

Sneller Verbatim/IDM

IN THE HIGH COURT OF SOUTH AFRICA(WITWATERSRAND LOCAL DIVISION)JOHANNESBURG

CASE NO: SS313/00

2002-02-14

5

<b>DELETE WHICHEVER IS NOT APPLICABLE</b>	
(1) REPORTABLE	YES/NO
(2) OF INTEREST TO OTHER JUDGES	YES/NO
(3) REVISED	<input checked="" type="checkbox"/>
DATE <u>2/5/2005</u>	SIGNATURE <u>[Signature]</u>

10

In the matter between

THE STATE

and

HEVISON FUNDINI NOYAHUNGU

15

---

**J U D G M E N T**

---

WILLIS J: The accused stands indicted of the murder of Johanna Mamfurutse Seku ("the deceased") on 28 February 2000, it being alleged that he unlawfully and intentionally killed her at or near Athol on this date. The accused pleaded not guilty. He nevertheless tendered an explanation of plea in which he said that although he admitted that he had shot and killed his wife on the day in question, he had gone to see her, and after knocking at the door for some 10 minutes, the door was opened. It was dark inside the room. He was hit with a metal object on the left side of his mouth. He heard a male

20

25

voice saying, "What do you want here?" Fearing for his life, he pulled out his firearm and shot in the direction of this male voice, and it was only later, after he had fired some eight shots and switched on the light in the room that he realised that he had shot and killed his wife, the deceased.

5

It is common cause that Johanna Mamfurutse Seku is the accused's wife according to customary law.

Various formal admissions were made in terms of section 220, in addition to the explanation of plea given. These relate essentially to the cause of death of the deceased, namely multiple gunshot wounds fired at her on 28 February 2000, and certain ballistic tests and the correctness of the post-mortem examination report.

10

It is common cause that the accused was at the time the owner of a licensed firearm, and that this firearm was used to shoot and kill his wife.

15

The first state witness was Inspector Van Deventer. He had come to the scene of the crime shortly after it had been committed, had taken photographs and recorded exhibits found there. Significantly he found no trace of any bullets in the walls or the furniture of the room in which the deceased was shot and killed.

20

Mr Robert Nelson, the owner of the premises upon which the deceased was shot and killed, also testified. He was the employer of the deceased. He gave evidence concerning the physical layout of the premises where the incident occurred. The property is bordered by razor wire and access in or out of the property by climbing over the perimeter fence and walls is virtually impossible. There is an electric

25

gate which gives access to the property, and in that gate is a pedestrian gate which operates by use of a mechanical key. The deceased obviously had a key to this gate which gave her access to and from the property. As is fairly standard in homes in luxury areas in Sandton, outside the entrance of the property there were three buttons which could be pressed. One would ring a bell in the office which he maintained on the premises; the other in the living quarters of his residence; and the last to the domestic workers' quarters. 5

At about 22:45 on the night of 28 February 2000 he heard eight bullets being fired in the domestic workers' quarters. He immediately called the security company and the police. Representatives of the security company arrived on the premises soon thereafter, went to the domestic workers' quarters and reported that the deceased was lying there. The police arrived on the scene shortly thereafter and it is common cause that it was then that Inspector Van Deventer took the photographs and made his observations, and the deceased's body was then removed to the mortuary. 10 15

Mr Nelson said that if the electric gate had opened at around the time that he was sitting in his study, and the shots had gone off, he would have heard that electric gate open. He did not hear it. He said that to the best of his knowledge the light outside the domestic workers' quarters, which shines outside the kitchen which gives access to those quarters, was on all through the night every night. This had been his experience over a number of years. He said it was necessary for this light to be on because it was extremely dark where the domestic workers' quarters were, those quarters being surrounded 20 25

by a perimeter wall, and also because it was very slippery. He said that as far as he was aware, the accused and his wife had become estranged for approximately a month and perhaps longer preceding the incident. He said that the deceased had told him that she intended to divorce her husband. Obviously this aspect of the estrangement and the intended divorce is hearsay. In the circumstances I do not believe that it should be ruled to be inadmissible, but I accept that it must be treated with due caution.

5

Mr Nelson spoke highly of the accused. He said that he had seen the accused visiting his wife on a regular basis. He was always very pleasant. He had been employed by him to do casual work, for example as a painter. The accused together with the deceased had been in the main portion of the house to babysit for his grandchild. To use Mr Nelson's own words, the accused was a "nice guy". He said, "I liked him". He was well mannered and hard working. Mr Nelson even went so far as to say, "I hold him in high regard".

10

15

The next witness was Mr Dieter, the neighbour of Mr Nelson. He knew both the deceased and the accused as neighbours and had seen them in the vicinity. On 27 February 2000, in other words the night before the accused shot and killed his wife, there was a very large commotion going on in the domestic workers' quarters. It got so bad that he went outside and told the people to stop fighting. A male voice said, "It is my business, and it is Moses." A female voice said, "This is not Moses." He, Mr Dieter, then fired a warning shot into the ground and said that if this nonsense did not stop, he would call the police. The commotion did stop.

20

25

Under cross-examination he as adamant that the voice of the female was that of the deceased. He assumed from the proprietorial manner in which the male person spoke about the women with whom he was fighting that the voice of the male person must have been that of the accused as her husband. He conceded that he could not be sure that it was in fact the accused who was the male person fighting with the deceased, and who said, "It is Moses."

