

SOUTH AFRICA / JUDGMENT

Fanti v S (228/2013) [2014] ZAE CGHC 102 (28 October 2014) [2014] ZAE CGHC 102

COURT

Eastern Cape High Court, Grahamstown

BEFORE

J M Roberson, C M Plasket

CASE / FILE NUMBER

228/2013

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IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, GRAHAMSTOWN

CA&R 228/2013

DATE HEARD: 08/10/2014

DATE DELIVERED: 28/10/2014

In the matter between

ZIYANDA FANTI

APPELLANT

and

THE STATE

RESPONDENT

JUDGMENT

ROBERSON J:-

[1] The appellant was charged in the Regional Court, Port Elizabeth, with murder. She pleaded not guilty and was ultimately convicted of culpable homicide. She was sentenced to 7 years' imprisonment, two years of which were conditionally suspended.

This appeal lies against the conviction only, leave to appeal having been granted on petition to the Judge President.

[2] It was common cause at the trial that the appellant stabbed the deceased once in the chest, thereby causing her death. In her plea explanation, the appellant stated that she acted in self-defence against an attack by the deceased.

[3] Two witnesses testified on behalf of the State and the appellant testified in her defence. The magistrate found that the

appellant's version was reasonably possibly true, but nevertheless convicted her, on her version, of culpable homicide.

[4] For the purposes of this judgment it is only necessary to deal with the evidence of the appellant. She testified that on the day of the incident, while on her way to the shop, she met the deceased and the two State witnesses. The deceased said "here is this thing that wrote my name on the website, I will meet her". The appellant proceeded on her way to the shop, and on her return saw the deceased and the two State witnesses coming towards her. Because the deceased had threatened that she would "get" her, the appellant broke off a stick from a hedge, and hid it behind her back. As they approached one another, the deceased, who was taller than the appellant, moved towards the appellant, grabbed her and slapped her with an open hand, saying that the appellant would die the way the appellant's mother had died. The appellant hit the deceased with the stick, causing the stick to break. The deceased grabbed the appellant by the hair, causing her to bend forwards, and hit her with her fists on her back. The appellant felt that her jacket had been torn and when she looked up she saw that the deceased had a knife in one hand. The deceased was still pulling the appellant's hair, causing her

pain.

[5] While still bending down and using both her hands, the appellant managed to take the knife away from the deceased, who at this stage was hitting the appellant. The appellant stabbed the deceased somewhere on her side and threw the knife away. During the altercation the two State witnesses merely observed what was happening and did not intervene. The appellant's

explanation for the attack on her by the deceased was that the appellant disapproved of the relationship between the appellant and the deceased's cousin. She denied that she had written anything about the deceased on a website.

[6] In his judgment the magistrate was of the view that when the appellant dispossessed the deceased of the knife, her life was no longer threatened. The two state witnesses did not try to assist the deceased in overpowering the appellant and there was no reason why it was necessary for the appellant to use the knife, once she had dispossessed the deceased of the knife. The magistrate reasoned that in order to defend herself from further attack, the appellant could have thrown the knife away, or hit the deceased with her fist, or walked or run away. She had no reason to fear that the deceased would chase her with a weapon, because the deceased no longer had the knife. The magistrate was of the view that the

appellant ought reasonably to have realised that she was using more force than was necessary and that by stabbing the deceased in the upper body, ought reasonably to have foreseen the possibility of death resulting.

[7] In my view, the magistrate's reasoning and conclusion cannot be faulted. In *R v Patel* 1959 (3) SA 121 (A) at 123B-D Holmes AJA (as he then was) said the following:

"The general principles mentioned by WATERMEYER, C.J., in R v Attwood, 1946 AD 331 at p. 340, are that an accused is entitled to an acquittal on the ground that he was acting in self-defence if it appears as a reasonable possibility on the evidence -

'(a) that he had been unlawfully attacked and had reasonable ground for thinking that he was in danger of death or serious injury. (Though there may be cases of lawful self-defence where the accused was originally the aggressor *R v Ndara*, 1955

(4) SA 182 (AD) at 184 E.);

(b) that the means of self-defence which he used were not excessive in relation to the danger;

(c) that the means he used were the only or least dangerous means whereby he could have avoided the danger."

The principles contained in (b) and (c) above are relevant in the present matter.

[8] When one considers the nature of the attack on the appellant by the now unarmed deceased, the use of a potentially lethal weapon was clearly excessive in relation to the attack. I also agree with the magistrate that there were other means available to the appellant to protect herself against the attack by the deceased. It was submitted on behalf of the appellant that she could not have run away because the deceased was holding onto her hair. In my view it would have been possible for the appellant to extricate herself from the hold on her hair, or to have removed the deceased's hand from her hair. She had after all managed to take the knife out of the deceased's hand. The means she used were therefore not the only or least dangerous means she could have used to avoid the attack by the deceased.

[9] The magistrate therefore correctly found that the appellant unlawfully and negligently caused the death of the deceased.

[10] The appeal is dismissed.

J M ROBERSON

JUDGE OF THE HIGH COURT

PLASKET J:-

I agree

C M PLASKET

Appearances:-

For the Appellant: Mr T Solani, Grahamstown Justice Centre

For the Respondent: Adv M J September, Director of Public Prosecutions, Grahamstown

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