

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

CASE NO:

A470/10

DATE:

25 FEBRUARY 2011

5 In the matter between:

RICHARD GOEIEMAN

Appellant

and

THE STATE

Respondent

10

JUDGMENT

MIA, AJ

On 8 April 2010 the appellant was convicted of murder and  
15 theft in the Regional Court, Beaufort West, he was sentenced  
to 18 years imprisonment for murder and three years  
imprisonment for theft. On 4 May 2010 the appellant applied  
for leave to appeal, the Regional Magistrate granted leave to  
appeal against the conviction alone. This appeal lies against  
20 the conviction alone.

On 13 February 2009, Ms Kiewiets, (the deceased), was found  
lying behind a couch in her mother, Ouma Katrien's house.  
The cause of death was strangulation. She was the sister of  
25 the appellant's girlfriend. The police were summoned and

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certain items belonging to the deceased were found missing, namely a gold Tempo watch, a Samsung E250 cell phone and a DVD player. These were later recovered.

5 The appellant was arrested on 15 February 2009. The State called four witnesses, Kevin Morris, (hereafter Morris), Ms Sonia Kiewiets, Ms Delia Johannes, (hereafter Johannes), Mr Jan Jacobus Minnies, also known as Pieter Paroro, (hereafter Paroro). Ms Sylvia Neels, (hereafter Neels), and Inspector  
10 Johan Krugel. The appellant called one witness and testified in his own defence. Morris testified that he was with the appellant and Paroro on the evening of 12 February 2009, they were on their way to Newfield Park from Hillside between 24h00 and 01h00. On the way the appellant said he was going  
15 to collect R50 from Ouma Katrien, who owed him money. On arrival at Ouma Katrien's house the appellant opened the gate and entered the yard and Morris and Paroro walked past. They walked up to another house and waited for the appellant. After fifteen minutes Morris went to look for the appellant. The  
20 appellant beckoned him and told him the window was open and that they should climb in. He refused. The appellant climbed in and told him to wait on the step. After a few minutes he heard a woman scream in Ouma Katrien's lounge. Morris left, assuming the appellant was caught stealing. Morris arrived  
25 home at 4 am. At 6 am the appellant knocked on his door and

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asked why he and Paroro left. The appellant then told him that he strangled the deceased with her underwear. He further told Morris that he sold a DVD to a person called Saul for R200 and asked him to find a buyer for the lady's watch he had in his  
5 possession.

Morris took the appellant to Neels, who enquired whether it was a stolen watch. The appellant told her that it was his girlfriend's watch, and he needed to sell it to buy nappies for  
10 their baby. The appellant wanted R80 for the watch and received R40 immediately and returned for the balance the following day. They used the R40 to buy a drug called "tik" which they smoked. They went back to the appellant's house where he cleaned up and washed his feet. They then went  
15 back to the drug dealer to sell the cell phone. They received "tik" in exchange for the cell phone. After they smoked the drugs they went to Paroro where appellant again told Paroro that he had strangled the deceased. Paroro confirmed that the appellant and Morris arrived at his house and that the  
20 appellant told him that he had to kill the deceased as she could identify him.

Johannes said the appellant, Morris and Paroro arrived at her house at ten past one on the morning of the 13th of February  
25 2009 to sell a DVD player. Her partner, Saul Booyesen, said he



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wanted to buy the DVD player. She then negotiated the price with the appellant. The appellant said the DVD player was his and he needed to sell it as his girlfriend and their child were at home without food. The appellant's evidence was that he was  
5 with Morris on the night in question. They walked around and smoked drugs, namely crystal meths, also known as Tik and Mandrax tablets. Just before 24h00 they went to the house of Johnny Matthys, (hereafter Matthys), who lived in the same street as Morris. Just after 02h00 Morris said he was going for  
10 a walk and the appellant said he was going to remain behind to smoke a tablet with Matthys. He left at 24h40 and went home to sleep. At two Morris woke him and told him he had a DVD player to sell. He said Morris asked him to sell the DVD player as people knew he sold stolen items and would not believe it  
15 was his DVD player. He sold the DVD player to a man named Saul who gave him R100 and offered to pay the balance the following day. He then returned to Morris who stood some distance away. They went to buy drugs with the money and then each went home.

