

REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG HIGH COURT
JOHANNESBURG

CASE NO 164/2012

In the matter between:

THE STATE

and

JUSTIN PIERRE RAUTENBACH

THE ACCUSED

SUMMARY

The accused in this matter had to answer to five charges: murder, subject to the provisions of s 51(1) of Act 105 of 1997, arising from the death by shooting of his father; robbery with aggravating circumstances; Unlawful possession of a firearm; Unlawful possession of ammunition; and the unlawful possession of drugs. The accused pleaded guilty to the fifth charge and was duly convicted. The accused pleaded not guilty to the remaining charges, but was found guilty of counts one, three and four of the indictment and was found guilty of a competent verdict to robbery of theft as contemplated in s 260 of the Criminal procedure act 51 of 1997.

The evidence in this trial was purely of a circumstantial nature. Thus the court in arriving at its decision had to pay heed to the two well established cardinal rules governing the use of circumstantial evidence in a criminal trial. They are:

- 1) the inference drawn must be consistent with all the facts proved;
- 2) and the facts proved must exclude all other reasonable inferences, save the one drawn.

During the trial the accused brought various substantive applications. The first being an application for a discharge in terms of s 174 of the Criminal Procedure Act 51 of 1997 on count 1 of the indictment. However, before a decision on the application was made, the accused applied for the recalling of a state witness for further cross-examination. The application was based on the failure of the defence counsel to comprehensively cross-examine the

state's witness. The application was granted. In arriving at its decision to recall the state's witness the court considered section 35 of the Constitution of The Republic of South Africa Act 108 of 1996, which guarantees the accused a right to a fair trial. The court held that the right to a fair trial, accorded to the accused by s 35 of the Constitution is a fundamental and absolute right and is not subject to any qualifications and thus includes the right to recall witnesses for further cross-examination.

The accused brought an application for the admission of certain hearsay evidence. The court examined section 3(1) (c) of the Law of Evidence Amendment Act 45 of 1988 and noted that this case is different from previous cases such as *S v Ramavhale* 1996 (1) SACR 639 (A) and *S v Ndhlovu and Others* 2002 (2) SACR 325 (SCA) in that in those cases the hearsay evidence was tendered in order to secure a conviction of the respective accused, whereas in the present case the hearsay evidence was tendered by the accused for purposes of demonstrating that his version is reasonably possibly true. The court, bearing in mind the accused's right to a fair trial, held that care should be taken to ensure that the accused is not unduly convicted because of a strict adherence to the rule against admission of hearsay evidence. However, the accused right to a fair trial does not provide licence for the admission of any or all hearsay evidence tendered by the accused. While the court must incline towards the direction of admitting the evidence, it must temper its enthusiasm in this regard by carefully scrutinising the value of the evidence before admitting it. In the present case the court refused to admit the hearsay evidence because it had no probative value.