

SOUTH AFRICA / JUDGMENT

Dlangamandla v S (A258/2020) [2021] ZAGPPHC 608 (23 September 2021)

[2021] ZAGPPHC 608

COURT

North Gauteng High Court, Pretoria

BEFORE

C J van der Westhuizen, V V Tlhapi

CASE / FILE NUMBER

A258/2020

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IN THE HIGH COURT OF

SOUTH AFRICA

GAUTENG DIVISION,

PRETORIA

CASE

NO.: A258/2020

NOT REPORTABLE

NOT OF INTEREST TO OTHER

JUDGES

REVISED

23/09/2021

In

the matter between:

SIBUSISO

DLANGAMANDLA Appellant

and

THE

STATE Respondent

JUDGMENT

van der Westhuizen, J

- [1] The appellant was arraigned in the Regional Court, Benoni, on charges of murder and assault. He was convicted on the said charges and sentenced on the charge of murder to 8 years imprisonment and on the charge of assault, to 1 year imprisonment. It was ordered that the two sentences were to run concurrently.
- [2] The court a quo granted leave to appeal the convictions, but refused leave to appeal against the sentences. The appellant only came before this court on the issue of the convictions. The appellant enjoyed legal representation throughout the trial in the court a quo.
- [3] The main complaint of the appellant on the issue of the conviction on the murder charge, is that the court a quo erred in accepting the evidence of a single witness. In that regard it was submitted on behalf of the appellant that the said witness had waited a year before coming forward to testify and that the witness had an axe to grind with the appellant. There is no merit in any of those submissions for what follows.
- [4] The murder charge flowed from an incident that occurred on 17 February 2017 at a tavern near Mlangeni, Daveyton. The charge of assault related to an incident that occurred on 6 January, 2018 at Etwatwa when the appellant assaulted the said witness, Mongezi Mtsomi, by hitting him with a brick and a fist causing serious bodily harm to the witness. In his evidence, the appellant admitted the assault.
- [5] At the commencement of the trial in the court a quo, the provisions of section 258 of the Criminal Procedure Act, 51 of 1977 (the CPA), as well as the provisions of section 51(2)(b) of the Criminal Law Amendment Act, 105 of 1997, relating to applicable minimum sentences, were explained to the appellant. The appellant confirmed that he understood those provisions.
- [6] Formal admissions in terms of the provisions of section 220 of the CPA that related inter alia to the post-mortem report, the cause of death, the identification of the body and the evidence relating to the removal of the deceased's

body from the scene, were made on behalf of the appellant. Further formal admissions were made on behalf of the appellant in terms of the provisions of section 212 of the CPA that related to the fired bullets found at the scene. Further admissions were also made in respect of various exhibits handed into court. The appellant admitted the content of ballistic reports relating to the bullet retrieved from the deceased's body and that relating to the firearm discovered at the appellant's home.

- [7] In summary the relevant facts were the following. The appellant was known to the witness for a number of years prior to the incident that occurred at the tavern and were indeed friends for a period of approximately 3 years when the incident occurred. On that date, they

were drinking beer at the tavern with friends and were standing near a passage. The appellant's girlfriend arrived with her friends. They came from the passage and were to pass when the girlfriend called the appellant to one side and spoke with him. When the appellant returned to their group, one of their friends asked the appellant what his relationship was with the said girl as she was also dating a member of the OVL gang. When the girlfriend returned, the appellant asked whether she was indeed dating the gang member. When she admitted it, the appellant hit her with open hands, produced a firearm and put it to her head and fired three shots. The shots missed her as she had moved away. A person was standing some distance, 4 to 5 metres away, from them with his friends and fell down when the second shot was fired. He died at the scene. The deceased was shot in the mouth. The witness informed the appellant that he, the appellant, had shot the person. Thereupon the appellant pulled his girlfriend from the passage and they all left to where they stayed. The witness later heard that the person who had been shot had died. He did not inform the police of the incident as he had feared for his life in view of the fact that the appellant had the firearm. Some months later, the police arrived at the appellant's home. When the appellant saw the police, he ran away in his underpants. The police entered his home and recovered a firearm under the pillow on the appellant's bed. The firearm was loaded with 5 rounds of live ammunition. The drivers licence of the appellant was also retrieved which indicated that the person who had run away was the appellant. The firearm found was stolen in Sunnyside, Pretoria. The witness only decided to report the incident to the police almost a year later when he learnt that the appellant no longer was in possession of the firearm.

- [8] The appellant testified in his defence. In short his defence was that the witness owed him money, and as a result their friendship terminated during the early part of 2018. He assaulted the witness because the latter owed him money and despite promises to pay which he did not follow through, the witness eventually claimed that the money lent to him was a gift which he was not obliged to return. He claimed that he was not aware that he had killed anyone. He only learnt about it when he was advised that the police were looking for him. The deceased was unknown to him. He handed himself over to the police. This occurred in the early part of 2018. He denied any knowledge of the allegations relating to the incident that occurred at the tavern on 17 February
2017. He further denied any knowledge of the firearm that the police had found at his home. He further claimed to have an alibi for the night of the incident of the recovery of the firearm.
- [9] The court a quo considered all the evidence tendered at the trial. The evidence of all the witness who testified were meticulously analysed by the court and in particular with reference to the credibility thereof. In addition, the court a quo dealt with the principles applicable to the evidence of single witnesses and alibi evidence. The court a quo was acutely aware of evaluating all the evidence holistically and not in isolation.[1] Sound reasons were provided by the court a quo for rejecting the evidence of the appellant and that of his girlfriend. The court a quo accepted the witness's explanation in respect of the delay in reporting the incident to the police. In that regard the court a quo cannot be faulted.

- [10] It is submitted on behalf of the appellant at the hearing of this appeal that the court a quo had erred in the factual findings it had made. In this regard, it is trite that a court of appeal's ability to interfere with the findings of the court a quo is limited, and in particular in respect of factual findings.[2]
- [11] It follows that this court is not to consider the evidence afresh as if sitting as a court of first instance. The duty of the court of appeal is to consider whether the court a quo had made patently wrong findings of fact or had misdirected itself that led to a failure of justice.
- [12] Considering the undisputed facts and the cogent findings of the court a quo, the only inference to be drawn is that the appellant was acutely aware that by his conduct in discharging a firearm in a public place under the circumstances which he had, he had foreseen the possibility of death and was reckless as to whether death would ensue.[3] Had it not been for the fact that the girlfriend had move away when the appellant pulled the trigger, she would in all probability have succumbed.
- [13] In my view, the appellant had failed to point to any patently wrong finding of fact or misdirection on the part of the court a quo. There is no basis upon which this court can fault the reasoning and findings of the court a quo.
- [14] It follows that the appeal cannot be upheld.

I propose the following order:

1. The appeal is dismissed.

C J VAN DER WESTHUIZEN

JUDGE OF THE HIGH COURT

I agree, and it is so ordered

V V TLHAPI

Date of Hearing: 03

August 2021

On behalf of Appellant: S R Malatji

Instructed by: Malatji

Attorneys

On behalf of Respondent: PCB Luyt

Instructed by: DPP

Gauteng

Judgment

Delivered: 23 September 2021

- [1] S v van Aswegen 2001(2) SACR 97 (SCA)
- [2] S v Prinsloo et al 2016(2) SACR 25 (SCA) [183]
- [3] S v Combrink 2012(1) SACR 93 (SCA) [17]
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Prepared on 23 October 2026 · Esheria