

IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NO: SS01/10

DATE: 23 JULY 2010

5 In the matter between:

THE STATE

and

SIRAAJ MOHAMED

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JUDGMENT

SAMELA, AJ

The accused, Siraaj Mohamed, is a 31 year old male person.
15 He appears before a judge sitting with one assessor, he is
charged with one count of murder of Gameda Davids in
accordance with the provisions of Section 51(1) of the Criminal
Law Amendment Act, 105 of 1997, read with Part 1 of
Schedule 2, particularly paragraph A, that is murder planned or
20 premeditated.

The accused pleaded not guilty and gave no plea explanation
except informed the Court that criminal capacity is placed in
dispute. The facts in this case are largely common cause. In
25 the early hours of the morning of 19 November 2008 the
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deceased son, Yushri Davids, was awoken by his mother's screams for help. Upon investigation he saw the accused trying to cut his mother's throat with a knife in the bathroom. He tried to defend his mother but was warned by the accused
5 to leave lest he got too hurt. Yushri hit the accused with a cricket bat and managed to pull his mother who only managed to run as far as the passage, when the accused caught up with her and again attempted to slit her throat.

10 The accused had dragged Yushri into the kitchen where he took out from the kitchen drawer another knife to continue the attack he had commenced on the deceased. Yushri managed to retreat to the sitting room. The accused then closed the door leading to the sitting room and removed the handle.
15 Yushri managed to phone his cousin to summon help. Neighbours and later on police arrived. The deceased died on the scene. The accused was arrested.

Mr Abdul Bassier Amley was one of the deceased neighbours
20 who attended at the crime scene. He informed the Court that on entering the house he saw the deceased lying on the floor and there was blood on the wall. He also noticed that the accused had a knife in each hand. After instructing the accused to put down the said knives, which he complied, the
25 put a cloth over the deceased.

Mrs Fiona Sasmin, also the deceased's neighbour, told the Court that early in the morning hours on the date of the incident she had heard and recognised the deceased's voice, who was screaming. She asked her husband to call the police and instructed her sons to go to the deceased house to assist.

Dr Sipho Mfolozi who conducted the post-mortem on the deceased body on 19 November 2008, his finding for the cause of death was the multiple incisions to the anterior neck. The accused was ordered on 8 December 2008 by the Wynberg magistrate in terms of Sections 77, 78, and 79 of the Criminal Procedure Act, Act 51 of 1977, as amended, to Valkenberg for 30 days observations. The panel of experts, led by Professor Kaliski, assessed the accused and compiled a report on the 3rd of August 2009, we will refer this as the first report. In their report the experts stated the following regarding the accused mental state:

“He refused to give an account of his actions during the period of the alleged offence. He was constantly softly spoken and no symptoms of mental illness could be elicited. During interviews he seemed unconcerned about his predicament and in the ward did not interact with others. He did not exhibit any strange or outward

behaviours."

Referring to accused assessment the experts wrote that as he refused to discuss his actions during the period of the alleged
5 offence it was not possible to ascertain his state of mind at the time. This may become clearer if he testify in court.

The experts then concluded by saying that the accused was not mentally ill and secondly he was fit to stand trial and that it
10 was not possible to assess whether he was able to appreciate the wrongfulness of the allege offence and act accordingly.

Panel members who had assessed and wrote the first report were invited to attend the court proceedings whilst the accused
15 was testifying. Unfortunately all panel members attended, the accused related to quote in detail about his childhood, informing the Court that he left his home on account of physical abuse by his father, and stayed with his grandmother, uncle, the deceased and the young Yushri. His relationship
20 with the deceased at first was fine, though later on he had conflicts with her and Yushri, and he mentioned amongst other things the noise that they were making with the TV while he was studying and also he mentioned one case whereby he was alleging that the deceased had cooked food and on three
25 occasions when he ate the food he got sick, so he thought

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perhaps then that the deceased had poisoned the food, although he had no proof. Two weeks prior the deceased murder he had heard some loud strange intense sounds of noises that involved "an overflow of information" which
5 instructed him to kill his aunt, that is the deceased, by using "an iron and smiting her on the neck". The accused interpreted these sounds as from Allah, or God, who instructed him to kill his aunt. He told the Court that Allah instructed him to kill his aunt who was to be sacrificed for sinful deeds of the Cape
10 Town inhabitants, comparing Cape Town to Sodom and Gomorrah.