5

We do know, however, that the male person was not Moses. Moses Moyo was the gardener employed by Mr Nelson. He lived in the other room of the domestic workers' quarters on the premises. He was born in 1945 and may be described as a dignified elderly gentleman. He testified that at the relevant time, i e when the deceased had been shot and killed, he had been visiting his girlfriend who lived nearby. He also said that he had been visiting his girlfriend the previous evening and could not have been involved in the argument. He too confirmed the fact that the outside light to the domestic workers' quarters is always as a matter of course on throughout the night.

10

15

Inspector Hilse, the investigating officer, also testified. He confirmed that the accused had been arrested on 17 March 2000 when he had handed himself over. He had had contact before with relatives of the deceased, and they had given him certain leads as to where the accused could be traced.

20

Dr Klepp, the forensic pathologist, also testified. The post-mortem report was admitted as an exhibit in terms of section 220 of the Act at the commencement of the trial. She diagnosed the cause

25

of death as multiple bullet wounds. The following aspects of her evidence are, however, relevant in an overall evaluation:

- (1) At least six bullets hit the body of the deceased.
- (2) Two of these bullets entered her body from the back.
- (3) One of the bullets entered the body from the front. 5
- (4) In respect of two of the entry wounds for the bullets there were tattoo marks around the bullet wound. The tattooing indicates that the bullet was fired from a distance less than one arm's length away from the victim. It is caused by unburnt gunpowder penetrating into the skin of the victim. 10

That concludes the evidence for the state.

I shall now deal with the evidence of the accused. Broadly, with one or two minor variations, it follows the plea explanation which he gave at the beginning of the trial. Although he said that the outside light was not on when he arrived at the premises of the deceased, the kitchen light was on. He entered through the kitchen door and knocked at the door of the room occupied by his wife for some 10 minutes before she opened. Immediately thereafter the light was switched off. He was hit with an object and he heard this male voice in the corner of the room, fired shots in that direction in the dark. Thereafter he switched on the light and discovered that he had shot and killed his wife. He was dazed and confused and he left the premises, went to the quarters which he occupied in Parkhurst in Johannesburg, slept there the night, then went to his family in Hazyview, and it was only after he heard that the police were looking for him that he handed himself over. 15 20 25

There are a number of criticisms that can be levelled at the evidence of the accused. He contradicted himself and was evasive as to how many children he had with the deceased. He also contradicted himself, was evasive and utterly unsatisfactory and illogical when asked about their ages, both now and when he had first met the deceased in 1986. He was utterly evasive and most unsatisfactory when asked when he had last spent the night with his wife. He said that when he left the premises where the deceased stayed, he found the pedestrian gate unlocked, although he had locked it behind him when he entered. He later seemed to wish to distance himself from this evidence, and could give no satisfactory explanation for how the male person who was supposed to be in the room at the time when he fired the shots managed to leave the premises.

5

10

It is remarkable that although he says that he fired in the direction where the male voice was heard, not a single bullet hit this male person, there having been no sign of this male person after the bullets were fired, and of these eight shots, at least six, and possibly more, hit his wife. He said that when the door was opened, he did not see who was standing at the door. If, on his version, the person who opened the door must have switched off the light, that person would have been standing right in front of him immediately before the light was switched off. If, on his own version of events, the kitchen light had been on at the time, he would have had to have seen the person standing in front of him, and certainly would have been able to recognise whether that person was his wife or not. His physical

15

20

25

description of where he was lying and how he was lying after he was hit and immediately before he fired the shots does not tally with his evidence as to the direction in which he fired the shots. In other words, if he had been lying in the position in which he said he was, on the floor and had fired the shots, he would have fired them in a direction diagonally opposite from that which he says he fired the shots at. 5

There is furthermore the evidence of Inspector Van Deventer to the effect that there were no bullets found anywhere in the room, in the walls or in the furniture, and no signs whatsoever of the walls or the furniture having been hit by any bullets. It is utterly remarkable, and quite unbelievable, that a person firing in the dark in the direction of a voice, not only should succeed in firing six of those bullets into "the wrong person", but also that not a single bullet went astray and hit any of the walls or the furniture in what was a very small room. 10 15

The witness was utterly unsatisfactory as to not only how the light was switched off in the room of his wife, but also how the kitchen light happened to come off after the shots were fired.

His conduct after he realised that he had shot and killed his wife is not consistent with a person who had made a genuine mistake. He did not go and summon help from Mr Nelson, or anyone else for that matter, nor did he immediately hand himself over to the police. 20

The most telling evidence against the accused is, however, that of the tattoo marks around the entry wounds of the bullets. As I have already indicated, the evidence of Dr Klepp was that the bullets would have been fired from a distance of not more than an arm's length 25



away. This objective evidence utterly destroys the version of the accused. It should also be borne in mind that on the accused's own version the deceased was found lying on the floor where she is shown in the photograph D2. This was some metres away from the place where he says he had fired the shots. Quite apart from anything else, it defies belief that a person could be an arm's length away from his own wife and not realise that he was shooting at her.

5

The credibility of the state witnesses was not seriously challenged by Mr Mpanza who represented the accused. This approach of Mr Mpanza in my view was entirely correct, as there is no reason whatsoever to doubt the credibility of any of the state witnesses.

10

The accused's version lies in tatters. The only reasonable inference which one can draw from all the facts is that the accused deliberately and intentionally shot and killed his wife, and that the form of intention was *dolus directus*. All the elements for murder are accordingly proven.

15

I should before handing down my formal verdict record that I was asked by the state to make a pertinent finding that the murder had been premeditated. In my view, although one has a suspicion that the accused may have intended to kill his wife when he entered the premises, there is simply not enough evidence for one safely to conclude beyond reasonable doubt that this is what occurred. It has to be reasonably possibly true that he shot and killed his wife, either in a moment of anger or emotional stress.

20

25

You are found guilty of murder as charged.