

IN THE HIGH COURT

(BISHO)

CASE NO.: CC40/03

DATE: 23 JUNE 2003

In the matter between:

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THE STATE

versus

MLUNGISI GEGE

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EX TEMPORE JUDGMENT

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EBRAHIM J

In this matter the record of the proceedings in the Court *a quo* have been tendered by the State and the Court has received the record and it now forms part of the proceedings in this court.

I have considered the brief submissions made by Miss Ncobo on behalf of the State and those of Mr Mazwi who appears for the accused. I have also perused the record of the proceedings and considered the evidence tendered at the trial. I have also considered the magistrate's judgment as well as the reasons he furnished in response to the Court's request that he provide the reasons for his committing the accused for sentence in the High Court.

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I am of the view that the accused was correctly convicted of the offence of murder. It appears from the magistrate's judgment that he did not specifically address the issue as to whether the murder of the deceased had been planned or premeditated by the accused. In this regard the magistrate in his reasons has again addressed the issue of the intention of the accused to cause the death of the deceased. Regrettably

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these reasons do not address the pertinent question as to whether the murder was planned or premeditated. The only fact that the magistrate relies upon to substantiate that the accused has acted in a premeditated manner is the fact that when the accused came out of the shebeen he apparently already had the knife in his hand. While this evidence may cause one to harbour a suspicion that the accused was acting in a premeditated manner to bring about the death of the deceased it cannot be accepted as proof beyond a reasonable doubt that he in fact did so. There is no evidence to suggest that he planned to kill the deceased.

Accordingly while I am confirming the conviction of murder I must add to this that the State has failed to prove that the accused acted in a planned or premeditated manner.

Consequently the conviction of murder, which I am hereby confirming, does not reside under Part 1 of Schedule II of the Criminal Law Amendment Act, 105 of 1997, but falls under Part 2 of the aforesaid schedule.

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Y EBRAHIM

JUDGE, BISHO HIGH COURT

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