



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Not reportable

Case no: A160/2023

In the matter between
QENEHELO RANTAPI
PULE NTHABI

FIRST APPELLANT
SECOND APPELLANT

and

THE STATE

RESPONDENT

Coram: OPPERMAN J et MAJOSI AJ

Heard: 06 MAY 2024

Delivered: 20 JUNE 2024. This judgment was handed down in court and electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 15h00 on 20 June 2024.

Summary: Criminal law and procedure – appeal against convictions – single witness – circumstantial evidence – discrepancies in testimony state witnesses not material in nature – appeal dismissed.

ORDER

1. Both the appellants' appeal against the convictions on count one is dismissed.
 2. The second appellant's appeal against the conviction on count two is dismissed.
-

JUDGMENT

MAJOSI AJ (OPPERMAN J concurring)

- [1] The appellants were convicted in the Regional Court, Bloemfontein, on one count of murder under the purview of s 51(1) of the Criminal Law Amendment Act 105 of 1997 and individually sentenced to ten years' imprisonment in terms of s 276(1)(b) of the Criminal Procedure Act 51 of 1977, as amended. The second appellant was convicted on a second count of assault with the intent to do grievous bodily harm and sentenced to undergo two years' imprisonment. It was ordered that his sentence run concurrently with the sentence imposed in count one.
- [2] Both appellants were declared unfit to possess firearms in terms of s 103 of the Firearm's Control Act 60 of 2000. The appellants sought leave to appeal their convictions only and were granted leave by the court a quo. The second appellant was granted bail pending appeal.
- [3] In their notice of appeal, the appellants assailed their conviction for count one on four main grounds namely:
- (a) That the court a quo erred in finding that the state proved its case beyond a reasonable doubt;
 - (b) the court a quo erred in finding that the state proved its case against the appellants by way of circumstantial evidence;

- (c) the court a quo erred in finding that the state witnesses were credible in light of the contradictions in their testimony; and
- (d) the court a quo erred in accepting the version of the state and rejecting the versions of the appellants.

For count two, the second appellant contended that the court erred twofold by finding that the state proved his guilt beyond a reasonable doubt and accepting the evidence of the state while rejecting his version.

- [4] It is common cause that on the 27th of March 2011, the appellants, three state witnesses and the deceased were at Lala's Tavern in separate groups, enjoying alcoholic beverages. The appellants' bottle of Grants Whiskey went missing from their table whilst they were smoking just beyond the door of the tavern. A brief background of the evidence is required to understand the chronology of the events.
- [5] The first state witness Mr. Mokoni testified that on the day in question, whilst smoking outside the tavern but still inside the yard, the first appellant approached him and demanded that he return a bottle of whiskey that had gone missing from his table inside the tavern. After assuring him that he had nothing to do with it, Maphisa (complainant in count two) approached and the first appellant demanded the whiskey bottle from him as well, and a verbal argument ensued. The argument escalated into a physical fight and the second appellant also approached them. He then thought it prudent to go inside the tavern to call the deceased and left Maphisa with the two appellants. Upon his return with the deceased, Maphisa reported that the second appellant had stabbed him with a knife and he also observed that he was bleeding. The deceased tried to intervene and they ended up chasing the appellants without success.
- [6] Shortly after their return, it was decided that they should walk Maphisa home as he was bleeding and the three of them left the tavern. They left Maphisa at his residence whereafter, he went to his own home and slept. Whilst in his slumber, a rough knock sounded at the door and the appellants demanded to see him. He told his mother not to open the door and they eventually left.

