

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: SS25/2023

DATE: 10-10-2024

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~ NO.

(2) OF INTEREST TO OTHER JUDGES: YES/ NO.

(3) REVISED.

DATE 19/11/2024

SIGNATURE [REDACTED]

10 In the matter between

BIYELA LINDANI CEBONI

Applicants

and

STATE

Respondent

J U D G M E N T

LEAVE TO APPEAL

YACOOB, J:

20 The three applicants were convicted of various charges, including murder robbery with aggravating circumstances, on 27 March 2024, together with a fourth accused. A fifth person charged with them was discharged on all counts. Mr Lukhele, who was accused number 2 in the trial has not sought to appeal his conviction or

sentence.

The three applicants before me seek leave to appeal only their convictions. They also seek condonation for the late submission of their applications for leave. The condonation application is not opposed and the applications were only five days late. Taking into account that all three applicants are currently in custody, that is hardly any delay at all. The condonation applications are granted.

The first applicant, Mr Biyela, was accused 1 in the
10 trial. He was convicted on three counts of murder, two counts of robbery with aggravating circumstances and one count each of unlawful possession of a firearm and ammunition.

The second applicant, Mr Zulu, was accused 3 in the trial. He was convicted of one count of murder and one of unlawful possession of firearm and ammunition.

The third applicant, Mr Mbatha, was convicted of one count of murder, one count of robbery with aggravating circumstances and one count each of possession of a
20 firearm and of ammunition.

The first and third applicants are both convicted on count 1, which was the murder of Grey Shibambo. They both take issue with the fact that there was a single witness and the Court did not call for the video footage mentioned by the witness. According to them, the witness's evidence

could not be relied upon because she was a single witness and had relied upon the video footage for her identification of them.

However, the witness had seen the applicants before, in the area, and knew them by sight. It was not as if this was the first time she had seen them. Had that been the case, the reliability of the evidence would have been an issue. In this case it was not. I find that, on count one, another court would not have come to a different
10 conclusion.

The first applicant was convicted on count two, the murder of Richard Radebe. It was submitted that the Court ought to have found that that the two witnesses who were called for the State materially contradicted each other, and that the witness whose evidence was in favour of the applicant was the only one telling the truth and that for this reason another court could come to a different conclusion and the court should grant leave.

I have examined the evidence again and still find
20 myself unable to agree with this analysis of the evidence and must find that another court would not come to a different conclusion on count two.

The first and second applicants were convicted on count three for the murder of Mr Kabelo Senegal. There was only one eyewitness and the applicants take issue with

the fact that there was a single witness, that he had consumed a lot of beer, and that it was very dark. In my view the applicants overstate the effect of the darkness and the beer. The witness was very clear and was able to draw a stark picture for the court, which was, to some extent corroborated by the evidence of accused 2. Again, the determining factor for this court is that the witness was familiar with the applicants by sight.

I am satisfied that another court would not have
10 come to a different conclusion.

The first and third applicants were convicted on count four, the armed robbery at Choppies. There were three witnesses. Only one of them really saw anything. The two witnesses were not entirely consistent and there were no photographs of the incident. The witnesses had not seen the applicants before. It is possible that another court may have come to a different conclusion on this count.

The first applicant is also convicted on count five,
20 the armed robbery at Shoprite. Mr Khunou, who appeared for the applicants, made a lot of the fact that the witnesses should have been too scared to look at the perpetrators because the witnesses were women and there was a firearm present, but every person is affected differently by such things and I would be wary of making such generalisations.

Certainly the witnesses were adamant that they were not affected in the way Mr Khunou] suggested.

In addition, there were photographs taken from the video footage. They were clearly of the first applicant, even though he denied it was him. I am not satisfied that a different court would come to a different conclusion.

As far as counts 6 and 7 are concerned, the unlawful possession counts, they are associated with the other counts and the guilt flows from the guilt of the other counts and I do not interfere with those.

The applications are dismissed, save that relief is granted to the first and third applicants to appeal their convictions on count 4.

[REDACTED]

YACCOB, J

JUDGE OF THE HIGH COURT

20 DATE: ...12./...11/2.024