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**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE DIVISION, CAPE TOWN**

Case No: A57/2023

In the matter between:

J[...] **P[...]**

Appellant

and

THE STATE

Respondent

JUDGMENT

SIPUNZI AJ

[1] On 25 October 2019, the appellant was convicted in the Regional Court, sitting at Bonnievale, on one count of murder, read with Section 51(2) of the Criminal Law Amendment Act 105 of 1997 (CLAA), as well as one count of desecrating a corpse. On 5 November 2019, he was sentenced to undergo fifteen (15) years imprisonment for murder and four (4) years imprisonment for desecrating of the

corpse, to be served concurrently. He now appeals his conviction and sentence with leave of this Court.

[2] According to the appellant's plea explanation, on 17 April 2017, the deceased, who was his girlfriend and with whom he lived, had gone out to attend a party. Upon her return, the appellant was waiting outside the house. She entered, and shortly thereafter, he followed her inside. The deceased was intoxicated and vomiting. In an effort to prevent her from continuing to vomit indoors, he forcibly removed her from the house because he could not stand the thought of her vomiting inside. She began to bleed after she banged her head against some furniture and a pole within the house. As they stood outside, he came to the grim realisation that she was no longer alive. He refuted the allegation of having raped her.

[3] Dr. Laurens testified that she examined the body of the deceased on 10 April 2017. The body was clothed in a long sleeve top and a panty. The deceased exhibited injuries across her body, with some appearing to be superficial while some others were more serious. Among others, the deceased exhibited extensive contusions on the lungs, and the left ventricle of the heart and the left lobe of the liver was ruptured. During the gynecological examination, it was observed that the deceased vagina had two tear wounds located at the five and six o'clock positions. There was a five-millimeter tear above the opening that extended deeply upward in the vagina in the direction of the three o'clock region. The primary findings from the post-mortem examination indicated that her death resulted from the blunt force trauma to the body.

[4] Based on her observation of various injuries, she noted that some of them were inflicted ante-mortem, some peri-mortem and those located in the *genitalia* were post-mortem. She opined that most of the injuries resulted from a significant force that compressed the chest, as the contusion of the lung tissue was suggestive of a significant impact. It was proposed to her that the deceased may have sustained the fatal injuries from a motor vehicle collision. She responded by expressing the opinion that the extent of the injuries the deceased sustained was such that it would not have been possible for her to reach home alive from that motor vehicle collision. She also opined that overall, the injuries she observed on the

deceased resulted from blunt force trauma and that the deceased might have been lying on the floor or against a hard surface when the force applied compressed or pressed her thoracic cavity.

[5] Van Rhyn was the friend of the appellant and was aware that the appellant was residing with the deceased, who was his wife. According to him, on the day of the incident, during the early hours of Saturday morning, he was travelling from the township to Willemse's house. As he was approaching, he could hear noise coming from the appellant's house, it was the appellant striking his wife. He instructed Willemse to go and stop the noise, but Willemse expressed his reluctance to get involved. Instead, Willemse called the police, who failed to respond. He could hear the appellant repeatedly telling Mammie Magrieta, another woman, that he was going to kill the deceased. At that stage he also requested Mammie Magrieta to call an ambulance.

[6] Eventually, he and Werner went to stop the fight. The appellant grabbed a spade, but they took it away from him. Then they realized that the deceased had passed away, the body lay on the floor, exposed. The police arrived, and the spade was handed over to them.

[7] Willemse testified that they lived in the same vicinity as the appellant, they were neighbours. Their homes were separated by 2 other homes. During the evening, they were together with the appellant. When the deceased arrived at their home, he could see her from a distance of approximately 10 meters, she appeared to be intoxicated. The appellant returned home as well. Thereafter, he could hear banging sound coming from the appellant's house. In past altercations, the deceased would raise her voice, yet what troubled him this time was her silence. During that period, he was accompanied by Van Rhyn. He subsequently contacted the police, yet their arrival was delayed.