- [7] Whilst at his next-door neighbors' house between 06h00 and 07h00 in the morning, his mother called him and when he reached his house, he found the two appellants there, bloodstained and carrying knives. They then informed him that he was lucky that his mother was home as, if they had met him in the street, they would have killed him.
- [8] They then proceeded to apologize to his mother as they had done something big and, before they departed, told him to walk down the road to see what they had done. While he did as he was instructed, he noticed that a crowd had gathered in the distance, it was there where the deceased was found dead on the ground.
- [9] Mr. Maphisa confirmed that he was also at Lala's Tavern with the deceased where Mokoni joined them and he noted the appellants were also there. He later went out to smoke in the tavern's yard and found the first appellant outside, angrily speaking to Mokoni. Whilst trying to enquire what the problem was, the first appellant physically attacked him. Mokoni went inside the tavern after which he observed the second appellant pulling out a Rambo knife which was used to stab him in the shoulder. When Mokoni and the deceased emerged from the tavern, the two appellants took off and the gates were closed behind them. He was taken home and received medical treatment the following day.
- [10] Ms. Mogape, the last state witness, intimated that she was also at the same tavern at the time the events in question transpired when she met Maphisa, a family friend. After a commotion, she approached him again and observed that he was bleeding and he informed her that the second appellant had stabbed him. The two appellants were chased out but managed to return by jumping the fence. They were chased out again. Sometime later, she left Lala's Tavern and escorted the deceased with her friend to Chakela's Tavern. Upon their arrival there, the deceased went inside the tavern whilst she took her friend to her home, which was directly opposite the tavern. When she returned from this short distance, she found the deceased bleeding from the head and he had made a makeshift bandage out of his T-shirt.

- [11] When she enquired, the deceased alleged that the two appellants had stabbed him. The two of them went back inside the tavern and she noted that the two appellants were at the second tavern. The deceased left the tavern on his own, which worried her, so she enquired from the security at the gate in which direction he had gone in order to follow him. In the meantime, the two appellants had also left the tavern and she encountered them in the street, going in the opposite direction to the one she was going. When she went further in the direction that they were coming from, she found the deceased lying on the ground with an open stab wound with no signs of life.
- [12] The first appellant indicated that whilst in the company of the second appellant at Lala's Tavern, their bottle of whiskey went missing and he calmly approached Maphisa to enquire where their bottle was when the deceased, unprovoked, grabbed him and pulled him into the yard of the tavern and fought with him. He intimated that Makoni, and Maphisa came to support the deceased as well as two security guards, who chased him and the second appellant away. He denied that he had any altercation with Maphisa or Mokoni and, that after they were chased away by the security, they left the tavern for a party and only heard the following day that the deceased had passed on. He denied that he assaulted or stabbed the deceased or any of their friends.
- [13] The second appellant also testified and denied that he ever stabbed Maphisa or that he and the first appellant ever got involved in stabbing the deceased or any of his friends. In fact, he indicated that it was the deceased who was the aggressor. The security guards did not assist his friend at all, but rather fought them which in turn, caused him to pull the first appellant from the ground in order to flee, never to return, as they were attending a friend's party. He also denied that he had stabbed Mokoni or the deceased.
- [14] This court's powers to interfere on appeal with the findings of fact of a trial court are limited unless there is a clear misdirection by the court a quo.¹ The court a quo was not only confronted with circumstantial evidence, but to a certain extent, mutually destructive versions as per the actual commission of both offences, as both appellants denied their involvement.

¹ *S v Francis* 1991 (1) SACR 198 (A); *R v Dhlumayo and Another* 1948 (2) SA 677 (A).

- [15] In *S v Reddy and Others*² the following was stated regarding the assessment of circumstantial evidence at paragraph 9D-E:

'In assessing circumstantial evidence one needs to be careful not to approach such evidence upon a piece-meal basis and to subject each individual piece of evidence to a consideration of whether it excludes the reasonable possibility that the explanation given by an accused is true. The evidence needs to be considered in its totality. It is only then that one can apply the oft-quoted dictum in *Rex v Blom* 1939 AD 188 at 202-203 where reference is made to two cardinal rules of logic which cannot be ignored.'

- [16] In *S v Trainor*,³ Navsa JA said the following:

'A conspectus of all the evidence is required. Evidence that is reliable should be weighed alongside such evidence as may be found to be false. Independently verifiable evidence, if any, should be weighed to see if it supports any evidence tendered. In considering whether evidence is reliable, the quality of the evidence must of necessity be evaluated, as must corroborative evidence, if any. Evidence must of course be evaluated against the onus on any particular issue or in respect of the case in its entirety. The compartmentalised and fragmented approach of the magistrate is illogical and wrong.'⁴

- [17] The undisputed facts are that the appellants confronted Mokoni and Maphisa for stealing their bottle and that this confrontation quickly turned physical, resulting in the deceased being called from inside the tavern by Mokoni. In his absence, Maphisa was stabbed with a knife which resulted in him bleeding from his shoulder. This actively-bleeding wound was observed, not only by Mokoni, but also by Mogape. After being chased away, they were seen by Mogape returning, jumping over the fence, into the yard of the tavern, only to be chased away a second time by the tavern owner. This, on all accounts, illustrates that the two appellants still wanted to continue with a further altercation regarding this bottle of whiskey.

