



THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Case no: 525/2013

Not reportable

In the matter between:

JACOBUS MICHAEL PRINSLOO

Appellant

and

THE STATE

Respondent

Neutral citation: *Prinsloo v S* (525/2013) [2014] ZASCA 82 (4 June 2014)

Coram: BOSIELO, THERON and WALLIS JJA.

Heard: 16 May 2014

Delivered: 4 June 2014

Summary: Criminal law – murder – conviction on evidence of accomplice – appeal dismissed

ORDER

On appeal from: North Gauteng Pretoria High Court (Mavundla J sitting as court of first instance):

- 1 The appeal against the appellant's convictions of theft on count 1 and of contraventions of the Firearms Act on counts 3 and 4 succeed and his convictions and sentences on those counts are set aside.
- 2 The appeal against the appellant's conviction on count 2 of murder and sentence of 25 years' imprisonment is dismissed.

JUDGMENT

Wallis JA (Bosielo and Theron JJA concurring)

[1] On the morning of Monday 12 October 2009 Mrs Cordelia Prinsloo was murdered. She was watering the flowers outside her home in a large rondavel at plot 63 Buffelsdrift, outside Pretoria, when she was struck several times on the back of the head with a spade. The perpetrator of the murder was one Lucas Moloi. The issue in this case is whether Mr Moloi acted in accordance with an agreement between him and Mrs Prinsloo's former husband, Mr Jacobus (Kobus) Prinsloo, who is the appellant. In the North Gauteng High Court Mavundla J, after a lengthy trial, held that Mr Prinsloo had arranged with Mr Moloi to kill his wife. He accordingly convicted Mr Prinsloo of the murder and sentenced him to 25 years imprisonment. At the same time he convicted him of theft of Mrs Prinsloo's firearm and 11 bullets and related offences under the

Firearms Control Act 60 of 2000. The sentences on those counts were to run concurrently with the sentence on the count of murder. The appeal is with his leave. The conviction on the main count must be addressed first.

[2] Mr Moloi pleaded guilty, was convicted and sentenced to 18 years imprisonment. He was the principal witness against Mr Prinsloo. His version was relatively simple. He met Mr Prinsloo, who is a geologist by profession, whilst working as a security guard. He was dissatisfied with his conditions of employment and sought employment with Mr Prinsloo. That employment commenced in June 2009 as a gardener. There is some difference between Mr Moloi and Mr Prinsloo concerning the precise circumstances of his employment, but nothing seems to turn on that.

[3] Plot 63 is a large piece of land, some 9 hectares in extent, on which there is not only a substantial house, together with outbuildings, but a large rondavel. Notwithstanding the divorce Mrs Prinsloo continued to live on the property in the rondavel. It was a term of the divorce agreement that the property would be subdivided and she would receive a piece of land some four hectares in extent where, according to the evidence, she hoped to build her dream-house. Mr Prinsloo did not live on the property during the week, but lived in a semi-detached house in Montana, which is in or near Pretoria. His two sons were boarders at a local school and would spend weekends with their father in the main house on the property. That would also give them the opportunity to see their mother. The relationship between Mr and Mrs Prinsloo was, however, strained and they had little communication with one another. They were in dispute over the implementation of the divorce settlement agreement and, in particular, the sub-division of Plot 63.

[4] Mr Moloi testified that shortly before the murder Mr Prinsloo asked him whether he would like to earn some money and offered him R50 000 and a house if he did a job for him. The nature of the job was to kill his ex-wife. He agreed to undertake this task, the amount involved being enormous for someone in his position. He said that Mr Prinsloo told him to cut a hole in the security fence round the property and then to lure Mrs Prinsloo to that spot on the pretext of pointing out the hole, where he should kill her using some implement on the property. He was told not to use a gun because that might attract the attention of the neighbours. Mr Moloi cut a hole in the fence on 9 October, but it was detected the following evening on a routine patrol by a security firm operating in the area and the hole was repaired.

[5] The Prinsloos were very security conscious and carefully controlled access to the property. Mr Moloi said he went to the property early on Monday 12 October 2009. In accordance with practice he sent a 'please call me' sms message to Mr Prinsloo, who in turn sent a message to Mrs Prinsloo. Mr Prinsloo said that the procedure was for him to send a one word message (the word 'hek' meaning 'gate') to Mrs Prinsloo and unless he received some message from the person waiting at the gate that it had not been opened, he would assume that she had opened it and let the person in.

