

A238/2010

IN THE HIGH COURT OF SOUTH AFRICA**(WESTERN CAPE HIGH COURT, CAPE TOWN)****CASE NUMBER:**

A238/2010

5 **DATE:**

2 JUNE 2011

In the matter between:

PIET TITUS

Appellant

and

10 **THE STATE**

Respondent

J U D G M E N T15 **MANTAME, AJ:**

This is an appeal both against the appellant's conviction and sentence. He is represented by Mr C Simon and Ms J A J Swarts appears for the State.

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On 17 June 2009 the appellant appeared in the Vredendal Regional Court on a charge of murder.

It was alleged that on or about 26 July 2008 and at Koekenaap
25 he fatally stabbed one Jaco Gouws. It is common cause that
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the deceased died of a stab wound in his chest,
though the State's witness, Katrina Watts, who was the
deceased's girlfriend, did not actually see what happened as
her view was obstructed by a dark curtain that partitioned the
5 house – the room. In any event the appellant pleaded not
guilty to the said charge.

The appellant's defence appears to be one of private defence
and or necessity. He admits being with the deceased when he
10 was stabbed. On his version the deceased wielded the knife.
This was in the midst of an altercation. I shall refer to this
rather trivial dispute in due course.

The appellant alleges that the deceased stabbed him and a
15 struggle ensued. The appellant managed to grab the
deceased's hand holding the knife. He twisted his wrist and
thereafter pushed him away. The appellant avers that he does
not know whether or not he struck or stabbed the deceased in
the process.

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The appellant's aforementioned version is contradicted by Dr
Van Dyk, who testified at the trial. His testimony was to the
effect that the wound sustained by the deceased was a clear
stab wound in his chest. In other words, there were no
25 surrounding injuries which would be expected in the

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circumstances described by the appellant, namely that the wound was inflicted in the course of a struggle.

Dr Van Dyk's testimony is also important in one other crucial
5 respect. He testified that the deceased was stabbed twice. The appellant could give no explanation for the second stab wound sustained by the deceased in his upper body. Moreover, immediately after the stab wound the appellant says he asked somebody to call the police. If so, why did he
10 subsequently disappear?

The State's case is supported by four witnesses, who advanced a compelling case against the appellant. The appellant's only witness, called to testify about his alleged
15 injuries was an appalling witness and his evidence was properly rejected by the trial court.

According to Katrina Watts she and the deceased were relaxing after supper, listening to soft music, when they were
20 interrupted by the appellant, who tried to barge in, demanding coffee. The deceased took offence at the appellant's conduct and went to the main door to speak to him. She did not see what happened next because of the dark curtain separating the rooms and ultimately only saw the deceased when he fell.

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Jan Gouws, the second State witness, arrived together with the appellant at the house. When they entered the house he went in first and sat on a bed. He, in fact, saw the appellant stabbing the deceased twice, once in the chest and once on
5 the shoulder. This is consistent with the medical evidence by Dr Van Dyk.

From his position he could clearly see what was happening and saw the appellant taking out an "okapi" knife out of his
10 overall's pocket. He was not sure whether the second stabbing movement actually struck the deceased. Dr Van Dyk's evidence, of course, supports what was said by Gouws. I have dealt with it *supra*.

15 The evidence of Constable Alexander is also of some significance. It places considerable doubt upon the appellant's testimony of the extent, if at all, of his injuries. He noticed an old wound on the appellant's head and also testified that he was able to take a full set of fingerprints from the appellant,
20 which would have been problematic if the appellant had injured his wrist, as he suggested.

His injuries, if as obvious as he suggests they were, would also have been noted by the Magistrate at his first appearance
25 in court on this matter.

The evidence of Lesley Owies, the defence witness, was unsatisfactory in material respects and warrants no further comment.

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A Court of Appeal cannot interfere with the conviction by a Lower Court unless there has been a significant misdirection by the trial Court or an irregularity in the proceedings. Counsel for the appellant has not alerted us to any such
10 problem.

The evidence of Jan Gouws directly and cogently implicates the appellant. Nothing suggests that his evidence could be fabricated. In fact, his evidence is corroborated in important
15 respects by other witnesses, and especially the objective medical evidence.

Taking into account the totality of the evidence, the appellant's version is simply not reasonably possibly true. His conviction
20 is accordingly unassailable.

With regard to sentence, it is noted that the prescribed minimum sentence was imposed. Did the Court in this instance properly conclude that there were no substantial and
25 compelling factors present which, cumulatively viewed,
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warranted the imposition of a lesser sentence? That was the case in S v Malgas 2001(1) SACR at 482.

There are several factors which weigh heavily in appellant's
5 favour, *inter alia*, when sentenced the appellant was already of
advanced years, that is, in his late fifties. He had no previous
convictions. The evidence suggests that on the night the
offence was committed he had been consuming liquor. A
rather trivial incident led to the stabbing and quite clearly it
10 was unplanned. His being jailed and the loss of the deceased
is a double loss for Katrina Watts and her situation merits
some sympathy.

In my view the Magistrate erred in not concluding that the
15 above factors, taken together, and weighed against the
sentence ordained by the Legislature, justified a departure and
the imposition of a lesser sentence.

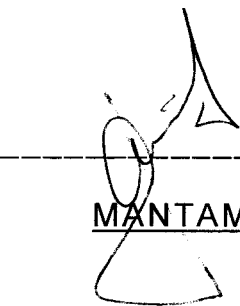
This court is acutely aware of the fact that a life has been lost
20 and the sentence it elects to impose must reflect societal
concerns that violent acts with disastrous consequences such
as in this instance, must be met with sufficiently stringent
penalties.

25 In the result, I propose that the appellant's conviction be
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confirmed, but his sentence be set aside and substituted with the following:

5 TWELVE (12) YEARS' IMPRISONMENT, of which FOUR
 YEARS ARE SUSPENDED FOR FIVE YEARS on condition
 that the appellant is not convicted of murder or assault with
 the intention to commit grievous bodily harm during the
 period of suspension.

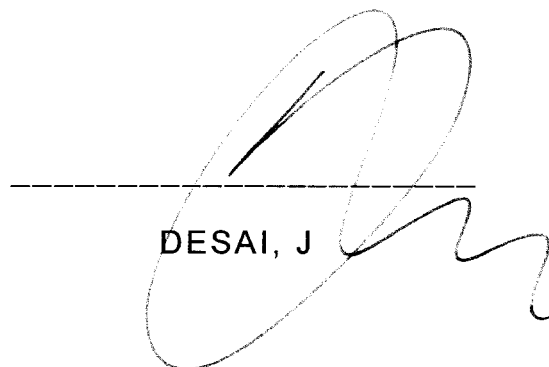
10 Such is the order.



MANTAME AJ

15 DESAI, J: I agree.

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DESAI, J