- [18] After Maphisa was taken home, the very same appellants came looking for him at his place of residence, demanding that the door be opened for them. When their orders were not complied with, they left, only to be later seen by Mogape at Chakela's Tavern, where the deceased and Mogape happened to be. Now, although Mogape did not see the deceased being stabbed for the first time at this tavern, she did find him, still alive at the time, but with a stab wound to the head

² *S v Reddy and Others* [1996] ZASCA 55; 1996 (2) SACR 1 (A).

³ *S v Trainor* [2002] ZASCA 125; 2003 (1) SACR 35 (SCA).

⁴ *Ibid* para 9.

when she returned to the tavern after escorting her friend home. Though a report was made to her that the appellants were responsible, the leading of this evidence was not adduced as required in terms of s 3 of the Law of Evidence Amendment Act 45 of 1988 and was appropriately discarded by the trial court in its judgment.

- [19] When the deceased left the tavern, Mogape enquired from the security staff which direction the deceased took and, on her way, there, she met up with the two appellants coming from the direction she was heading towards. It is where the deceased was found stabbed to death, surrounded by a gathering crowd.
- [20] Whilst at his neighbours house just before 06h00, Maphisa was called back home, where he not only observed the appellants to be bloodstained and carrying knives but was also told by them that he was lucky they did not open the door, as they would have killed him. They informed him that he ought to take a walk down the street to observe their handiwork, which he did only to find the outcome of that which forms the subject matter at hand.
- [21] The state witnesses and appellants are well known to each other and identity has never been placed in dispute. The appellants were observed in four separate locations, firstly, Lala's Tavern at varying occasions, secondly, at the house of Maphisa once when they demanded entry and the other, holding knives, bloodstained, inviting him to view their handiwork further down in the street. Thirdly, at Chakela's Tavern by Mogape and lastly, individually by Mogape, in the very same street where the deceased was found, devoid of life, with the same crowd gathering around the body which was also observed by Mokoni.
- [22] At the first location they were observed to be on a rampage for a bottle of whiskey which resulted in physical altercations which led to Mokoni, the complainant in count two, being stabbed. When they were chased away, they were seen jumping the fence by Mogape only to be chased away again. This was an indication that they did not regard the matter as resolved, but still wanted to engage the deceased and his companions further, which they did by pursuing the deceased and his companions to three other locations.
- [23] The court a quo was confronted with circumstantial evidence on both counts and

suitably deployed the principles laid down in *R v Blom*.⁵ Each piece of evidence was carefully evaluated by taking into consideration whether the versions provided by the appellants are reasonably possibly true in light of the evidence presented by the state.

[24] The trial court correctly found that the various discrepancies in the testimony of the state witnesses were not material in nature and their evidence was an honest account of the events. The court meticulously evaluated the evidence of Mokoni and found it to be reliable in all material respects, despite him being a single witness. The court a quo's reasoning for both counts cannot be faulted, having due regard to the conspectus of the evidence and the trial magistrate correctly rejected the versions of the appellants as unreasonable and improbable. Accordingly, the appeal against convictions in respect of both counts must fail.

[25] In the result, the following order is made:

1. Both the appellants' appeal against the convictions on count one is dismissed.
2. The second appellant's appeal against the conviction on count two is dismissed.


O.R. MAJOSI AJ

I concur


M. OPPERMAN J

Appearances

For the Appellant:

Instructed by:

Ms. S Kruger

Legal Aid South Africa,
Bloemfontein

For the Respondent:

Instructed by:

Mr. M Lencoe

Director of Public Prosecution,
Bloemfontein

⁵ *R v Blom* 1939 AD 288.