IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE HIGH COURT, CAPE TOWN)

CASE NUMBER: SS05/2011

DATE: 16 FEBRUARY 2012

In the matter between:

THE STATE

and

GARY JOEL KOOPMAN

J U D G M E N T

KOEN, AJ:

On 14 June 2010 at about quarter past six in the morning, Mrs Elizabeth Kroese and her daughter, Ms Suzette Strydom, left their home at 108 Weimar Street, Parow, to go to work. Mrs Kroese lived in the main house and her daughter lived in a flatlet adjoining the house, together with the accused, Mr Koopman. When they left for work, Mrs Kroese's second daughter, Nicolene and her friend, Stefani Gouws, who had slept over that night, were left behind in the main house, Mr Koopman remained in the flatlet. All those left behind were

asleep when they were last seen by Mrs Kroese and Ms Strydom.

Later that day at about 4:15 p.m., Mrs Kroese and Ms Strydom returned home from work. Upon entering the house, Mrs Kroese discovered the body of Nicolene on a sleeper-couch in the sitting-room. She had been strangled and was dead. Mrs Kroese screamed for help. Ms Strydom came to her assistance. When in the main house, Ms Strydom saw the body of Ms Gouws lying in a pool of blood on the floor in the passage. She had been stabbed nine times. One of the stab wounds had resulted in the severing of her carotid artery, causing massive and rapid loss of blood. She was also dead.

Mr Koopman was asleep in the flatlet when Suzette and Mrs Koopman roused him after their horrifying discovery. He appeared to be extremely drowsy, almost drugged. When told about the bodies of Nicolene and Ms Gouws, Mr Koopman told them that there had been a lot of blood which he had tried to clean up. He had taken a large number of sleeping pills and antidepressants in an apparent attempt to commit suicide.

Mr Koopman was arrested the same day. He was subsequently charged with robbery with aggravating circumstances arising out of the fact that he had in his possession R700,00 which

had belonged to Ms Gouws (count 1); with a contravention of section 3 of Act 32 of 2007, namely the rape of Ms Kroese (count 2); and with the murders of both Ms Kroese (count 3) and Ms Gouws (count 4). He pleaded not guilty to the robbery and the rape charges and guilty to the two murder charges.

At the commencement of the trial Mr Koopman made written statements in terms of section 112(2) and 115 of the Criminal Procedure Act. It is necessary, I think, to repeat their content:

> "Statement in terms of section 112(2) of Act 51 of 1977: I, Gary Joel Koopman, state as follows:
>
> (1) I am the accused in this matter.
>
> (2) My legal representative has informed me of my right to plead not guilty to all the charges.
>
> (3) My legal representative has furthermore explained to me that there are minimum sentences applicable to the charges and that should I be convicted on the applicable charges, the minimum sentence will be imposed unless the court finds that there are substantial and compelling circumstances or otherwise exercises its discretion in imposing an appropriate sentence.
>
> (4) I fully understand the charges put to me.

(5) I plead guilty to counts 3 and 4.

(6) I do so voluntarily and of my own free will and I have not been unduly influenced to plead guilty.

(7) I am 27 years of age.

(8) I admit the following facts:

Count 3:

(a) I admit that on 14 June 2010 and at 108 Weimar Street, Parow, in the district of Bellville and within the jurisdiction of this Honourable Court, I unlawfully and intentionally killed Nicolene Kroese, an adult female person, by strangling her with a rope.

(b) I admit that the cause of death, as indicated in the *post-mortem* report as "consistent with ligature strangulation of the neck and consequences thereof" is correct and that the death was caused by me.

(c) I admit the contents of the *post-mortem* report compiled by Professor S Wadee is correct and consent to it being handed in to the Court as an exhibit.

(d) On the morning of 14 June 2010 I was in

the house with Stefani Gouws and Nicolene Kroese. On the previous day my girlfriend Suzette Strydom, told me that she wanted me to leave. As a result, on the morning of the 14th I decided that I was going to kill myself, but that I was not going alone, Suzette should also suffer. I decided that I was going to kill Nicolene Kroese to get back at Suzette. Nicolene was Suzette's sister.