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According to the appellant, Morris returned early the next morning while his girlfriend was getting ready to go to her granny. He lied to his girlfriend that he was accompanying Morris to court and they went to smoke drugs. He next saw  
25 Morris at the police station on Sunday when he was arrested.

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The appellant suggested that he was implicated by Morris because he was angry that the appellant collected and kept the balance of the R100 for the DVD from Saul. The appellant said he did not know Paroro, and that he had possibly  
5 implicated him because he was a friend of Morris. The appellant does not know Johannes or Neels.

Matthys testified in support of the appellant that the appellant was at his home with Morris. They smoked drugs and Morris  
10 left. The appellant remained behind to smoke with Matthys and left before 01h00.

Mr Calitz submitted on behalf of the appellant that the evidence of Morris should be rejected because he was a single  
15 witness, and that he was a participant in the crime, further that his evidence was circumstantial and he was under the influence of drugs.

A Court may convict on the evidence of an accomplice where  
20 the evidence has been supported by competent evidence other than the evidence only of the accomplice, provided that the necessary caution is applied.

Leon, J., having regard to leading cases from R v Ncanana  
25 1948(4) SA 399 (AD) to S v Hlapezula 1965(4) SA 439 (AD),

compiled a summary of principles in relation to the caution applicable to accomplices evidence in S v Van Vreden 1969(2) SA 524 (NPD) at 531, as follows:

- 5           "1. Caution in dealing with evidence of an accomplice is imperative where the requirements of the Criminal Procedure Act have been satisfied;
2. An accomplice is a person with possible motive to tell lies about an innocent accused in order to  
10           shield some person or obtain immunity for himself;
3. Corroboration which does not implicate the accused but merely gives details of the crime is no guarantee of the truthfulness of the accomplice;
4. When corroboration is sought it must directly  
15           implicate the accused in the commission of the offence;
5. Further corroboration may be found in the evidence of another accomplice, provided that the latter is a reliable witness;
- 20           6. Where the corroboration of an accomplice is offered by another accomplice the Court is not relieved of its duty to examine this evidence with caution;
7. When no such corroboration exists there must be some other assurance that the evidence of the  
25           accomplice is reliable;



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8. That assurance may be found where the accused is a lying witness or does not give evidence;
9. In the absence of any of the aforementioned a Court may only convict on the evidence of an accomplice where the Court understands the peculiar danger inherent in accomplice evidence and appreciates that acceptance of the accomplice evidence and rejection of the accused is only permissible where the merits of the accomplice's evidence and the demerits of the accused's evidence is beyond question.
10. That the evidence of an accomplice should be "beyond question" does not mean that his or her evidence must be free from any defects to support a conviction."

In S v Hlapezula 1965(4) SA 439(A) at 440H Holmes, JA stated: "where corroborative evidence implicating the accused in the commission of the crime is given by another accomplice, the latter's evidence, if regarded as reliable, may, depending on the circumstances, satisfactorily reduce the risk of a wrong conviction. This was the view of Botha JA, giving the judgment of this Court in S v Avon Bottle Store (Pty) Ltd and Others 1963(2) SA 389 (AD) at pg 393H, and I agree with it.

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In relation to the evidence of Morris, the Regional Magistrate observed the necessary caution, and warned Morris in terms of Section 204 of the Criminal Procedure Act, 51 of 1977. The caution applicable to a single witness and an accomplice is

5 satisfied by the evidence of Paroro, Neels and Johannes, it is not disputed that Morris was in the company of the appellant. Morris placed the appellant in the house where the deceased was found. He also said he heard a female's voice. He could not have known this had he not been present. If Morris wanted

10 to implicate the appellant he could have exaggerated his evidence and said he saw the appellant strangle the deceased. He did not say so. He told the Court that the appellant told him that he strangled the deceased, this is confirmed by Paroro who relates the same detail. Morris and Paroro did not

15 seek to exclude themselves from being involved with the appellant at the scene of the crime.