[8] Sergeant Bashe of the SAPS, reported that he arrived at the appellant's home in the early hours of the morning on 09 April 2017, he was accompanied by a colleague. They had received a complaint that the appellant was allegedly assaulting his girlfriend. Upon arrival at the residence of the appellant, they spoke to Willemse

outside. He led them into the appellant's house. This is where he discovered the lifeless, unclothed body of the deceased on the floor, bearing injuries to her face. Upon enquiring from the appellant about the circumstances of the injuries sustained to her face, the response given was that she had struck her face against the door when she entered. The appellant also informed him that earlier they had an argument with the deceased because she had left with one Lasla. The appellant failed to provide any further detail.

[9] While at the appellant's residence, he also spoke to Van Rhyn, who reported that he could hear from outside the appellant's house that someone was being assaulted with a spade. However, he did not give him the spade. Subsequently, he called an ambulance and additional police officers to facilitate further investigation. In his view, the evidence was ample, leading him to arrest the appellant as well. The appellant failed to specify the manner in which the deceased was undressed.

[10] The appellant also testified and confirmed that the deceased was his partner, and they were living together at the time of her death. He confirmed that earlier in the evening, he was in company of Van Rhyn and Willemse. They had spent the evening together almost into midnight, had been drinking and was intoxicated. Earlier during the night, he had gone to look for the deceased at Magrieta's house to enquire if the deceased was not sleeping there.

[11] Around midnight, as he was heading home, he noticed the deceased approaching from behind. They went to their residence. As she entered, the deceased was staggering unsteadily from intoxication. She was wearing a skirt paired with a T-shirt. She entered the bedroom and fell asleep. He made his way to the kitchen to get food. When he went back to the bedroom, he observed that the deceased had white foam coming from her mouth. This infuriated him, and he reprimanded her for going out drinking, and as she felt the urge to vomit, he decided to take her out. The deceased was staggering as they both stumbled out of the house. During that process, they bumped into the walls, at the exit, she struck the door frame and fell to the ground. He had a suspicion that it was at that stage her skirt slipped off. He lifted her and placed her on the sofa in the sitting room. At that moment he saw that there was blood and grabbed the spade to remove it. However,

before he did that, he decided to call an ambulance. He then asked Mamie to contact the police and an ambulance. At that time, the deceased was lying motionless. When the police arrived, he was taken into custody.

[12] The appellant further observed that the deceased was clothed only in a panty and t shirt when her body was found on the floor. He suspected that her skirt might have fallen off when he was trying to help her out of their house. He could not recall where the skirt fell. He also recalled that when he was taking the deceased out of their house, she hit herself against the door frame, he was not able to recall how many times she struck herself against the wall or furniture. He then took her back into the house. At that stage, she was already naked, he also noticed that she was unwell, and he covered her with a sheet. When the photos that were depicting the body of the deceased were shown to him, the appellant testified that the deceased was wearing the t-shirt as it appeared in the photos. He was not able to recall which part of the deceased body hit against the wall or door frame as he was helping her out of the house. He also recalled that at some stage there was blood on the floor. He decided to get a spade in order to clean up but never did. He denied that he told Mamie of his intention to kill the deceased. He also refuted the allegation that he assaulted the deceased.

AD Conviction

[13] The primary challenge against the convictions, as presented by, and as argued for the appellant is that the trial court erred in finding that the evidence established the guilt of the appellant beyond reasonable doubt on the following factors, namely:

- a) The trial court erred when it found that all the injuries on the deceased body were inflicted by the appellant, intentionally;
- b) The court erred in finding that the evidence established the guilt of the appellant on the charge of murder beyond reasonable doubt.
- c) That the evidence did not provide clarity on the number of blows that were inflicted by the appellant on the deceased body , the amount of force and the instrument used to inflict the fatal injuries.

[14] It is common cause that the appellant and the deceased were partners, and they were cohabiting at the time of the incident. It is further common cause that the appellant and the deceased were together inside their house when the deceased succumbed to bodily injuries and when further injuries were inflicted in her *genitalia*. This occurred during the night, shortly after the appellant and the deceased had arrived at their home. The appellant was previously in the company of his neighbours, where he was consuming alcohol. Earlier during that night, he had also been searching for the deceased among their neighbours but was unable to find her.

[15] The cause of death is undisputed; the deceased succumbed to blunt force injuries identified by Dr. Laurens during her postmortem examination of the body. What remained to be determined during the trial was whether the accused had caused the injuries on the deceased, with intention to kill and that he thereafter desecrated the deceased corpse, also causing the vaginal injuries identified by Dr. Laurens.