(e) Stefani went to sleep in Nicolene's room and Nicolene and I started talking about sex and sexual bondage. We were in the lounge on the sleeper-couch. I got up and went to fetch a rope (used for acts of bondage) and a book on bondage. Nicolene and I decided that we were going to do sexual bondage. I tied Nicolene's wrists together with the rope behind her back, around her body and around her neck. During sexual intercourse, I tightened the rope around Nicolene's neck. When we do acts of bondage, we use a word to indicate that

we must back off. She said the word, but I did not back off and continued to strangle her. I realised that I was killing her and decided that this was the opportunity to do so. She died as a result of the strangulation. I do not dispute the injury to her face, as indicated in the *post-mortem* report, but cannot remember how it took place. I admit that I had the intention to kill Nicolene and that I had decided to do so prior to the incident.

(f) After the incident involving Stefani Gouws, which I describe below, I took a handful of antidepressant tablets and sleeping pills. I tried to clean the blood off the floor with water and I hung the rope up in the bathroom. I also telephoned Margaux Brandt, but do not recall the content of the conversation. The effect of the pills was that I started feeling drowsy, sleepy and numb and I have problems remembering some of the events that took place. I, however, remember the events I have related

clearly and admit that my actions were wrongful; that I was fully aware that my actions were wrongful during the incident and that I committed the crime of murder. I admit that I had no right to act as I did.

Count 4:

(9) I admit the following facts:

(a) I admit that on 14 June 2010 and at 108 Weimar Street Parow, in the district of Bellville and within the jurisdiction of this Honourable Court, I unlawfully and intentionally killed Stefani Gouws, an adult female person, by stabbing her repeatedly with a knife.

(b) I admit that the cause of death, as indicated in the *post-mortem* report as "penetrating incised wounds of the neck and chest and the consequences thereof" is correct and that the death was caused by me.

(c) I admit the contents of the *post-mortem* report compiled by Professor S Wadee as correct and consent to it being handed in to the Court as an exhibit.

(d) After the events that I describe in respect of count 3, I went to fetch a knife to cut the rope around Nicolene loose. Stefani came out and I decided that I was going to kill her as well. I took the knife and stabbed Stefani repeatedly. I do not recall precisely where I stabbed Stefani. There was a second knife, but I do not recall how I got hold of it during the incident. After the stabbing, Stefani fell down in the passage. I tried to clean the blood with a bucket of water.

(e) I admit that I had the intention to kill Stefani and that I had decided to do so after I had killed Nicolene.

(f) After Stefani was killed, I took the pills that I describe in para (8)(f) above and made the phone call to Margaux. I admit that my actions were wrongful; that I was fully aware that my actions were wrongful during the incident, and that I committed the crime of murder. I admit that I had no right to act as I did.

(g) Although I attempted to end my own life, I could not do so.

Statement in terms of section 115 of Act 51 of 1977:

I, Gary Joel Koopman state as follows:

(10) I am the accused in this matter.

(11) My legal representative has informed me of my right to plead not guilty to all the charges.

(12) My legal representative has furthermore explained to me that there are minimum sentences applicable to the charges and that should I be convicted on the applicable charges, the minimum sentence will be imposed, unless the court finds that there are substantial and compelling circumstances or otherwise exercises its discretion in imposing an appropriate sentence.

(13) I fully understand the charges put to me.

(14) I plead not guilty to counts 1 and 2.

(15) I understand that I have the right to remain silent and not give a plea-explanation.

(16) I have elected to make the following plea-explanation:

Count 1 (robbery with aggravating circumstances):

On 14 June 2010 and at 108 Weimar Street, Parow, in the jurisdiction of this Honourable Court, Stefani Gouws gave me R700,00 (seven hundred rand) in cash to buy TIK. I did not buy the TIK as planned,

because of what took place later. I deny that I robbed Stefani as indicated in the indictment. I admit that I was in possession of the R700,00 cash, the property of Stefani Gouws.

Count 2:

I admit that I had sexual intercourse with Nicolene Kroese on 14 June 2010 at 108 Weimar Street, Parow, in the jurisdiction of this Honourable Court. I admit further that an act of sexual penetration took place, in that there was a penetration of her vagina with my penis. I deny that this took place without her consent.

Admissions with Consent

(17) I have been advised by my legal representative that I am not obliged to assist the state in proving its case and do not have to make admissions. I, however, elect to make the following admissions and understand the implications and effect thereof as explained by my legal representative:

Ad count 1:

(a) I admit that I was in possession of the R700,00 cash, the property of Stefani Gouws.