The appellant's version was that he was at home at the time the incident occurred and that he sold the DVD player on

20 behalf of Morris. The appellant did not call his girlfriend as a witness to corroborate his evidence that he was at home from 01h00. No explanation as to why this witness was not called was tendered. His failure to call this witness leads this Court to draw an adverse inference from his failure to call the

25 witness. Had he indeed been home as he indicated there



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would be no problem in having this witness confirm this. Morris said that he accompanied the appellant to sell the watch and cell phone. The appellant only recalls selling the DVD player and says he went alone. The evidence of Neels  
5 and Johannes is that Morris was present. Morris does not deny this and does not seek to diminish his role in the disposal of the stolen items. He goes with the appellant to sell the items. The independent evidence of Neels and Johannes supports Morris' version. Appellant's explanation that  
10 Johannes heard from her partner Saul that he sold the DVD to him does not explain why she would place the appellant, Morris and Paroro at her home when on his version he went alone to sell the DVD player, and does not explain how she could recall in such detail that he explained that he needed the  
15 money for his girlfriend and child.

The appellant's version does not explain why Neels would implicate him and Morris, neither Neels nor Johannes had any motive to implicate him falsely. In the present matter Morris is  
20 well known to the appellant and was able to provide specific details about the incident as if he was present or had been told what had happened. He was able to state how the deceased was murdered, that she was strangled with her underwear, he was able to identify what items were removed from the house,  
25 which belonged to the deceased and were later recovered, he

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was even able to tell the Court how these items were disposed of, namely who they were sold to and what amounts were received. He said he accompanied the appellant to the house of Neels to sell the gold watch. The evidence of Neels  
5 confirms his presence at her home.

In order to accept the evidence of Morris some safeguards to reduce the risk of a wrong conviction are desirable. See S v Hlapezula *supra*. In this matter, support for the version put  
10 forward by the accomplice, a single witness, is found in the evidence of Paroro who was with the appellant before and after the incident occurred. Paroro confirms that the appellant told him that he had to murder the deceased, as she was able to identify him. He also related the particular detail that she was  
15 strangled with her underwear. Further support for Morris' version is found in the evidence of Johannes who bought the DVD player. She stated that the appellant was accompanied by Morris and Paroro when she bought the DVD player for her partner, Saul. Whilst there may be a danger in accepting an  
20 accomplice's evidence, the evidence of Johannes is independent and there was no motive shown why she would implicate the appellant falsely. The evidence of Neels supports the version of Morris. Neels testified that Morris accompanied the appellant, she did not know him before the  
25 incident, she did, however, recognise him when he



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accompanied the appellant, and when he brought the police to her home. The evidence of the above witnesses presents the necessary safeguards to reduce the risk of a wrong conviction and establishes the guarantees to accept the evidence of  
5 Morris. See S v Van Vreden *supra*. The evidence of the appellant that he was at home was not corroborated by his girlfriend and is contradicted by Johannes who places him at her home at past 01h00 on that morning.

10 The trial court is best placed to consider the alibi of the appellant and the evidence of the State witnesses, and then to decide whether the alibi defence is reasonably true. In this matter Matthys was called to corroborate the appellant's version and alibi. Matthys' evidence does not account for the  
15 period after the appellant left his home and there is no other evidence to support the appellant's version. An independent witness, Johannes, places him at her home at 01h00. This evidence reduced the risk of a wrong conviction. The Regional Magistrate was correct in accepting the evidence of Morris as  
20 corroborated by Paroro, Johannes and Neels, and amounted to a credibility finding against the appellant, causing him to reject the evidence of the appellant.

On the evidence as a whole the Regional Magistrate had  
25 regard to the State's case being based on circumstantial



evidence and considered the rules applicable to such evidence as established in R v Blom 1939 AD 188 and S v Reddy 1996(2) SACR 1 (AD), and S v Mlambo 1957(4) SA at 727 (AD).

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Having regard to the totality of the evidence the Regional Magistrate correctly concluded that the only reasonable inference to be drawn is that the appellant murdered the deceased and stole the items which were sold. In the result I  
10 propose the following order; that THE APPEAL AGAINST THE CONVICTION IS DISMISSED.

15

  
for MIA, AJ

I agree, the APPEAL IS DISMISSED AND THE CONVICTION IS  
20 CONFIRMED.

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CLEAVER, J