[6] This procedure was followed by Mr Moloi and Mr Prinsloo on Monday 12 October 2009. It appears that Mrs Prinsloo must have opened the gate to let Mr Moloi in. He found her watering the flowers wearing her pyjamas. She asked him to fetch a spade. He did so and when, on his return, he found her with her back to him, struck her twice on the back of the head and once on the shoulder killing her. He then wrapped her body

in plastic, dragged it to a spot some 30 metres away from the rondavel, covered it with a tarpaulin and with the leaves of the delicious monster plant, thereby concealing it. He did not have much time in which to do this because the domestic worker Mrs Shongwe was due to arrive at about 8.30 am.

[7] Mr Moloi spent the rest of the day on the property but, according to Mrs Shongwe, his behaviour was peculiar and she formed the view that he might have stolen something from the house. She was also concerned because there was no sign of Mrs Prinsloo, although her car was in the garage and the radio in the rondavel was playing all day. These concerns caused her to telephone Mr Prinsloo in the afternoon and he agreed to come to the property that evening. This he did probably between 5 and 6 pm (the exact time is not relevant). According to her he reassured her that he would speak to Mr Moloi and warn him to remain in his quarters that evening on the grounds that there were going to be security patrols in the area that night. Mr Moloi's quarters were outside the property and he had no direct means of access. He also looked around the property briefly in response to her concerns about Mrs Prinsloo but said he found nothing. He did not, however, try to enter the rondavel, either alone or together with Mrs Shongwe, or endeavour to ascertain why the radio was playing and whether Mrs Prinsloo was there or had perhaps had an accident or fallen ill.

[8] Both Mr Moloi and Mr Prinsloo testified that on the same evening Mr Prinsloo went to Mr Moloi's quarters and gave him R500. Mr Moloi said that this was to enable him to get away from the scene of the crime, while Mr Prinsloo said that it was to enable Mr Moloi to pay for his girlfriend to return to the Free State for medical treatment. I will revert to

this in due course. What is undoubtedly so is that Mr Moloi left the following day and returned to the Free State. He was ultimately arrested in Welkom where he was found in possession of Mrs Prinsloo's 'moonbag', and her firearm and the 11 bullets that formed the subject of the charges under the Firearms Control Act.

[9] The further narrative is taken from the evidence of Mrs Shongwe and Mr Prinsloo. On the Tuesday morning early he returned to the property to collect his golf shoes and some clothes for his sons. Mrs Shongwe reiterated her concerns about Mrs Prinsloo and he told her that he would return after he had finished playing golf. There was still no sign of Mrs Prinsloo, her car was still there and the radio was still playing.

[10] Later that afternoon, around dusk, Mr Prinsloo returned. The situation remained unchanged. He accordingly went to the rondavel with Mrs Shongwe but did not enter. Mr Prinsloo gave as his reason for not doing so that he was subject to a domestic violence protection order. They did, however, use a stick to push the curtain in one window aside, and could see that Mrs Prinsloo's bed was unmade and heard the radio playing. Of Mrs Prinsloo there was no sign.

[11] Mr Prinsloo did not investigate further but started to make some phone calls. First he telephoned his son to ascertain whether he had received a message from his mother that she was going to be away. Apparently Mrs Prinsloo was a freelance air hostess and on occasions undertook trips to various parts of Africa. When she did so it was her practice to inform her son by sms that she would be away. However, the son had not received any message from her. Mr Prinsloo then asked his son to obtain a telephone number for one of Mrs Prinsloo's friends and,

once he had the number, telephoned the friend to ascertain whether she knew if Mrs Prinsloo had gone away. When that drew a blank he telephoned one or two airlines that he knew employed her but again without success. He then telephoned Mrs Prinsloo's attorney who suggested that he get the police and enter the rondavel in their company.

[12] Mr Prinsloo accepted this advice and went to the local police station. There, after some delay, the nature and cause of which has no bearing on the case, he obtained the services of three policemen who accompanied him back to the property. They went to the rondavel and it turned out that the door was unlocked because Mr Prinsloo simply opened it. There was no sign of Mrs Prinsloo, or of anything missing in the office in the house, where Mrs Prinsloo sometimes worked. The policemen did not search the property but left after about an hour. According to Mr Prinsloo he also left the property and went to collect some large flashlights from his home in Montana. Having done so he returned late that evening and searched until the flashlight batteries failed. He stayed on the property that night sleeping in the house.

[13] The following morning Mr Prinsloo decided to search by exiting the property and walking round the perimeter. When he came to the Western side he smelled rotting flesh, with which as a big game hunter he was familiar. He then re-entered the property and went to the spot where the smell emanated from where he saw something wrapped in plastic and concealed under plants, but with a leg protruding. This was at a spot about 30 metres away from the rondavel. He then went and told Mrs Shongwe that Mrs Prinsloo was dead and, having done so, went and reported his find to the police.