(b) An analysis of the blood sample taken

from the body of the deceased, Stefani Gouws, revealed that her blood alcohol level was 0.00 grams per 100 millilitres of blood.

Ad count 2:

(a) The specimens retained by Professor Shabier Wadee in respect of the sexual assault collection kit with seal number 05D1AF0821 were correctly taken, sealed, packed and handled and was not contaminated.

(b) An analysis of the blood sample taken from the body of the deceased, Nicolene Kroese, during the *post-mortem* examination, revealed that her blood alcohol level was 0.00 grams per 100 millilitres of blood.

(c) I admit that an act of sexual penetration took place, in that there was a penetration of her vagina with my penis.

(18) The Honourable Court may record these facts as admissions in terms of section 220 of Act 51 of 1977, which my legal representative has explained to me."

And both statements were signed by Mr Koopman and his counsel.

The state did not accept the plea of guilty entered in respect of the murder charges. In the result pleas of not guilty were entered in respect of all four charges.

Mr Koopman also made a number of admissions in terms of section 220 of the Criminal Procedure Act. It is not necessary to detail these admissions in this judgment.

It was apparent from the plea-explanations handed in by Mr Koopman and the admissions made by him, that the issues which remained for determination in the trial, were essentially twofold. These were firstly, whether Mr Koopman had used violence or the threat of violence to obtain from Ms Gouws the R700,00 he had in his possession and secondly, whether or not Ms Kroese had consented to sexual intercourse with him. It goes without saying that it was for the state to prove these allegations beyond a reasonable doubt.

In S v Chabalala 2003 (1) SACR 134 (SCA) at 139, the manner in which the evidence in a criminal trial is to be approached, was described as follows:

"The correct approach is to weigh up all the elements which point to the guilt of the accused against all those which are indicative of his innocence, taking proper account of inherent strengths and weaknesses, probabilities and improbabilities on both sides and having done so, to decide whether the balance weighs so heavily in favour of the state as to exclude any reasonable doubt about the accused's guilt."

The state relied on circumstantial evidence and inferential reasoning to prove the issues in dispute. The test to be applied in cases such as this, was set forth in the case of R v Blom 1939 AD 188 at 200. The following was stated:

"In reasoning by inference, there are two cardinal rules of logic which cannot be ignored:

(i) The inference sought to be drawn must be consistent with all the proved facts. If it is not, the inference cannot be drawn.

(ii) The proved facts should be such that they exclude every reasonable inference from them, save the one sought to be drawn. If they do not exclude other reasonable inferences, then there must be a doubt

whether the inference sought to be drawn is correct."

It must also be borne in mind that the law requires that the cumulative effect of all of the proved facts must be taken into account. It is not permissible to consider each circumstance in isolation. As is stated in Schwikkard, Principles of Evidence, 3rd Edition, at page 538:

> "The state must satisfy the court not that each separate item of evidence is inconsistent with the innocence of the accused, but only that the evidence taken as a whole is beyond reasonable doubt, inconsistent with such innocence."

In order to apply these principles, it is necessary, firstly, to establish what the relevant proved facts are. To all intents and purposes these facts were common cause and it is only the weight to be attached to them and the inferences which may properly be drawn from them that is in issue. We shall deal firstly with the robbery charge.

On behalf of the state, it was submitted that because Ms Gouws had been employed only weeks before and had a child to support and hardly knew the accused, having met him

only shortly prior to her death, it was improbable that she would have given him so much of her money. She earned only R900,00 the night before of which, if Mr Koopman is to be believed, she gave to him the lion's share. In addition much score was placed on the position of her handbag which was lying open on the floor of the sitting room close to where she had been stabbed. With reference to the photographs of the crime scene, it was submitted that it was evident that the stabbing had preceded the appropriation.

Secondly, in regard to the rape charge, it was submitted on the basis of evidence given by Mrs Kroese and Ms Strydom to the effect that Nicolene disliked Mr Koopman, that it was improbable that she would have consented to sexual intercourse with him. Further factors which led to the inference that consent had not been given, it was submitted, were that Nicolene was menstruating at the time; that a tampon had been carelessly discarded on the floor of the sitting room; that Ms Gouws was in the house, and that it is unlikely on this account that Nicolene and Mr Koopman would have engaged in intercourse in a readily accessible part of the house where they might have been discovered by her.

