not present, if for instance the accused has given evidence and has not been proved to have testified falsely, and if it cannot be said that the accomplice is beyond all question a satisfactory and convincing witness while the accused is the opposite, then corroboration is required.”

The evidence of Selina as regards how the deceased was assaulted is corroborated by the findings of Dr Lourens as mentioned in para 17 supra. She confirmed that she did hit the deceased with a plank on his foot. She washed the blood stains on the floors and walls. This corroborated by Accused No.2. She burnt the blood stained clothes and Inspector Legoshi confirmed that Selina showed her the burnt clothes. She was the only person sober on that night this is confirmed by all three accuseds. She is Accused No.1’s girlfriend and there will be less possibility of her fabricating her story. There was no grudges between

Selina and the accuseds.

20. The evidence of Accused 1 on the other hand contradicts what his previous attorney put to Selina under cross examination. He also contradicts the evidence of Accused 2. Accused 2 through his legal representative put to Selina that Accused No.1 stabbed the deceased with a shiny object twice on the neck. This happened when they left the deceaseds at the veld.

**F.E. MOKGOHLOA
ACTING JUDGE
HIGH COURT
NORTHERN CAPE DIVISION**

On behalf of the State	:	Advocate A. Van Heerden
Instructed by	:	Director of Public Prosecution Kimberley
On behalf of the Accused 1	:	Ms. B. Segone
Instructed by	:	Legal Aid Centre Kimberley
On behalf of the Accused 2 & 3	:	Advocate J. Cloete
Instructed by	:	Legal Aid Centre Kimberley