[14] The police came to the property and Mr Prinsloo showed them where the body lay hidden. A pathologist Dr van der Nest arrived at around 11 am. Until then the body was not disturbed. It was then unwrapped and seen to be in an advanced state of decomposition in the head and neck region. Mr Prinsloo was not present when this occurred. There was a mass of flies around the body. Dr van der Nest said that it was impossible from an external inspection to see what the cause of death had been beyond saying that it involved some kind of head injury. That was confirmed by Sergeant Roets of the South African Police Service, who was present. She arranged for the body to be removed to the mortuary where an autopsy was performed that confirmed Mr Moloi's description of the manner in which he had killed Mrs Prinsloo.

[15] One other event of importance occurred on that day. Mr Prinsloo had remained at the property during the morning although he had stayed away from the police activity in the vicinity of the body. He left at about lunchtime to go and fetch his sons from school and tell them what had happened to their mother. While driving away from the plot he met a vehicle or vehicles coming in the opposite direction carrying Mrs Prinsloo's family, who had been told of her death. They stopped and a brief discussion took place. In the course of this Mrs Prinsloo's mother asked whether she had suffered. Her son in law, Mr Schoonraad, testified as follows in this regard:

'Mnr Prinsloo het ons ingelig dat nee, sy sou geen lyding gehad het nie en hy het gesê want sy is agter die kop soos wat jy 'n haas een hou slaan, mordsdood slaan is sy geslaan.'

When he gave this answer he illustrated it with a chopping motion of his hand. This conversation was confirmed by Mrs Le Roux, the deceased's

sister and Mr Prinsloo accepted in his evidence that he had so described his former wife's death.

[16] It will be apparent from this narrative of events that the real area of dispute at the trial was whether Mr Moloi was telling the truth when he said that Mr Prinsloo asked him to kill his former wife in return for a substantial reward, or whether Mr Prinsloo's denial that anything of the sort had occurred was to be accepted. In this regard the trial court correctly accepted that Mr Moloi was both an accomplice on his own version and a single witness. Accordingly his evidence had to be approached with due caution and corroboration for it had to be sought in other admissible evidence. Having done so the court below believed that he was telling the truth. It recognised, however, that this was insufficient on its own to warrant a conviction. The accused bore no onus to prove his innocence and provided his version of matters could reasonably possibly be true he was entitled to his acquittal. The court below considered that Mr Prinsloo's evidence that he had nothing to do with the deceased's death and had not procured Mr Moloi to kill her, could not be believed. Hence the conviction on the main count.

[17] Mr Moloi's description of events was simple and straightforward. The one area in which he was shown not to be telling the truth related to the circumstances of his arrest where for some inexplicable reason he denied that he had tried to escape, when the contrary was true. Apart from that there was no obvious flaw in his evidence. His tale of how he killed Mrs Prinsloo was confirmed by the post-mortem examination. In regard to three matters there was important corroboration. First he testified that he had been told to cut a hole in the fence as a device to lure Mrs Prinsloo to a place where he could kill her. Such a hole was cut and he left a ladder

outside the property. That is what was discovered when the security officer discovered the hole. There is nothing to suggest that Mr Moloi would have devised so complex a plot of his own volition or that having had it thwarted he would not have resorted to some other stratagem. Second there is the important feature that Mr Prinsloo visited him on the night of the murder and gave him R500. That was common cause. Third there is the fact that Mr Prinsloo testified that he had spoken to Mr Moloi telephonically on Tuesday afternoon and Mr Moloi had undertaken to return to the property if Mr Prinsloo would send him the money to do so. Had he been a murderer on the run from the law that is highly unlikely. One final feature is that there was no apparent advantage to him in falsely incriminating his previous employer as he had already been convicted and sentenced and no advantage in terms of a reduced sentence was available from his giving false evidence.

[18] There was accordingly sufficient reason for the trial court to believe Mr Moloi. But that, on its own, was insufficient. Were there proper grounds for disbelieving Mr Prinsloo? In my view there were.

[19] First there was the encounter with Mrs Prinsloo's family on the day her body was discovered. Mr Prinsloo's graphic description of how she had met her death coincided precisely with that of Mr Moloi and the results of the autopsy. But he was unable to explain how he could have known that at the time. Even Dr van der Nest was unable to say what had caused her death or where the blows had landed or whether the initial blow had been fatal. She could not tell whether Mrs Prinsloo had been restrained before her death or had in some other way been terrorised before the fatal blow was inflicted. Nor could anyone else. Yet Mr Prinsloo, who had not even seen the body unwrapped, was able to give

this precise description to her family within three hours of Dr van der Nest having arrived at the property. His explanation that he had been told this by an unidentified female police officer at the scene was not credible. If Sergeant Roets, who watched the body being unwrapped, could say no more than that the head was misshapen no-one else could have given a more accurate description.