[16] The fundamental principle in the evaluation of evidence in criminal trials is that the state bears the onus to prove beyond a reasonable doubt that the accused is guilty of the commission of the offence, while the accused person does not carry any burden of proof. The test to apply in such evaluation was articulated in *S v Van der Meyden*¹, in that, *‘The proper test is that an accused bound to be convicted if the evidence establishes his guilt beyond reasonable doubt, and the corollary is that he must be acquitted if it is reasonably possible that he might be innocent. The process of reasoning which is appropriate to the application of the test in any particular case will depend on the nature of the evidence which the court has before it. What must be borne in mind, however, is that the conclusion which is reached (whether it be to convict or to acquit) must account for all the evidence. Some of the evidence might be found to be false, some of it might be found to be unreliable; and some of it might be found to be only possibly false or unreliable; but none of it may simply be ignored.’*

¹ *S v Van Meyden* 1999 (2) 79 (W) @ 82

[17] Miss Kunju for the appellant submitted that there were no eyewitnesses who observed the appellant striking the deceased. She did not challenge the evidence of the state regarding the banging sound that emanated from the appellant's house whilst he was with the deceased. She however, cautioned that evaluation of the evidence in relation to the banging sound that originated from the appellant's house ought to bear in mind that the walls of the house were made from corrugated iron sheets and therefore, the sounds would be louder as opposed to a sound that would be produced from a brick-and-mortar wall. Concerning the nature of the injuries sustained by the deceased, she conceded that the version of the appellant contained contradictory statements and improbabilities. She argued that evaluation of his version should also take into account that the appellant and the deceased were both intoxicated, suggesting that the injuries to the neck may have occurred while the appellant was holding her, and taking her out of the house. She also submitted that the trial court ought to have accepted the appellant's version that the deceased may have been sustained injuries in a motor vehicle collision prior to arriving at their home.

[18] In light of the test established in *Van der Meyden* and in consideration of the arguments advanced, this court may only interfere with the factual findings of the trial court if there has been a misdirection in the evaluation of the evidence.² Starting with the findings of Dr. Laurens during the postmortem examination; her diagnosis of the cause of death; the opinion on the nature and extent of the injuries. By any measure, the deceased had extensive injuries, in fact, she was injured all over her body, including the internal vital organs. She rejected the proposition that the deceased may have been injured in a motor vehicle collision. According to her, it would not have been possible for the deceased to reach her home after she would have been injured in a motor vehicle collision. She further opined that the deceased sustained vaginal injuries after having already succumbed to the other injuries.

[19] The doctor's opinion found consistency in the evidence provided by Van Rhyn and Willemse, who were in close proximity to the deceased and the appellant before they entered their home. The couple remained inside until the appellant exited the

² S v Hadebe and Others 1997(2) SACR 641 SCA, Paragraph 11

house. According to Willemse and Van Rhyn, shortly after the couple entered their home, they heard the banging sound which indicated that there was a fight going on inside the house. Willemse was concerned that in this instance, the deceased was not screaming, as it was often the case during their fights. It was at that moment that he called the police, but they did not arrive. Later, the appellant exited the house, he requested Mamie to call the police and an ambulance.

[20] The version of events related by the appellant must also be given due consideration, in line with *S v Shackell*³, that, ‘ *In view of the standard of proof in criminal cases, a court does not have to be convinced that every detail in an accused’s version is true. If the accused version is reasonably possibly true in substance the court must decide the matter on the acceptance of that version. Of course, it is permissible to test the accused’s version against inherent probabilities. But it cannot be rejected merely because it is improbable, it can only be rejected on the basis of inherent probabilities if it can be said to be so improbable that it cannot reasonably possibly be true.*’

[21] The extent and severity of the injuries according to the findings of Dr. Laurens demonstrate that, in the given circumstance, the proposition that the appellant may have been injured in a motor vehicle collision was improbable and unlikely. If regard is also had to the contradictory statements of the appellant regarding the manner in which injuries may have been inflicted or sustained, the version of Van Rhyn and Willemse, that the deceased was injured inside her house and in the hands of the appellants, stands incontestable and unassailable. In light of the undisputed evidence in the state case, it was not necessary for the trial court to make a determination of the number of blows that were inflicted by the appellant on the deceased body. The evidence was overwhelming, it established that the deceased was free of injuries when she entered her home with the appellant, and that all injuries found on her body were inflicted whilst she was inside her home.