The accused told the Court that Allah had earlier on, on two previous occasions instructed him to kill his aunt but he had
15 resisted. The third instruction came while lying on the bed and was more serious as Allah had informed him that if he failed to carry out the instruction he was going to be hurt. He decided to carry out Allah's instructions. He testified that he stood up and walked to the kitchen. On his way to the kitchen he saw
20 the deceased in the bathroom. He opened the kitchen drawer, took knives, and went to the deceased in the bathroom, attacked her by cutting her throat. He could not give much details as to how he held the deceased's head while he was trying to slit her neck, how the deceased screamed and
25 shouted at the time, the role played by Yushri when he

assaulted him with the cricket bat. He simply informed the Court that he could not remember. He remembers seeing his aunt lying down in the passage, bleeding from her neck, and also noticed that he was surrounded by people. At that
5 moment, that he is when he was surrounded by people, he realised that he was in trouble.

As the accused gave his testimony he was showing absolutely no remorse for his actions. It was only after the second
10 experts report and testimony that he informed the Court that he was sorry for what he did to his deceased aunt and her son Yushri.

The experts wrote a supplementary report dated the 15th of
15 June 2010, which made the following assessment:

“The motivations and explanations above are probably delusions and that is false and inappropriate beliefs of persecution and grandeur. As his actions at the time of
20 the offence seem to have been driven by these delusions he should be regarded as dangerous in terms of Section 79(4)(b) of the Criminal Procedure Act, 51 of 1977, as amended.”

25 The experts mentioned that the clinical diagnoses of the /DS

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accused was schizophrenia paranoid sub-type and also then that he is certifiable in terms of the Mental Health Act and in terms of Section 79(4)(c) the accused is fit to stand trial in terms of Section 77(1) and in terms of Section 79(4)(d) he was
5 not able to appreciate the wrongfulness of the alleged offence and act accordingly.

The panel of experts concluded in their unanimous report by recommending that:

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“The disposition fairest to the defendant, that is the accused, and the safest to the community would be for the Court to refer him, that is the accused, as a State patient to a psychiatric hospital for treatment and
15 rehabilitation.”

The Court was fortunate and had the privilege of hearing Professor Kaliski, the leader of the panel of experts, explaining in a simple but more detail their reports. He
20 informed the Court that amongst other things that the accused is a very dangerous person, and should the Court declare him as a State patient he assured the Court that the accused will be kept in a maximum security ward, and at Valkenberg this is normally known as Ward 20, and would be kept there
25 indefinitely. If the accused condition improves, which is

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unlikely in this case he might be released after a lengthy period of time, which the professor estimated as between 15 and 20 years. However he also squashed any hope that the accused will be admitted and immediately afterwards if an application is being made could be released or discharged. He informed the Court unequivocally that the accused release will depend on their, that is the experts, recommendations.

The State and the defence did not oppose the experts supplementary report as that endorsed the panel's findings and recommendations in the first as well as the second report.

The Court is of the view therefore that the accused committed the act, that is the murder, in question, and that at the time of such commission he was by reason of mental illness or intellectual disability not criminally responsible for such act. The ACCUSED IS THEREFORE FOUND NOT GUILTY BY REASON OF MENTAL ILLNESS OR INTELLECTUAL DISABILITY.

The following order is therefore made:

- (a) In terms of Section 78(b)(a)(AA) of Act 51 of 1977 as amended the accused be detained in Valkenberg Psychiatric Hospital pending the decision of a Judge

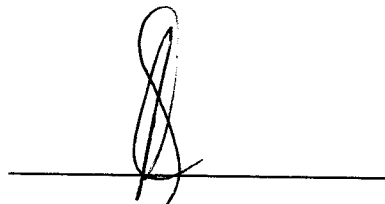
in Chambers in terms of Section 47 of the Mental Health Act 17 of 2002;

(b) In terms of Section 34(1)(b) of Act 51 of 1977 as amended the articles handed into evidence as exhibits
5 be returned to the executor in the estate of the late Gameda Davids and;

(c) In terms of Section 34(1)(a) of Act 51 of 1977 as amended that the articles of clothing belonging to the
10 accused be returned to him.

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SAMELA, AJ