[20] Second there is the explanation for handing Mr Moloi R500 on the night that the murder took place. Mr Prinsloo said that there had been a prior agreement that he would lend the money to Mr Moloi, but no arrangements had been made for the money to be handed over. However, the reason he went to the property that evening was not, on his version, to hand the money over to Mr Moloi, but because of Mrs Shongwe's concerns about Mr Moloi's strange behaviour that day and Mrs Prinsloo's absence. It would be a remarkable coincidence for him at the same time to remember an earlier commitment to lend money to Mr Moloi and to hand over the money. It would be an even more remarkable coincidence that his having done so for an entirely different reason should coincide with the murder and facilitate Mr Moloi's flight.

[21] The third problem lies with Mr Prinsloo's explanations for his behaviour on the Monday and Tuesday. He went to the property on Monday afternoon to be told that Mrs Prinsloo had not appeared although her car was in the garage and the radio was playing in the rondavel and had been doing so the whole day. The obvious inference was that Mrs Prinsloo might have fallen ill or had some kind of attack that had incapacitated her and required medical assistance. Even an estranged husband's natural response would be to investigate but he did not do so. His conduct becomes even more peculiar the following morning when he

was told by Mrs Shongwe that matters were unchanged and without even the most cursory investigation or even calling out Mrs Prinsloo's name he collected his golf shoes and went off to play golf. He only made some investigation that evening and even then it was of the most cursory.

[22] To make matters worse Mr Prinsloo had telephoned Mr Moloi on the Tuesday afternoon and learned that he was at President Brand, a gold mine near Welkom in the Free State. Yet after the body was discovered and at a time when he said he suspected that Mr Moloi was the murderer he did not give this evidence to the police. Indeed he commenced an interview with the police and furnished them with a mobile phone number, but then excused himself on the grounds that he had to go to the mortuary to identify the body of his former wife. He undertook to return, but did not do so, and when the police contacted him he told them that his attorney had advised him not to speak any further with them. For an innocent man this was extraordinary behaviour.

[23] The fourth point that bears directly on Mr Prinsloo's credibility arose on 21 October. Mr Schoonraad and some of the police had gone to the property to open a safe in the rondavel. After this had been done they were walking to various places on the property and Mr Prinsloo was accompanying them. Suddenly Mr Prinsloo stopped at a point on the path they were taking, bent down and lifted a cover from a drain or something similar and told the police and Mr Schoonraad, that Mr Moloi had intended to hide the body there, but had been put off doing so by finding a snake skin inside the drain when he lifted the cover. This evidence was not challenged and there is simply no explanation for it unless Mr Prinsloo had been told that by Mr Moloi. That could only have occurred on either the Monday evening or in the telephone call on the Tuesday

afternoon. In either event it demonstrates guilty knowledge of the murder before the body was even discovered. It is incompatible with Mr Prinsloo's protestations of innocence.

[24] For those reasons I am unable to fault the trial court's assessment that Mr Prinsloo evidence could not be accepted. I reach that conclusion without paying any regard to the evidence that was challenged at the trial and in this court as inadmissible hearsay. The appeal against the conviction of murder cannot succeed. While there was a submission that the sentence of 25 years imprisonment was excessive and disproportionate to that imposed upon Mr Moloi I am not persuaded that the sentence imposed by the judge was infested with any misdirection or induces a sense of shock. The appeal against sentence must also be dismissed.

[25] As regards the appeal in relation to the other three counts they can be disposed of shortly. It was argued that Mr Moloi may have stolen the 'moonbag' and the firearm and bullets without any participation from Mr Prinsloo. His version was that Mr Prinsloo had given it to him on the evening of Monday 12 October, and I think that is the more probable version. However, that would have required Mr Prinsloo to make his way surreptitiously into the rondavel without Mrs Shongwe seeing him do so. I am persuaded, and the State accepted, that it cannot be said beyond reasonable doubt that he did so. In those circumstances the conviction of theft on count one cannot stand and that means that the convictions on counts three and four under the Firearms Control Act must also succeed.

[26] The order I make is the following:

- 1 The appeal against the appellant's convictions of theft on count 1 and of contraventions of the Firearms Act on counts 3 and 4 succeed and his convictions and sentences on those counts are set aside.
- 2 The appeal against the appellant's conviction on count 2 of murder and sentence of 25 years' imprisonment is dismissed.

M J D WALLIS
JUDGE OF APPEAL

Appearances

For appellant: L S DE KLERK SC

Instructed by: Rynhardt Kruger Attorneys, Pretoria
Honey Attorneys, Bloemfontein

For respondent: N P Marriott (with her M Marriott)
National Director of Public Prosecutions,
Pretoria.