[22] It is untannable that the amount of force that caused her injuries resulted from her body striking against a door frame or household furniture. The suggestion that

³ S v Shackell 2001(4) SA 1 SCA, Paragraph 30

she may have sustained the injuries when the appellant was trying to get her out of the house has been shown not to be only improbable, but unequivocally false. From the above, the conclusion reached by the trial court that the deceased was injured by application of blunt force, at the hands of the appellant cannot be faulted. The trial court accurately found that the appellant was criminally responsible for the pre mortem; peri mortem and the postmortem injuries found on the deceased.

AD Sentence

[23] The main guiding principles in sentencing are well documented particularly, *S v Zinn* which is instructive that personal circumstances; that the nature of the offences committed and the interests of the community have to be decisive in the sentences imposed. In appeal cases where the CLAA is applicable, these traditional principles have become integrated into the consideration of a proper approach to substantial and compelling circumstances that would guide the court in imposing just and equitable sentences.⁴ Upon the consideration of principles of sentencing in relation to the relevant factors, the court found no circumstances that were substantial and compelling to justify imposing of a lesser sentence. On the charge of murder, the appellant was sentenced to undergo fifteen years imprisonment. On the charge of desecrating a corpse, he was sentenced to undergo four (4) years imprisonment. The sentences were ordered to run concurrently.

[24] The written heads of arguments and the oral submissions did not present any significant challenge to the sentences imposed on both counts, save to reiterate the personal circumstances of the appellant at the time the sentences were considered. There were no factors pointed out to suggest that the trial court erred or committed a misdirection in the consideration of the sentences it imposed. It was however, submitted that the often-complained congestion and overcrowding in the prisons should be decisive in the appeal against the sentences.

[25] Nonetheless, the personal circumstances, the nature of the offences committed, and the interests of the community remained central in evaluating

⁴ S v PB 2013(2) SACR 533 SCA , paragraph 20

whether the trial court imposed appropriate sentences. Worthy of note was that the appellant had no previous convictions, he was advanced in age, being 57 years old; a primary breadwinner for his family at the time of arrest and that, he had been diagnosed with a terminal illness. It is imperative to also recognise the fact that these offences were committed in a domestic violence environment. On reflection of the circumstances in which these offences were committed, one is reminded of the observations of the court in *S v Kekana*⁵, that: “*Domestic violence has become a scourge in our society and should not be treated lightly. It has to be deplored and also severely punished. Hardly a day passes without a report in the media of a woman, or a child being beaten, raped or even killed in this country. Many women and children live in constant fear for their lives. This is in some respect a negation of many of their fundamental rights such as equality, human dignity and bodily integrity.*”⁶ Therefore the approach to the sentences that were imposed on the appellant have to reflect the same observations.

[26] A closer reading of the reasoning of the trial court judgment and how it reached its conclusion on the sentences revealed no error or misdirection in the application of principles to the unique circumstances of the appellant. The sentences imposed on both counts reflect a considered value judgment, with no factors that justify interference.

[27] It is within this context and background that the appeal against the convictions and sentences should fail.

Order

[28] Therefore, I proposed the following order:

The appeal against convictions and sentences is dismissed.

⁵ *S v Kekana* (629/2013) [2014] ZASCA 158 (1 October 2014)

⁶ *S v Kekana*, paragraph 20

SIPUNZI AJ
Acting Judge of the High Court

I agree. It is so ordered.

LE GRANGE J
Judge of the High Court

Appearances

For the Appellant:

Ms Kunju

Instructed by: Legal Aid South Africa
Cape Town Local Office

For the Respondent:

Ms Engelbrecht

Instructed by: The Director of Public Prosecutions
Western Cape

Hearing Date: 30 May 2025
Judgment Date: 11 June 2025

This judgment was handed down electronically by circulation to the parties' representatives by email.

