Court File

IN THE HIGH COURT OF SOUTH AFRICA

(CAPE OF GOOD HOPE PROVINCIAL DIVISION)

CASE NO: A501/2004

DATE: 14 NOVEMBER 2008

In the matter between:

ROYEN KAROLES

versus

THE STATE

JUDGMENT

MOTAJANE, A J:

The appellant was charged in the Regional Court, Cape Town, with murder. There he pleaded guilty and made a statement in explanation of his plea in terms of Section 112(2) of Act 51 of 1977, in which he set out circumstances which culminated in the death of the deceased.

The statement was rejected by the State and it proceeded to lead evidence of two witnesses and the accused testified in his defence.

The accused was found guilty and was sentenced to 15 years imprisonment, being the minimum sentence applicable.

With the leave of the court *a quo* he now appeals to this Court against conviction and sentence.

The evidence on the merits was straightforward. The record reveals that the appellant and his brothers went to the house of the deceased's brother where there was a party. An argument developed and the appellant left the premises. The deceased followed appellant in the street and at some stage turned and ran back to the yard to set his dogs loose on the appellant. As he was running back to the gate, appellant stabbed him with a knife in the shoulder and he died on the scene.

On the State version, appellant insulted the deceased who was unarmed. The deceased turned away from the appellant to go and unleash his dogs. The deceased fell and appellant then took out his knife and fatally stabbed the deceased whilst the deceased was on the ground.

The merits of the appeal. It has been submitted on behalf of the appellant that he exceeded the bounds of self-defence in averting the attack from the deceased and was accordingly

negligent and should have been convicted of culpable homicide. I do not agree. Appellant's version is that the deceased ran away after he had dispossessed him of the knife. He chased him and stabbed him once in the shoulder. He admits that his life was not in danger at the time he stabbed the deceased and that he had legal intention to kill him. Once these facts are accepted, as they must be, the State has, in my view, succeeded in proving the appellant's guilt beyond reasonable doubt.

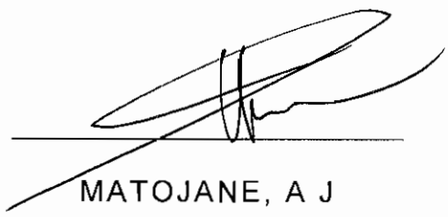
The appeal against conviction must accordingly FAIL.

It was further contended on behalf of the appellant that the magistrate's finding that the contradictions between the State witnesses with regard to the number of times the appellant attempted to stab the deceased and where he fell was material. On the appellant's version which, for the reasons advanced above is to be preferred, these submissions are irrelevant, as the appellant admits all the elements of the offence of murder.

Counsel for the appellant, correctly in my view, submitted that the magistrate followed an incorrect approach in evaluating the evidence of the appellant. In S v Tuseni and Another, 1053(4) SALR 406 (A) at page 412, De Beer, A J A held that:-

"Where a trial Court has committed a misdirection, the Court of Appeal is free to disregard the findings of fact that have been made by the trial Court and come to its own conclusions, but that in so doing it must be alive to the limitations inherent in the process of appeal."

The finding by the magistrate that there are no safeguards to rely on the evidence of appellant as a reliable witness is a misdirection that allows this Court to come to its conclusions on the materials on record. The correct approach in evaluating the evidence of the accused is to determine whether the guilt of the accused has been proved beyond reasonable doubt, which would be so only if there is at the same time no reasonable possibility that an innocent explanation which has been put forward might be true. See S v Van der Naiden, 1999(2) SALR at page 79.



MATOJANE, A J