In addition it was submitted on behalf of the state that the fact that Nicolene had been viciously assaulted with a skateboard

and had suffered extensive facial injuries and had scratched Mr Koopman with her fingernails in what must have been an apparent struggle, militated against the fact that she consented to having intercourse with Mr Koopman.

The evidence underpinning the drawing of inferences, falls, therefore, into two broad categories. Firstly, evidence relating to the nature of Nicolene's relationship with Mr Koopman and secondly, evidence relating to features of the crime scene, as depicted in the photographs, including the injuries suffered by Nicolene and the fact that she had struggled with Mr Koopman. In the view of the Court, the evidence concerning the nature of Nicolene's relationship with Mr Koopman, whilst honestly given, is speculative in nature. It is based upon impressions held by the witnesses and must be approached cautiously.

It is all too easy for human beings to conceal their true feelings about others. This is not to say that we find that Nicolene was engaged in a secret intimate relationship with Mr Koopman, we find only that limited weight should be given to the evidence concerning Nicolene's relationship with Mr Koopman.

The difficulty which the Court has with attempting to piece together the features of the crime scene as they are depicted

in the photographs and in drawing inferences therefrom, is that it is necessary in order to do so, to sequence the facts which appear from the photographs in time. There is nothing particularly out of the ordinary about the fact that the handbag containing Ms Gouws' money is lying next to the sleeper-couch on the floor of the sitting-room. There are blood spots on the handbag and the clothing situated next to it, which indicates, as we see it, that the bag and the clothing were in that position before Ms Gouws was stabbed. If the state cannot prove that the violence inflicted upon Ms Gouws preceded or was simultaneous with the taking of the money, a robbery charge cannot be proved.

The same applies to the rape charge that Nicolene struggled with Mr Koopman is clear; that he inflicted violence upon her is clear. Whether this occurred before, during or after Mr Koopman had intercourse with her, is critical. Again it is necessary to sequence in time these common cause facts. If the state was able to show that the violence inflicted upon Nicolene occurred before or during sexual intercourse, then a rape charge could be sustained. We are not able to determine with sufficient degree of certainty what the order of events was that fateful day. There are a range of inferences which can be drawn from the common cause facts.

That the violence inflicted upon Ms Gouws preceded the taking of her money, is one of those inferences. And that Mr Koopman had sexual intercourse with Nicolene without her consent, is another inference which can be drawn. But these are not the only inferences which can be drawn. The common cause facts are not inconsistent with the version put up by Mr Koopman in the plea-explanations he filed, namely that Ms Gouws gave him the R700,00 and that Nicolene consented to having sexual intercourse with him.

In his plea-explanation, Mr Koopman stated:

> "During sexual intercourse, I tightened the rope around Nicolene's neck. When we do acts of bondage, we use a word to indicate that we must back off. She said the word, but I did not back off and continued to strangle her."

The Court gave careful consideration to this statement by Mr Koopman. The sentence is capable of being construed to mean that Mr Koopman continued to strangle Nicolene during intercourse and after she had revoked consent. If this were the only meaning we could attribute to the sentence, a conviction for rape would follow, but the sentence does not, as we see it, necessarily mean only that Mr Koopman continued

to have sex with Nicolene after she said the word indicating that he should stop. It does not unambiguously state this. All that is unambiguous from the statement is that he continued to strangle her. It does not thus provide a basis for concluding that Mr Koopman, on his own version, continued to have sexual intercourse with Nicolene after she revoked her consent.

We are, therefore, unable to find that the state has proved beyond a reasonable doubt the robbery and the rape charges.

The state contended that the murders were premeditated. There is no doubt that it has proved this in respect of the murder of Nicolene. In regard to the murder of Ms Gouws, however, we are unable to find that this was the case. There is no evidence of any prior planning by Mr Koopman of the murder of Ms Gouws. The fact that the murder took place on the spur of the moment, cannot be excluded and we must thus find that her murder was not premeditated.

In the result, Mr Koopman is **CONVICTED IN RESPECT OF COUNTS 3 AND 4**, the two murder charges and **ACQUITTED ON COUNTS 1 AND 2**.

KOEN, AJ